

GAHC010036402022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1318/2022

NIZAM UDDIN AND 7 ORS

1 NO. WARD MEMBER,

39 NO. MADHYA BETBARI GAON PANCHAYAT, S/O MOFIZ UDDIN

VILL- BANBAHAR, P.O. KAYAKUCHI

DIST. BARPETA, ASSAM, PIN-781352

2: MANSUR ALI

3 NO. WARD MEMBER

39 NO. MADHYA BETBARI GAON PANCHAYAT

S/O EMAN ALI

VILL- CHAKIRBHITA

P.O. KAYAKUCHI

DIST. BARPETA

ASSAM

PIN-781352

3: RAMENA AHMED

5 NO. WARD MEMBER

39 NO. MADHYA BETBARI GAON PANCHAYAT

W/O JEHERUL ISLAM

VILL- MARALATARI

P.O. KAYAKUCHI

DIST. BARPETA

ASSAM

PIN-781352

4: NASRIN AHMED

6 NO. WARD MEMBER

39 NO. MADHYA BETBARI GAON PANCHAYAT

W/O ZAKIR HUSSAIN

VILL- MARALATARI
P.O. KAYAKUCHI
DIST. BARPETA
ASSAM
PIN-781352

5: NOOR ISLAM
7 NO. WARD MEMBER
39 NO. MADHYA BETBARI GAON PANCHAYAT

S/O BISHA MIYA
VILL- CHAKIRBHITHA
P.O. KHABLABHITHA
DIST. BARPETA
ASSAM
PIN-781352

6: SANIARA AHMED
8 NO. WARD MEMBER
39 NO. MADHYA BETBARI GAON PANCHAYAT

W/O AMIR HUSSAIN
VILL- CHAKIRBHITHA

P.O. KHABLABHITHA
DIST. BARPETA
ASSAM
PIN-781352

7: SHAHIDA KHATUN
10 NO. WARD MEMBER
39 NO. MADHYA BETBARI GAON PANCHAYAT

W/O MUSHARAF HUSSAIN
VILL- KAMALPUR
P.O. KAMALPUR
DIST. BARPETA
ASSAM
PIN-781352

8: MANJUWARA AHMED
10 NO. WARD MEMBER
39 NO. MADHYA BETBARI GAON PANCHAYAT

W/O AMBAD HUSSAIN
VILL- KAMALPUR
P.O. KAMALPUR
DIST. BARPETA

ASSAM
PIN-78135

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI-781006.

2:THE COMMISSIONER

PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM
JURIPAR
SIXMILE
GUWAHATI-781037.

3:THE DEPUTY COMMISSIONER

BARPETA
P.O. AND DIST. BARPETA
ASSAM
PIN-781356

4:THE BARPETA ZILLA PARISHAD

REP. BY THE PRESIDENT OF BARPETA ZILLA PARISHAD
DIST. BARPETA
ASSAM
PIN-781356

5:THE CHIEF EXECUTIVE OFFICER

BARPETA ZILLA PARISHAD
P.O. AND DIST. BARPETA
ASSAM
PIN-781356

6:THE PAKABETBARI ANCHALIK PANCHAYAT

REP. BY ITS PRESIDENT
P.O. KAYAKUCHI
DIST. BARPETA
ASSAM
PIN-781356

7:THE PRESIDENT

PAKABETBARI ANCHALIK PANCHAYAT
KAYAKUCHI
P.O. KAYAKUCHI
DIST. BARPETA
ASSAM
PIN-781356.

8:THE EXECUTIVE OFFICER

PAKABETBARI ANCHALIK PANCHAYAT
KAYAKUCHI
P.O. KAYAKUCHI
DIST. BARPETA
ASSAM
PIN-781352

9:DEWAN MUSHARAF HUSSAIN
S/O LATE DEWAN ELIM UDDIN
VILL- CHAKIRBHITHA
P.O. KHABLARBHITHA
PIN-781352
DIST. BARPETA
ASSA

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : SC, P AND R.D.

Linked Case : WP(C)/7820/2022

DEWAN MUSHARAF HUSSAIN
S/O- LATE DEWAN ALIM UDDIN

VILL- CHAKIR BHITHA

P.S AND DIST- BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM AND 15 ORS

REP BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
JURIPAR
GUWAHATI- 781037

3:THE DEPUTY. COMMISSIONER
BARPETA
ASSAM

4:THE CHIEF EXECUTIVE OFFICER
BARPETA ZILLA PARISHAD
BARPETA
PIN- 781301

5:THE PRESIDENT

PAKABETBARI ANCHALIK PANCHAYAT
KAYAKUCHI
DIST. BARPETA
ASSAM
PIN-781352

6:THE EXECUTIVE OFFICER
PAKABETBARI ANCHALIK PANCHAYAT
KAYAKUCHI
DIST. BARPETA
ASSAM
PIN-781352

7:THE SECRETARY
39. NO. MADHYA BETBARI GAON PANCHAYAT
KAYAKUCHI
DIST. BARPETA
ASSAM
PIN-781352.

8:NIZAM UDDIN
1 NO WARD MEMBER

39. NO. MADHYA BETBARI GAON PANCHAYAT

S/O- MOFIZUDDIN
VILL- BANBAHAR

P.O- KAYAKUCHI
DIST. BARPETA
ASSAM

PIN-781352.
9:MANSUR ALI
3 NO WARD MEMBER

39. NO. MADHYA BETBARI GAON PANCHAYAT

S/O- ENAM ALI
VILL- CHAKIR BHITA

P.O- KAYAKUCHI
DIST. BARPETA
ASSAM
PIN-781352.
10:RAMINA AHMED
5 NO WARD MEMBER

39. NO. MADHYA BETBARI GAON PANCHAYAT

W/O- JEHERUL ISLAM
VILL- MARALARTARI

P.O- KAYAKUCHI
DIST. BARPETA
ASSAM
PIN-781352.
11:NUSRIN AHMED
6. NO WARD MEMBER

39. NO. MADHYA BETBARI GAON PANCHAYAT

W/O- JAKIR HUSSAIN
VILL- MARALARTARI

P.O- KAYAKUCHI
DIST. BARPETA
ASSAM
PIN-781352.
12:NOOR ISLAM
7. NO WARD MEMBER

39. NO. MADHYA BETBARI GAON PANCHAYAT

S/O- BISHA MIYA
VILL- CHAKIRBHITHA

P.O- KABLARBHITHA
DIST. BARPETA
ASSAM

PIN-781352.
13:SANIARA AHMED
8. NO WARD MEMBER

39. NO. MADHYA BETBARI GAON PANCHAYAT

W/O- AMIR HUSSAIN
VILL- CHAKIRBHITHA

P.O- KABLARBHITHA
P.S AND DIST. BARPETA
ASSAM
PIN-781352.
14:SHAHIDA KHATUN
10 . NO WARD MEMBER

39. NO. MADHYA BETBARI GAON PANCHAYAT

W/O- MUSHARAF HUSSAIN

VILL AND P.O- KAMALPUR

P.S AND DIST. BARPETA
ASSAM
PIN-781352.
15:MUNJUWARA AHMED
10 . NO WARD MEMBER

39. NO. MADHYA BETBARI GAON PANCHAYAT

W/O- AMBAD HUSSAIN

VILL AND P.O- KAMALPUR

P.S AND DIST. BARPETA
ASSAM
PIN-781352.
16:SHAHJAHAN ALI
S/O SRI DELOWAR HUSSAIN
VILL- CHAKIRBHITHA
P.O- KABLARBHITHA
DIST- BARPETA
ASSAM
PIN- 781352.

Advocate for : MR. M K CHOUDHURY
Advocate for : SC
P AND R.D. appearing for THE STATE OF ASSAM AND 15 ORS

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

08.06.2023

Heard Mr. S. Ali, learned counsel for the petitioners in W.P.[C] no. 1318/2022; Mr. A. Borkotoky, learned counsel for the petitioner in W.P.[C] no. 7820/2022 & for the respondent no. 9 in W.P.[C] no. 1318/2022; Mr. D.A. Kaiyum, learned counsel for the respondent nos. 8 – 14 & 16 in W.P.[C] no. 7820/2022; and Mr. J. Abedin, learned counsel for the respondent no. 5 in W.P.[C] no. 7820/2022 and for the respondent nos. 6 & 7 in W.P.[C] no. 1318/2022. Also heard Mr. N.K. Dev Nath, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1, 2, 5 & 8 in W.P.[C] no. 1318/2022 & for the respondent nos. 1, 2, 4, 6 & 7 in W.P.[C] no. 7820/2022 and Mr. C.K.S. Baruah, learned Junior Government Advocate, Assam for the respondent no. 3 both in W.P.[C] no. 1318/2022 & W.P. [C] no. 7820/2022.

2. The petitioners, 8 [eight] in nos., in the writ petition, W.P.[C] no. 1318/2022 are the Ward Members of 39 no. Madhya Betbari Gaon Panchayat whereas the petitioner in the writ petition, W.P.[C] no. 7820/2022 is the President of 39 no. Madhya Betbari Gaon Panchayat under Pakabetbari Anchalik Panchayat, elected in terms of the provisions of Section 6[1][b] of the Assam Panchayat Act, 1994.

3. In view of the broad consensus arrived at by the learned counsel for the parties, it is not necessary to advert to the factual background in details, save and except the relevant facts.

3.1. A requisition notice came to be submitted on 14.02.2021 by 8 [eight] nos. of Ward Members of 39 no. Madhya Betbari Gaon Panchayat expressing want of confidence in the President of the said Gaon Panchayat i.e. the petitioner in W.P.[C] no. 7820/2022. On the

basis of the requisition notice dated 14.02.2021, the matter proceeded further. A litigation ensued earlier in the form of a writ petition, W.P.[C] no. 3001/2021 at the instance of the President of the Gaon Panchayat, that is, the petitioner in W.P.[C] no. 7820/2022. The writ petition, W.P.[C] no. 3001/2021 came to be disposed of by an order dated 24.06.2021 with a direction to the President and the Ward Members of the Gaon Panchayat to proceed in terms of the provisions of Section 15 of the Assam Panchayat Act, 1994 for holding the discussion on the motion of no confidence. Though a special meeting was convened on 17.07.2021 to discuss the motion of no confidence, the proceedings of the special meeting came to be interfered with by an order dated 01.02.2022 passed in a writ petition, W.P.[C] no. 3570/2021 instituted again by the petitioner in W.P.[C] no. 7820/2022. After interfering with the proceedings of the special meeting dated 17.07.2021 and the consequential communication, the Court, by order dated 01.02.2022, issued a direction to the respondent no. 5 therein, that is, the President, Pakabetbari Anchalik Panchayat to convene a special meeting of 39 no. Madhya Betbari Gaon Panchayat to discuss the motion of no confidence against its President, that is, the petitioner in W.P.[C] no. 7820/2022 at 11-00 on 14.02.2022 in the office of the Pakabetbari Anchalik Panchayat, Kayakuchi, District - Barpeta as per the requisition notice dated 12.04.2021. As all the parties were before this Court, issuance of notice for the special meeting directed to be so held on 14.02.2022, was dispensed with.

4. Section 15 of the Assam Panchayat Act, 1994 has provided for the matter of no confidence against the President and Vice-President of a Gaon Panchayat. It is provided inter alia in sub-section [1] of Section 15 that every President shall be deemed to have vacated his office forthwith when a resolution expressing want of confidence in him is passed by a majority of two-third of the total number of Members of the Gaon Panchayat. As per Section 15[1] of the Assam Panchayat Act, 1994, a special meeting for that purpose, is to be convened by the Secretary of the Gaon Panchayat with approval of the President of the Gaon Panchayat. As per Section 15[2], the requisition notice for such a meeting shall have to be signed by not less than one third of the total number of Members of the Gaon Panchayat and shall be delivered to the President of the concerned Gaon Panchayat with intimation to the Deputy Commissioner of the District. In case such a meeting is not convened by the President within a period of 15 [fifteen] days from the date of receipt of the notice, the Secretary of the

Gaon Panchayat shall within 3 [three] days is to refer the matter to the President of the concerned Anchalik Panchayat who shall convene the special meeting within 7 [seven] days from the date of receipt of the information from the Secretary of the Gaon Panchayat and preside over such special meeting. In case the President of the Anchalik Panchayat does not take action as above within the specified seven days time the concerned Gaon Panchayat Secretary shall inform the matter to the Deputy Commissioner/Sub-Divisional Officer [Civil], as the case may be, within 3 [three] days after the expiry of the stipulated 7 [seven] days time and the concerned Deputy Commissioner/Sub-Divisional Officer [Civil] shall convene the meeting within seven days from the date of receipt of the information with intimation to the Zilla Parishad and the Anchalik Panchayat and preside over the meeting so convened. The first proviso to Section 15[1] has provided that the concerned Deputy Commissioner/Sub-Divisional Officer [Civil], as the case may be, in case of his inability to preside over the meeting, may depute one Gazetted Officer under him not below the rank of Class-I Gazetted Officer to preside over such specially convened meeting. The second proviso to sub-section [1] of Section 15 has laid down to the effect that when a no confidence motion is lost, no such motion shall be allowed in the next six months.

5. From the submissions of the learned counsel for the parties and on perusal of the case records produced by the learned Standing Counsel, P&RD Department, it has clearly emerged that though a special meeting was convened on 14.02.2022 purportedly in compliance of the direction of this Court, the convening of the special meeting did not result in any resolution, which was the utmost statutory requirement, under the hand of the President, Pakabetbari Anchalik Panchayat, who was specifically entrusted with the responsibility to convene such special meeting properly by this Court in its order dated 01.02.2022 passed in the writ petition, W.P.[C] no. 3570/2021.

6. The learned counsel for the parties are at consensus on the point that the motion of no confidence still survives and has to be proceeded with from the stage of convening of a special meeting to discuss the motion. As the parties are in such broad consensus, the issues raised in the two writ petitions are not required to be gone into in details.

7. The learned counsel for the parties representing the President and the Ward Members of 39 no. Madhya Betbari Gaon Panchayat have conjointly submitted that since the President, Pakabetbari Anchalik Panchayat had failed to convene the special meeting in compliance of the direction of this Court and it did not result into any resolution for or against the motion, the special meeting for discussing the motion of no confidence may be directed to be held under the aegis of the jurisdictional Deputy Commissioner in terms of the provisions of Section 15[1] of the Assam Panchayat Act, 1994 with information to the jurisdictional Zilla Parishad and the jurisdictional Anchalik Panchayat. As it is found that on the previous two occasions, the special meetings were not properly held and the motion of no confidence did not result into a proper resolution, this Court is of the considered view that a direction is called for in the case in hand because the motion of no confidence is not lost and still survives. It is, therefore, directed that a special meeting to discuss the motion of no confidence against the petitioner in W.P.[C] no. 7820/2022, that is, the President, 39 no. Madhya Betbari Gaon Panchayat is to be convened and be held at 11-00 a.m. on 26.06.2023 in the office of the Deputy Commissioner, Barpeta. Such special meeting shall be presided over by the Deputy Commissioner, Barpeta or in case his inability to preside over such special meeting, the Deputy Commissioner, Barpeta may depute one officer under him not below the rank of Class – I Gazetted Officer to preside over such special meeting. The authority, who will preside over the said special meeting, shall ensure a free and fair voting process by way of secret ballots, by also ensuring interference of outsiders. Since all the parties to be participated in the said special meeting are before this Court as parties in the two writ petitions, the notices for the said special meeting to be convened and held on 26.06.2022 to them, are dispensed with, as agreed to by the learned counsel representing such parties. The Secretary of 39 no. Madhya Betbari Gaon Panchayat who is also a party in both the writ petitions, represented by Mr. Dev Nath, learned Standing Counsel, P&RD Department, shall be present in the special meeting with the relevant records for the purpose of assisting the authority to preside over such special meeting.

8. As the interim order was passed in the writ petition, W.P.[C] no. 7820/2022 on 07.12.2022 whereby the In-Charge, President of 39 no. Madhya Betbari Gaon Panchayat, Kayakuchi, Barpeta had been restrained from dealing with the fund of the Gaon Panchayat

save and except payment of salary of the staff. It is observed that till the resolution in the special meeting convened on 26.06.2023 is passed, the interim order dated 07.12.2022 shall operate and further continuance or modification or alteration of the interim order will abide by the outcome of the decision adopted in the special meeting convened and directed to be held on 26.06.2023.

9. With the directions made above, the writ petition is disposed of.

10. A copy of the order be furnished to Mr. Dev Nath, learned Standing Counsel, P&RD Department and Mr. Baruah, learned Junior Government Advocate, Assam for compliance of the directions, made hereinabove.

JUDGE

Comparing Assistant