

GAHC010118152018



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

Case No.: WP(C)/1659/2020

JOGEN KUTUM AND 10 ORS.
EX-PRESIDENT OF 107 RAWNAPUR SAMOGURI G.P.
S/O SRI KULIRAM KUTUM
VILL-SUMAIMARI
P.O.-POTIYA
P.S.-BONGAON
DIST-MAJULI (ASSAM)
PIN-785106

2: BRINDA SAIKIA
EX-MEMBER OF NO 1 MEKHELI GAON UNIT
107 RAWNAPUR SAMOGURI G.P.
S/O LATE SAMBHU SAIKIA
VILL-MEKHELI GAON
P.O. AND P.S.-BONGAON
DIST-MJAULI (ASSAM)
PIN-785110

3: HAREN SAIKIA
EX-MEMBER OF NO 7 POTIYA HOKOLAMUKH UNIT
107 RAWNAPUR SAMOGURI G.P.
S/O SRI KUMUD SAIKIA
VILL AND P.O.-POTIYA
P.S.-BONGAON
DIST-MAJULI (ASSAM)
PIN-785106

4: SMT. BIBIMAI DAS
EX-MEMBER OF NO 5 DEKASENCHOWA UNIT
107 RAWNAPUR SAMOGURI G.P.
W/O MUHIDAR DAS
VILL-DEKASENCHOWA
P.O.-SAMOGURI
P.S.-BONGAON

DIST-MAJULI (ASSAM)
PIN-785110

5: SMT. REKHA OZAH
EX-MEMBER OF NO 2 SAMOGURI UNIT
107 RAWNAPUR SAMOGURI G.P.
W/O SRI DEBA OZAH
VILL AND P.O.-SAMOGURI
P.S.-BONGAON
DIST-MAJULI (ASSAM)
PIN-785110

6: PULIN DAS
EX-MEMBER OF NO 3 BONKHOWA CHUK UNIT
107 RAWNAPUR SAMOGURI G.P.
S/O BUDHESWAR DAS
VILL-THAKURBARI
P.O.-SAMOGURI
P.S.-BONGAON
DIST-MAJULI (ASSAM)
PIN-785110

7: DILIP SAIKIA
EX-MEMBER OF NO 9 KOMAR TOTTIA UNIT
107 RAWNAPUR SAMOGURI G.P.
S/O BAPURAM SAIKIA
VILL AND P.O.-TOTTIA
P.S.-BONGAON
DIST-MAJULI (ASSAM)
PIN-785106

8: JOGGESWAR KALITA
EX-MEMBER OF NO 6 KOMARGAON UNIT
107 RAWNAPUR SAMOGURI G.P.
S/O LATE DOLARAM KALITA
VILL-KOMAR GAON
P.O.-POTIYA
P.S.-BONGAON
DIST-MAJULI (ASSAM)
PIN-785106

9: BINA PEGU
EX-MEMBER OF NO 8 SUMAIGURI UNIT
107 RAWNAPUR SAMOGURI G.P.
W/O SRI PRANAB KUTUM
VILL-SUMAIGURI
P.O.-POTIA
P.S.-BONGAON

DIST-MAJULI (ASSAM)
PIN-785106

10: BIJOY NEOG
EX-MEMBER OF NO 10 RAWNAGAON UNIT
107 RAWNAPUR SAMOGURI G.P.
S/O LATE BOPARAM NEOG
VILL-RAWNAGAON
P.O.-TOTTIA
P.S.-BANGAON
DIST-MAJULI (ASSAM)
PIN-785106

11: JYOTIMONI DAS
EX-MEMBER OF NO 4 BURASENCHOWA UNIT
107 RAWNAPUR SAMOGURI G.P.
W/O SRI BISYAWJIT DAS
VILL-BURASENCHOWA
P.O.-POTIA
P.S.-BONGAON
DIST-MAJULI (ASSAM)
PIN-785106
VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-781006

2:THE COMMISSIONER TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
JURIPAR
PANJABARI
GHY-37

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI-781006

4:THE DEPUTY COMMISSIONER
MAJULI
ASSAM
PIN-785105

5:THE CHIEF EXECUTIVE OFFICER
MAJULI ZILLA PARISHAD
KAMALABARI
DIST-MAJULI
ASSAM

PIN-785105
6:THE MAJULI ANCHALIK PANCHAYAT
REPRESENTED BY THE EXECUTIVE OFFICER-CUM-BLOCK DEVELOPMENT
OFFICER
MAJULI DEVELOPMENT BLOCK
KAMALABARI
P.O. AND P.S.-GARAMUR
MAJULI
DIST-MAJULI (ASSAM)
PIN-785104
7:THE 107 RAWNAPUR SAMOGURI GAON PANCHAYAT
REPRESENTED BY THE SECRETARY
RAWNAPUR SAMOGURI GAON PANCHAYAT UNDER MAJULI ANCHALIK
PANCHAYAT
KAMALABARI
P.O. AND P.S.-GARAMUR
MAJULI
DIST-MAJULI (ASSAM)
PIN-785104

Advocate for : MR. A F N U MOLLAH
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 6 ORS.

Advocates for the Petitioners

Mr. R. P. Sarmah, Senior Advocate.Mr. M. Khan, Advocate; Ms. C. M. Deka, Advocate; Mr. H. I. Choudhury, Advocate; Mr. A. Roshid, Advocate; Mr. M. K. Hussain, Advocate; Mr. S. H. Rahman, Advocate; Mr. A. F. N. U. Mollah, Advocate; Md. A. Rashid, Advocate; Mr. M. Kalita, Advocate; Mr. R. Ali, Advocate;, Mr. P. Hazarika, Advocate; Mr. M. Hussain, Advocate; Mr. F. Haque, Advocate; Mr. A. K. Sarma, Advocate; Mr. D. Kalita, Advocate; Mr. P. Hazarika, Advocate; Mr. R. Islam, Advocate; Mr. A.H.M.R. Choudhury, Advocate; Dr. P. K. Goswami, Advocate; Mr. A. Rahman, Advocate; Mr. M. K. Boro, Advocate; Mr. A. T. Sarkar, Advocate; Mr. B. J. Ghosh, Advocate; Mr. N. Upadhyay, Advocate; Mr. HR Choudhury, Advocate.

Advocate for the Respondents

Mr. P. Nayak, Standing Counsel, Finance Department and Mr. K. Konwar, Standing Counsel, P&RD Department.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 04.01.2023

Date of Judgment : 04.01.2023

JUDGMENT AND ORDER (ORAL)

Heard the learned counsel appearing on behalf of all the petitioners in the batch of the writ petitions. I have also heard Mr. P. Nayak, the learned Standing Counsel for the Finance Department as well as Mr. K. Konwar, the learned Standing Counsel, P&RD Department.

2. The dispute in the instant writ petitions relates to non-payment of the remuneration dues of the PRI members, who are the petitioners in the batch of writ petitions whose term ended in March, 2018.

3. It appears from Sections 12 (2), 39 (2) and 71 of the Assam Panchayat Act, 1994 (for short, the Act of 1994) that the Presidents, Vice-Presidents and other members of the Gaon Panchayat, Anchalik Panchayat and Zilla Parishad respectively are entitled to receive certain allowances as may be prescribed in terms with the same and by virtue of Section 141 of the Act of 1994, the Assam Panchayat (Administrative) Rules, 2002 (for short, the Rules of 2002) was made by the State Government. In terms with Rules 13, 14 & 15 of the Rules of 2002, the Presidents, Vice-Presidents as well as each members of the Zilla Parishad, Anchalik Panchayat and Gaon Panchayat have been held to be entitled to certain monthly remuneration and sitting allowances. Relevant however to mention that in

terms with Rules 13, 14 & 15 of the Rules of 2002, the remuneration to be paid to the Presidents, Vice-Presidents as well as the members of the Zilla Parishad, Anchalik Panchayat and Gaon Panchayat were to be made out of their own resources.

4. At this stage, if this Court takes note of Section 24 (1) of the Act of 1994, it stipulates that every Gaon Panchayat shall have a fund bearing the name of the Gaon Panchayat. Similarly, Section 56 (1) of the Act of 1994 stipulates that every Anchalik Panchayat shall also have a fund bearing the name of the Anchalik Panchayat. Section 91 is in respect to the Zilla Parishad fund which every Zilla Parishad shall have. The Gaon Panchayat fund, Anchalik Panchayat fund as well as the Zilla Parishad fund would comprise of the various amounts as have been mentioned in various sub-clauses of Section 24 (1), Section 56 (1) and Section 91 of the Act of 1994. This Court would deal with the same in detail in the later part of this judgment.

5. It is also relevant to take note of that in terms with Section 24 (2), Section 56 (2) and Section 93 (2), the payment towards the cost of its own administration including payment of wages which would include amongst others the allowances to the Presidents, Vice-Presidents as well as the members of the Gaon Panchayat, the Anchalik Panchayat and the Zilla Parishads shall be defrayed from the fund as constituted under Section 24, 56 & 91 of the Act of 1994 respectively.

6. It further transpires from the records that the Government of Assam, in exercise of powers under Section 141 (1) of the Act of 1994, amended the Rules of 2002. Perusal of the Assam Panchayat (Administrative) Amendment Rules, 2012 (hereinafter for short referred to as the Amended

Rules of 2012) reveals that amongst others Rules 13, 14 and 15 were amended. By carrying out the said amendment not only the quantum of the monthly remuneration/allowances were increased but there was also an amendment whereby the words "out of its own resources" were substituted in Rule 13 by "out of the devolution of fund to the Zilla Parishad and Zilla Parishad's own resources". Similarly, in Rule 14 "out of the devolution of fund to the Anchalik Panchayat and the Anchalik Panchayat's own resources" and in Rule 15 "out of the devolution of fund to the Gaon Panchayat and the Gaon Panchayat's own resources" were inserted by substituting the words "out of its own resources". Therefore, pursuant to the amendments which have been brought about by the Amended Rules of 2012, the monthly remuneration/allowances to the PRI members has not only to be paid out of the own resources of the Gaon Panchayat, the Anchalik Panchayat or the Zilla Parishad as the case may be, but also from the devolution of the fund to the Gaon Panchayat, the Anchalik Panchayat as well as the Zilla Parishad which is made by the State Government.

7. As already stated herein above, all the writ petitions relate to non-payment of monthly remuneration/allowances to the PRI members whose term ended in the month of March, 2018. The case of the petitioners is that they are entitled to by virtue of Article 243 (I) of the Constitution, the Act of 1994 as well as the Rules framed therein under to receive the monthly remuneration and other allowances which has been deprived by the State Government.

8. Both the Finance Department as well as the P&RD Department have filed affidavits in some of the writ petitions including in WP(C) No.8574/2019. The Joint Secretary to the Government of Assam, Panchayat

and Rural Development had filed an affidavit on 27.01.2020 stating inter-alia that for payment of remuneration to the Presidents, Vice-Presidents and the members of the Gaon Panchayat, Anchalik Panchayat and Zilla Parishad whose 5 years term ended on March, 2018, the Panchayat and Rural Development had instructed all the Panchayat Raj Institutions for payment of the pending remuneration to the members of the respective PRIs from their own resources of revenue. It was mentioned that since the own resources of the PRIs were not adequate for payment of remuneration to the elected representatives, the Panchayat and Rural Development Department submitted a proposal to the Finance Department of the Government of Assam to arrange fund for payment of the outstanding dues of the remuneration to the elected Presidents, Vice-Presidents and members of the Gaon Panchayat, Anchalik Panchayat and Zilla Parishad whose term ended on March, 2018 from the 5th Assam State Finance Commission Devolution Grant/State Owned Priority Development (SoPD) Grant or from any other sources. It was mentioned that once the required fund is received from the Finance Department of the Government of Assam, the same would be disbursed to the respective Gaon Panchayats, Anchalik Panchayats and Zilla Parishads immediately for payment of remuneration to its elected representatives whose term ended in March, 2018. Therefore, from the perusal of the said affidavit of the Panchayat and Rural Development Department, it is clear that from the stand taken, that the petitioners are entitled to the remuneration/monthly allowances. But, however, it is on account of the fund not being available, the said payment could not be made.

9. The records further reveals that on 10.09.2021, this Court taking

into account the stand taken by the Standing Counsel of the Finance Department to the effect that on 06.07.2021, the Director of Finance (EA) Department expressed his view that the P&RD Department may consider arrangement of the fund from the SoPD and make the payment of outstanding remuneration to the elected PRI members subject to the condition that thereafter no further budgetary support would be considered in future and the PRIs would have to arrange fund for remuneration from their own resources as per the Act of 1994; this Court directed both the Finance and the P&RD Department of the State of Assam to file their affidavit to bring on record their respective stand.

10. Pursuant to the said order, on 30.11.2021, the Principal Secretary to the Government of Assam, Panchayat and Rural development Department, Dispur had filed an affidavit. In the said affidavit it was mentioned that, in terms with the order dated 10.09.2021, the P&RD Department vide letter dated 27.09.2021 bearing No.PDA.192/2021/14, furnished instructions to the learned counsel of the Department inter-alia stating that "Deptt. has already re-endorsed the said file to the Finance again intimating about a Cabinet decision dated 22.07.2019 wherein it approved to defray the expenditure from the Devolution Grant under the Assam State Finance Commission for an amount of Rs.67.3032 Crores per year from 2019-20 for regular payment of remuneration to the newly elected Panchayat representatives." Further it was mentioned that the Panchayat and Rural Development also requested "for reconsideration for arranging fund for an amount of Rs.182.00 Crores for payment of outstanding remuneration to the elected PRI members from the State Finance Commission Devolution Grant/SoPD Grant or from any sources. However, the file was not returned

from the Finance Department with views". It is further mentioned that the Finance (EC-I) Department vide endorsement dated 08.11.2021 requested the P&RD Department to discuss the matter with the Chief Minister of Assam first, as desired by the Chief Minister. The P&RD Department again re-endorsed the matter to the Finance Department vide endorsement dated 23.11.2021 with the intimation that the matter has already been discussed with the Chief Minister during the Review Meeting held on 06.06.2021 and has been minuted. It has been mentioned that at Point No.HCM/36/18 of the said minutes, it was mentioned that the Chief Minister on being appraised about the issue of pending remuneration of the current and previous PRI members, directed that the pending remuneration of the current PRI members will be booked under the State Finance Commission Devolution Grant immediately and the remuneration of the previous term's PRI members will also be covered by the State Finance Commission Grants in three installments in the coming years. Under such circumstances, the P&RD Department had again re-endorsed the matter to the Finance Department for re-consideration for arranging fund for an amount of Rs.182.00 Crores for payment of outstanding remuneration to the elected PRI members from the State Finance Commission Devolution Grant/SoPD Grant or from any other source. Further to that it has been mentioned that after the re-endorsement of the file to the Finance Department, the decision from the Finance Department is awaited and once the decision is received, the P&RD Department will take necessary steps accordingly. To the said affidavit filed by the respondent No.1, the endorsement so made to the Finance Department was enclosed as Annexure-B. The said endorsement has a material bearing to the instant dispute for which the

same is reproduced herein below:-

“Manish Thakur, IAS
Commissioner & Secretary
Finance Department

Principal Secretary's approval at page 19/N

Finance (EC-I) Deptt.'s view at page 18/N (dated 08/11/2021).

Finance (EC-I) Deptt.'s endorsement dated 22-07-2021 (at page 14/N)

and this Deptt.'s proposal dated 4-8-2021 for re-consideration for arranging fund for an amount of Rs.182.00 Crore for payment of outstanding remuneration to the elected PRI members whose term ended in March, 2018 from State Finance Commission Devolution Grant/SoPD grant or from any other Sources may also be perused.

Finance Department vide their endorsement dated 8-11-2021 requested the Department to discuss the matter with Hon'ble Chief Minister first as desired by Hon'ble Chief Minister.

It is to be stated that, this matter has already been discussed with Hon'ble Chief Justice during the review meeting held on 06.06.2021 and has also been minuted. (Copy at Sl.59/c to 67/c).

Point No.HCM/36/18 of the minutes may kindly be perused, wherein it is mentioned that Hon'ble Chief Minister, Assam on being appraised about the issue of pending remuneration of the current and the previous PRI members, directed that the pending remuneration of the current PRI members will be booked under the State Finance Commission Devolution Grant immediately and the remunerations of the previous term PRI members will also be covered by the State Finance Commission Grants in 3 (three) installments in the coming years.

This for favour of your kind information and for re-consideration for arranging fund for an amount of Rs.182.00 Crore for payment of outstanding remuneration to the elected PRI members from State Finance Commission Devolution Grant/SoPD grant or from any other Sources.

Addl. Secretary to the Govt. of Assam
Panchayat & Rural Development Department.”

11. It is interesting that on 06.04.2022, the Joint Director, Finance (EA) Department had filed an affidavit-in-opposition. In the said affidavit-in-opposition, it has been mentioned that the Finance Department releases Devolution Grant based on recommendation of the State Finance Commission and proposals received from the line Departments. It was mentioned that the 5th Assam State Finance Commission (5th ASFC) recommended Devolution Grant primarily to be used for asset creation like roads, buildings, drinking water supply, village markets etc. Accordingly, the Finance Department released Devolution Grant for a total of Rs.191.99 crores to the PRIs against the proposal received from the line Department under the award of the 5th ASFC. It has been further mentioned that the P&RD Department thereafter moved the Cabinet during 2019-20 seeking approval on two aspects: (a) to defray the expenditure from the Devolution Grant under the Assam State Finance Commission for an amount of Rs.67.0302 crores per year from 2019-20 for regular payment of remuneration to the newly elected Panchayat representatives; and (b) allocation for an amount of Rs.182,26,97,499/- for payment of the outstanding dues of remuneration to the elected PRI members of the previous Panchayat Bodies whose term ended on March, 2018 from the 5th ASFC Devolution Grant/SoPD Grant or any other source. However, the Cabinet approved the proposal (a) to defray the expenditure from the Devolution Grant under the SFC from 2019-20 for regular payment of remuneration to the newly elected Panchayat representatives. But the

Cabinet did not approve the proposal (b) regarding allocation for an amount of Rs.182,26,97,499/- for payment to the PRI members of the previous Panchayat Bodies. It is however surprising to note that in affidavit filed by the Finance Department though filed at a later point of time than the affidavit filed by the Principal Secretary, P&RD Department but the Finance Department for reasons best known did not think it appropriate to disclose the subsequent events as narrated in the affidavit of the Principal Secretary, P&RD Department and the steps taken pursuant to the Review Meeting dated 06.06.2021 and the endorsement dated 23.11.11.2021 which was material for the purpose of disposal of the writ petitions.

12. At the cost of repetition, it is observed that a perusal of the affidavit dated 30.11.2021 by the Principal Secretary of the P&RD Department and the affidavit so filed by the Joint Director, Finance (EA) Department on 6th of April, 2022 shows there is a marked difference in the stand being taken by the respective Departments of the State of Assam. While the affidavit dated 06.04.2022 filed by the Joint Director, Finance (EA) Department restricts itself to the Cabinet decision dated 22.07.2019; but the affidavit-in-opposition filed by the respondent No.1, on 30.11.2021, further goes to show that the matter was discussed with the Chief Minister during the review meeting held on 06.06.2021. In the said review meeting, the Chief Minister of Assam, on being apprised about the issue of pending remuneration of the current and the previous PRI members, directed that the pending remuneration of the current PRI members would be booked under the State Finance Commission Devolution Grant immediately and the remunerations of the previous term PRI members will also be covered by the State Finance Commission Grants in 3 (three) installments in the

coming years. At this stage, this Court would like to observe that Finance Department of the State of Assam being a responsible Department ought to have been more forthcoming in the disclosure of the status rather than limiting its affidavit to the Cabinet decision dated 22.07.2019.

13. The learned counsel appearing on behalf of the P&RD Department submitted that the decision taken on 06.06.2021 is a review of earlier Cabinet decision dated 22.07.2019, and as such, it is a Cabinet decision. However, Mr. P. Nayak, the Standing Counsel, Finance Department submitted that the same is only a decision in a review meeting and cannot be termed to be a Cabinet decision. But one aspect of the matter is clear that there was a decision taken by the highest Chief Executive Authority of the State i.e. the Chief Minister of Assam that the pending remuneration of the PRI members be paid in three installments in the coming years. The said decision was taken on 06.06.2021. However, till date, the petitioners have not received their dues.

14. In the backdrop of the above preludes, the question which arises for consideration is as to whether this Court can issue a Writ of Mandamus upon the State Government to pay the remuneration/allowances to the petitioners to which they are entitled to? The answer to the said question would be available upon a perusal of evaluation of the Panchayat Raj Institution so established, its evolutions, the status it holds as well as the Act of 1994 and the Rules framed therein under.

15. This Court finds it relevant to take note of Article 40 of the Constitution of India which is a part of the Directive Principles of the State Policy enshrined in Part IV of the Constitution. It stipulates that State shall take steps to organise village panchayats and endow them with such

powers and authority as may be necessary to enable them to function as units of self-government. Article 40 of the Constitution is reproduced herein under:-

“40. Organisation of village Panchayats.- The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government.”

16. This Court further finds it relevant to take note of that in terms with Entry 5 of List-II of the Seventh Schedule of the Constitution of India amongst others Panchayat is a State Subject. The Panchayat Raj Institutions as would be seen have been in existence for a long time. This would be evident from the fact that in the Constituent Assembly Debates, there are debates on the role of Panchayat Raj in the Indian Polity. The history would also show that after the Constitution of India came into force, several States had enacted Panchayats Acts bringing in the three tier Panchayat System. However, with the passage of time, there was a decline in the Panchayat Raj System for which the 73rd amendment to the Constitution of India was made thereby granting a Constitutional status to the Panchayat Raj Institutions. This Court finds it also relevant at this stage to take note of the Statement of Objects and Reasons of the Constitution (Seventy-third Amendment) Act 1992 which is reproduced herein under:-

“STATEMENT OF OBJECTS AND REASONS

Though the Panchayati Raj Institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersession, insufficient representation of weaker sections like Scheduled Castes, Scheduled

Tribes and women, inadequate devolution of powers and lack of financial resources.

2. Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the short-comings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj Institutions to impart certainty, continuity and strength to them.

3. Accordingly, it is proposed to add a new Part relating to Panchayats in the Constitution to provide for among other things, Gram Sabha in a village or group of villages; constitution of Panchayats at village and other level or levels; direct elections to all seats in Panchayats at the village and intermediate level, if any, and to the offices of Chairpersons of Panchayats at such levels; reservation of seats for the Scheduled Castes and Scheduled Tribes in proportion to their population for membership of Panchayats and office of Chairpersons in Panchayats at each level; reservation of not less than one-third of the seats for women; fixing tenure of 5 years for Panchayats and holding elections within a period of 6 months in the event of supersession of any Panchayat; disqualifications for membership of Panchayats; devolution by the State Legislature of powers and responsibilities upon the Panchayats with respect to the preparation of plans for economic developments and social justice and for the implementation of development schemes; sound finance of the Panchayats by securing authorisation from State Legislatures for grants-in-aid to the Panchayats from the Consolidated Fund of the State, as also assignment to, or appropriation by, the Panchayats of the revenues of designated taxes, duties, tolls and fees; setting up of a Finance Commission within one year of the proposed amendment and thereafter every 5 years to review the financial position of Panchayats; auditing of accounts of the Panchayats; powers of State

Legislatures to make provisions with respect to elections to Panchayats under the superintendence, direction and control of the chief electoral officer of the State; application of the provisions of the said Part to Union territories; excluding certain States and areas from the application of the provisions of the said Part; continuance of existing laws and Panchayats until one year from the commencement of the proposed amendment and barring interference by courts in electoral matters relating to Panchayats.

4. The Bill seeks to achieve the aforesaid objectives."

17. From a perusal of the above Statement of Objects and Reasons, it would show that the objective behind the enactment was to introduce the Panchayat Raj System at grass root level. As the Panchayat Raj System were based on State Legislation and the functioning was unsatisfactory, the amendment to the Constitution sought to strengthen the Panchayat Raj System by giving a uniform constitutional base so that the Panchayats become vibrant units of administration in rural areas by establishing strong, effective, democratic local administrations so that there can be rapid implementation of rural development programmes. It would also be seen that the objective was to have the uniform three tier system of Panchayat, i.e. a village, intermediate and district level throughout the country. The term is to be fixed for 5 years and new elections are to be held before the period expires. There is reservation for Schedule Castes/Schedule Tribes and the women for the post of the members as well as the Chairpersons. It is also provided that all the reserved seats are to be allotted by rotation in different constituents in a Panchayat.

18. In terms with the 73rd Amendment of the Constitution, Part IX of the Constitution which was originally omitted by the Constitution (Seventh

Amendment) Act, 1956 was added to the Constitution consisting Article 243 and 243O and a new Schedule viz. 11th Schedule was added to the Constitution with effect from 24.04.1993.

19. Article 243 defines the various terms. In terms with Article 243A, a Gram Sabha is the electorate of the Village Panchayat, may exercise such powers and perform such functions at the village level as a Legislature of State may by law provide. In other words, the powers and functions of the Village Panchayat are to be determined by the State enactment. Article 243B states that there shall be a constituted Panchayat at the village, intermediate and district levels in accordance with the provisions of Part IX of the Constitution. Article 243C gives directions with regard to the composition of Panchayats of different levels. Article 243D makes provisions for reservation of seats for Schedule Castes/Schedule Tribes including women belonging to Schedule Castes/Schedule Tribes and also for other women in the Panchayats at all levels. Article 243E provides for the term of the Panchayat which is 5 years. Article 243G speaks of the power, authority and responsibility of the Panchayats to be determined by the Legislature of the State. It states that the Legislature of the State may by law endow the Panchayats with such power and authority as may be necessary to enable them to function as institution of the self governance and such law may contain provision for devolution of powers and responsibilities upon the Panchayats at the appropriate level, subject to such conditions as may be specified therein with respect to (a) the preparation of plans for economic development and social justice; and (b) the implementation of the schemes for economic development and social justice as may be entrusted to them including those in relation to the

matter listed in the Schedule 11 of the Constitution.

20. At this stage, it may also relevant to take note of that Schedule 11 of the Constitution mentions as many as 29 matters which are necessary to enumerate herein to point out that it is only a financially and administratively viable unit which can undertake scheme of development relating to them. They are (1) Minor irrigation, water management and watershed development, (2) Social forestry and farm forestry, (3) Small scale industries, including food processing industries, (4) Khadi, village and cottage industries, (5) Rural housing, (6) Roads, culverts, bridges, ferries, waterways and other means of communication, (7) Rural electrification, including distribution of electricity, (8) Non-conventional energy sources etc.

21. Article 243H speaks of the powers that the State Legislature may give to the Panchayats to levy, collect and appropriate taxes, duties, tolls and fees also assigning such of them as are levied and collected by the State Government to provide for grant-in-aid from the Consolidated Fund of the State and also to provide for constitution of such Funds for crediting all money received, respectively, by or on behalf of the Panchayats and for withdrawal of the money therefrom. Article 243I amongst others provides for constitution of a Finance Commission by the Governor of the State to review the financial position of the Panchayats at the end of every 5 years. Relevant therein to mention that the recommendations to be made by the Finance Commission are in respect to (a) the principles which should govern (i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part IX of the Constitution

and the allocation between the Panchayats at all levels of their respective shares of such proceeds; (ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Panchayats; (iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State; (b) the measures needed to improve the financial position of the Panchayats; (c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats. The above would therefore show that it is a Constitutional mandate that the State Government is required to take appropriate measures for the sound financial position of the Panchayats and in doing so, the Finance Commission has to make necessary recommendations in that regard.

22. Article 243J requires the State to make provisions with respect to the maintenance of accounts by the Panchayats and the auditing of such accounts of the Panchayats. Article 243K provides for the State Election Commission to conduct, supervise, direct and control the election including the electoral rolls. The remaining Articles of Part IX of the Constitution being not relevant for the purpose of the instant case so not dealt with herein.

23. This Court at this stage, would also like to refer to Article 280 (3) (bb) which was also inserted by the Constitution (Seventy-third Amendment) Act, 1992. In terms with Article 280, The President of India shall within two years from the commencement of the Constitution and thereafter at the expiration of every 5th year or at such earlier time as the President considers necessary by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President. Amongst the various duties stipulated in Sub-Article (3)

of Article 280, it shall be the duty of the Commission to make recommendations to the President in terms with Clause (bb), the measures needed to augment the Consolidated Fund of the State to supplement the resources of the Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State.

24. Therefore, a conjoint reading of Article 243I and Article 280 (3) (bb) of the Constitution would show that the Finance Commission so constituted by the Governor of the State shall make recommendations in various aspects including the grant-in-aid to the Panchayats from the Consolidated Fund of the State as well as to take the necessary measures needed to improve the financial positions of the Panchayats. By virtue of Article 280 (3) (bb), the Finance Commission so constituted by the President of India shall make recommendations to augment the Consolidated Fund of the State to supplement the resources of Panchayats in the State on the basis of the recommendations made by the Finance Commission of the State in terms with Article 243I. It would, therefore, show that though Panchayat Raj Institutions are the responsibility of the State Government as it falls in the State List, the Finance Commission constituted by the President of India in terms with Article 280 is obligated to make recommendations to the President to augment Consolidated Fund of the State to supplement the resources of the Panchayats in the State.

25. On the basis of the said 73rd amendment of the Constitution, the Act of 1994 was enacted in consonance with the provisions of Article 243 to 243O. From a perusal of the said Act of 1994, it would transpire that three levels of the Panchayat in the State of Assam would be the Gaon Panchayat, the Anchalik Panchayat and the Zilla Parishad. Chapter-IV of

the Act of 1994 deals with the establishment and constitution of the Gaon Panchayats. Section 12 (2) of the Act of 1994 stipulates that the allowances and other conditions of service of the President and Vice-President shall be as may be prescribed. Section 19 of the Act of 1994 stipulates the function of the Gaon Panchayats which are in terms with the Schedule 11 to the Constitution of India. In terms with Section 20, the State Government has to by a notification and subject to such conditions as may be prescribed make assignment of its functions to the Gaon Panchayats. Section 24 is very pertinent for the purpose of the instant dispute and as such the same is reproduced herein below:-

“24. Gaon Panchayat Fund. - (1) *for every Gaon Panchayat there shall be constituted a Gaon Panchayat fund bearing the name of the Gaon Panchayat and there shall be placed to the credit thereof-*

- (a) Contribution and grants, if any, made by the Central or the State Government;*
- (b) Contribution and grants, if any made by the Zilla Parishad, Anchalik Panchayat or any other local authority;*
- (c) Loans, if any, granted by the Central or the State Government;*
- (d) All receipts on account of taxes, rates and fees levied by it;*
- (e) All receipts in respect of any schools, hospitals, dispensary, buildings, institutions or works vested in, constructed by or placed under the control and management of the Gaon Panchayat.*
- (f) All sums received as gifts or contribution and all income from any trust or endowment made in favour of the Gaon Panchayat;*
- (g) Such fines and penalties imposed or realized under the provisions of this Act as may be prescribed;*

(h) All other sums received by or on behalf of other Gaon Panchayat.

(2) Every Gaon Panchayat shall set apart and apply annually such sum as may be required to meet the cost of its own administration including payment of wages and purchase of furniture and other office equipment and stationery articles and to meet the charges on electricity, post and telegraphs, P.O.L. etc.; and other incidental charges:

Provided that the total expenditure on establishment shall not exceed one third of the total expenditure of the Gaon Panchayat in a year."

26. The above quoted Section 24 (1) stipulates what would contribute the Gaon Panchayats' fund. Clause (a) of Section 24 (1) of the Act of 1994 is in relation to the contribution and grants, if any, made by the Central or the State Government. Clause (b) relates to contribution and grants, if any made by the Zilla Parishad, Anchalik Panchayat or any other local authority. Clause (c) relates to loans, if any, granted by the Central and the State Government. Clauses (d) to (h) are in respect to those receipts which are received by the Gaon Panchayat on account of the power of taxation and assignment of functions to the Gaon Panchayat. Further to that Section 26 of the Act of 1994 stipulates that subject to the provision of the said Section, every Gaon Panchayat shall be entitled to receive share of Land Revenue and Local Rates/grants-in-aid as prescribed from the Consolidated Fund of the State as recommended by the State Finance Commission constituted under section 113 of the Act.

27. Chapter-V relates to establishment and constitution of Anchalik Panchayat. Section 39 as already quoted herein above stipulates the allowances of the President, Vice-President and the other members of the Anchalik Panchayat. It is mentioned therein that the members, the President and the Vice-President of the Anchalik Panchayat would be

entitled to allowances along with the sitting allowances as may be prescribed. Sections 40 & 41 are in relation to the powers and functions of the President and the Vice-President of the Anchalik Panchayat. Section 49 is in relation to the general functions of Anchalik Panchayat. Section 56 is in relation to the Anchalik Panchayat fund and the same being relevant is reproduced herein below:-

56. Anchalik Panchayat Fund. - (1) *For every Anchalik Panchayat, there shall be constituted an Anchalik Panchayat fund bearing the name of the Anchalik Panchayat and there shall be placed to the credit thereof -*

- (a) contribution and grants, if any, made by Central or State Government, including such part of the land revenue collected in the State as may be determined by the Government;*
- (b) contribution and grant, if any, made by the Zilla Parishad or any other local authority;*
- (c) loans, if any, granted by the Central or the State Government or raised by the Anchalik Panchayat on security of its assets;*
- (d) all receipts on account of tolls, rates and fees levied by it;*
- (e) all receipts in respect of any schools, hospitals, dispensaries, buildings, institutions or works, vested in, constructed by or placed under the control and management of the Anchalik Panchayat;*
- (f) all sums received as gifts or contributions and all income from any trust or endowment made in favour of the Anchalik Panchayat;*
- (g) such fines and penalties imposed and realized under the provisions of this Act, or of the bye-laws made thereunder, as may be prescribed, and all other sums received by or on behalf of the Anchalik Panchayat.*

(2) Every Anchalik Panchayat shall set apart and apply annually such sums as may be required to meet the cost of its own administration including the

payment of salary, allowances, provident fund and gratuity to the officers and employees. The total expenditure on establishment shall not exceed one-third of the total expenditure of the Anchalik Panchayat without prior approval of the Government.

(3) Every Anchalik Panchayat shall have powers to spend such sums as it thinks fit for carrying out the purpose of this Act.

(4) The Anchalik Panchayat fund shall be vested in the Anchalik Panchayat.

(5) Subject to such general control, as the Anchalik Panchayat may exercise from time to time, all orders and cheques for payment from the Anchalik Panchayat fund shall be signed by the Executive Officer."

28. It would be seen from the above quoted provisions that similar to Clause 24 (1) of the Act of 1994, Section 56 (1) also stipulates what would constitute the Anchalik Panchayat fund. Section 57 relates to the taxes which the Anchalik Panchayat can levy at such rate as the Government may prescribe.

29. Chapter-VI relates to establishment and constitution of the Zilla Parishad. Section 71 stipulates the allowances of the President, Vice-President and the sitting fee and allowances of the members which are to be fixed as may be prescribed by the Government. The general powers of Zilla Parishad have been stipulated in Section 89; and Section 90 stipulates the functions and powers of Zilla Parishad. The same are in tune with the Schedule 11 of the Constitution. Section 91 relates to the Zilla Parishad fund. The same being relevant is quoted hereinunder:-

“91. Zilla Parishad Fund. - There shall be for every Zilla Parishad a fund called the Zilla Parishad fund and the following shall form part of or be paid into the Zilla Parishad Fund, namely:

(i) the amount transferred to the Zilla Parishad Fund by appropriation form

out of the consolidated fund of the State;

- (ii) all grants, assignments, loans, and contributions made by the Government;
- (iii) all fees and penalties paid to or levied by or on behalf of the Zilla Parishad under this Act and all fines imposed under this Act;
- (iv) all rents from land or other properties of the Zilla Parishad;
- (v) all interests, profits and other money acquired by gifts, grants, assignments or transfers from private individual or institutions;
- (vi) all proceeds of land, securities and other properties sold by the Zilla Parishad;
- (vii) all sums received by or on behalf of the Zilla Parishad by virtue of this Act:

Provided that sums received by way of endowments for any specific purpose shall not form part of or be paid into the Zilla Parishad Fund.”

30. The above quoted provisions would show that the Zilla Parishad fund shall constitute amongst others the amount transferred to the Zilla Parishad Fund by appropriation form out of the Consolidated Fund of the State; all grants, assignments, loans, and contributions made by the Government etc. The power to tax is given in Section 95 of the Act of 1994 which is subject to such maximum rates as the Government may prescribe.

31. Section 113 relates to Finance Commission. Section 113 (1) and Sub-Section 8 of Section 113 being relevant is quoted herein below:-

*“**113. Finance Commission.-** (1) the State Government shall as soon as may be, within one year from the date of commencement of the Constitution (seventy-third amendment) Act, 1992 and thereafter at the expiration of every*

fifth year constitute a Finance Commission to receive the financial position of the Panchayats and to make recommendations to the Governor as to

(a) the principles which should govern

(i) the distribution between the State and the Panchayats net proceeds of the taxes, duties, tolls and fees leviable by the State which may be divided between them and allocation between Panchayats at all levels of their respective share of such proceeds;

(ii) the determination of the taxes, duties, tolls and feeds which may be assigned to or appropriated by the Panchayats.

(iii) the Grants-in-aid to the Panchayats from the consolidated fund of the State.

(b) the measures needed to improve the financial position of the Zilla Parishads, Anchalik Panchayats and Gaon Panchayats.

(c) any other matter referred to the Finance Commission by the Governor in the interest of sound finance of the Panchayats;

(d) The Finance Commission shall consist of a Chairman and two other members to be appointed by the Governor.

.....

(8) The Governor of the State shall cause every recommendation made by the Finance Commission under this section together with an explanatory memorandum as to the action taken thereon to be laid before the House of the State Legislature."

32. From a perusal of the above quoted Section 113 (1) would show that the same is in paramateria to Article 243I of the Constitution. In terms with Sub-Section (8) of Section 113, the Governor of the State shall cause every recommendation made by the Finance Commission under this section together with an explanatory memorandum as to the action taken thereon to be laid before the House of the State Legislature.

33. From the above, i.e. the objects and reasons behind the 73rd amendment of the Constitution, Part-IX of the Constitution, Article 280 (3) (bb) of the Constitution as well as the provisions of the Act of 1994 as detailed herein above it would show that in view of Article 40 of the Constitution, the Panchayat Raj Institutions have been given a Constitutional status. The reason for giving the said Constitutional status is on account of the experience prior thereto and the shortcoming which was observed apart from the impetus given to local self governance. It would further show that the basic idea behind the Constitutional status given to the Panchayat Raj Institutions is (a) that they are to be self governing at the lowest end of the democratic polity; (b) that being self governing units, those who are governed by the said units and for whose benefit they are going to operate will have either a direct or an elective indirect representation in them; (c) that they have an effective say in the conduct of their affairs including its plans, policies and programmes and their execution and (d) that they will have not only a sense and satisfaction of participation but also an experience in the governing of their own affairs. Therefore, keeping in mind Article 40 of the Constitution, it has to be the endeavour of the State government that the Panchayat Raj Institutions remain a thriving institutions having a sound financial position in order to carry out the desired objectives as enshrined in Part IX of the Constitution of India. It would also be seen that in order the Panchayat Raj Institutions to function properly, the members of the Panchayat Raj Institutions have been statutorily mandated to be entitled to as could be seen from Sections 12, 39 & 71 of the Act of 1994. The quantum of allowances and from where the amount for the allowances are

to be defrayed have been prescribed and the prescription has been given in Rules 13, 14 & 15 of the Assam Panchayat (Administrative) Rules, 2002 as amended up-to-date.

34. Now coming to the facts of the instant case in the backdrop of the above, it would be seen that the petitioners whose term ended on March, 2018 were entitled to their allowances as legislatively mandated under the Act of 1994 and the Rules framed therein under. The Panchayat and Rural Development Department in the Government of Assam including the Chief Minister in the review meeting dated 06.06.2021 had accepted that there are pending dues to be paid to the members of the Panchayat Raj Institutions whose term ended in March, 2018. It further shows from the affidavit filed by the Panchayat & Rural Development Department that they are pursuing to get the fund which comes to around 182.00 Crores for meeting the liability towards defraying the allowances of the members of the Panchayat Raj Institutions whose term ended in March, 2018. However, it is on account of the indifference of the Finance Department of the Government of Assam, necessary approval has not been granted, thereby facilitating the Panchayat & Rural development Department to make payment to the petitioners. It is therefore seen that on account of the inter-departmental tussle that the petitioners have been deprived of their legitimate dues for almost five years if not made.

35. At this stage therefore this Court would like to consider as to whether a writ in the nature of mandamus can be issued upon the respondent authorities, more particularly to the State of Assam to make payment of the dues to which the petitioners are entitled to in the batch of writ petitions. The Constitution of India empowers this Court to issue

various writs, directions, orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by the Part-III and for any other purpose under Article 226 of the Constitution. It is therefore essentially a power to issue high prerogative writs for enforcement of fundamental rights as well as for non-fundamental or ordinary legal rights which may come within the expression "for any other purpose". The expression "for any other purpose" in the article 226 of the Constitution makes jurisdiction of this Court more extensive.

36. As held by the Supreme Court in the case of ***Director of Settlements, AP and Others vs. M.R. Apparao and Another***, reported in ***(2002) 4 SCC 438***, one of the conditions for exercising the power under Article 226 for issuance of a writ of mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right which entitled him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority could be enforced by issuance of a writ of mandamus. Therefore, a writ of mandamus is a command issued to direct any person, corporation, inferior Courts or Government, requiring him or them to do some particular thing therein specified which pertains to his or their office and is in the nature of a public duty. A mandamus is therefore available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. However it needs to be taken note of that in order to obtain a writ or order in the nature of mandamus, the applicant has to

satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.

37. In view of the above, as it would be seen that the petitioners who were members of Panchayat Raj Institutions were legally entitled to their monthly allowances as well as other allowances by virtue of the provisions of the Act of 1994 and the Rules of 2002. The respondent authorities, more particularly the State Government have not made payments of the pending admitted remuneration. Under such circumstances this Court is of the opinion that this Court can issue a writ in the nature of mandamus thereby commanding and compelling the respondent State Government to make payment of the monthly allowances as well as other allowances to the members of the Panchayat Raj Institutions to which they are entitled to under the provisions of the Act of 1994 and the Rules framed therein under subject to verification of their respective quantum of entitlement.

38. The tussle as to whether the Panchayat and Rural Development Department or the Finance Department should pay or whether the Finance Department should grant the approval cannot be a consideration to deny the petitioners of their rightful dues as their entitlement has been duly admitted by the concerned respondent authorities and the Respondent Authorities are bound by the Act of 1994 as well as the Rules framed therein under and the Constitutional duty to pay to the petitioners their legitimate dues.

39. Under such circumstances, this Court, therefore, directs the State of

Assam, and more particularly, the Principal Secretary to the Government of Assam, Panchayat and Rural Development Department to verify the claims of the petitioners as regards their respective entitlements only in so far as the quantum is concerned and upon verification, to make payment to the petitioners as per their entitlement. For the purpose of making payment, if there is requirement to take necessary concurrence from the other authorities like the Finance Department, the Principal Secretary to the Government of Assam, Panchayat and Rural Development Department shall do the needful.

40. The Commissioner and Secretary to the Government of Assam, Finance Department shall also do the needful so that the entitlements of the petitioners are paid by according necessary approval and releasing funds. It is made clear that the directions passed herein are directions upon the State Government to pay dues to the petitioners in the batch of writ petitions. It shall be the collective responsibility of the State Government to see to it that the dues of the petitioners are released to them within the time stipulated herein under.

41. Taking into account the decision taken in the review meeting on 06.06.2021 by the Chief Minister of Assam, the Government of Assam would be at liberty to pay the entitlement to the petitioners at one go or in installments as per the administrative and financial convenience.

42. It is, however, made clear that the entire exercise has to be done by the State Government in its Departments to make payment to the petitioners within a period of 6 (six) months from the date copy of the instant judgment is served upon the Principal Secretary to the Government of Assam, Panchayat and Rural development Department and

the Commissioner & Secretary to the Government of Assam, Finance Department with their respective claims.

43. With the above observations and directions, the batch of writ petitions stand disposed of.

JUDGE

Comparing Assistant