

GAHC010047332022



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

Case No. : WP(C)/1768/2022

ANJUMA AHMED
W/O ABDUR RASHID SHEIKH, R/O VILL- PURNI, P.O.-KACHAKHANA, P.S.-
GOLAKGANJ, DIST- DHUBRI, ASSAM, PIN-783334

VERSUS

THE STATE OF ASSAM AND 14 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF PANCHAYAT AND RURAL DEVELOPMENT,
DISPUR, GUWAHATI-6

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
PANJABARI
JURIPAR
GUWAHATI-37

3:THE DEPUTY COMMISSIONER OF DHUBRI
DIST-DHUBRI
ASSAM
P.O.-DHUBRI
PIN-783301

4:THE BLOCK DEVELOPMENT OFFICER
GOLAKGANJ
P.O.-GOLAKGANJ
DIST-DHUBRI
ASSAM
PIN-783301

5:THE SECRETARY OF NO 72 HARIRHAT GAON PANCHAYAT
DIST-DHUBRI

ASSAM
P.O.-BORO CHARAIKHOLA
PIN-783334

6:SMT. ANJANA BISWAS
W/O PRATAB BISWAS
R/O VILL-PURNI
P.O.-KACHAKHANA
DIST-DHUBRI
ASSAM
PIN-783334

7:JAHIRUL ISLAM
S/O SURMAN ALI SARKAR
R/O VILL-BORO CHARAIKHOLA
P.O.-BORO CHARAIKHOLA
DIST-DHUBRI
ASSAM
PIN-783334

8:ANJUMA BIBI
W/O BISHA MONDAL
R/O VILL-PUB MAISHA
P.O.-BORO CHAIRAIKHOLA
DIST-DHUBRI
ASSAM
PIN-783334

9:SMT. MATIJAN BIBI
W/O SOLIM UDDIN SHEIKH
R/O VILL-MARAGADHADAR CHAR
P.O.-PAGLAHAT
DIST-DHUBRI
ASSAM
PIN-783334

10:SMT. ROMICHA BIBI
W/O ANOWAR HUSSAIN
R/O VILL-PURNI
P.O.-KACHAKHANA
DIST-DHUBRI
ASSAM
PIN-783334

11:RAJESWAR RABI DAS
S/O MOTI LAL RABI DAS
R/O VILL- PURNI
P.O.-KACHAKHANA

DIST- DHUBRI
ASSAM
PIN-783334

12:KARUN KANTA ROY
S/O POKHI RAM ROY
R/O VILL-BORO CHARAIKHOLA
P.O.-BOROCHARAIKHOLA
DIST-DHUBRI
ASSAM
PIN-783334

13:SMT. TARABALA BISWAS
W/O AMULLYA BISWAS
R/O VILL-BORO CHARAIKHOLA
P.O.-BORO CHARAIKHOLA
DIST-DHUBRI
ASSAM
PIN-783334

14:PUSHPA LATA ROY
W/O PRADIP ROY
R/O VILL-BORO CHARAIKHOLA
P.O.- BORO CHARAIKHOLA
DIST-DHUBRI
ASSAM
PIN-783334

15:NILKAMAL ROY
S/O BANU ROY
R/O VILL-PURNI
P.O.-KACHAKHANA
DIST-DHUBRI
ASSAM
PIN-78333

Advocate for the Petitioner : MR. N M SARKAR
Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

02.05.2023

Heard Shri MA Sheikh, learned counsel for the petitioner. Also heard Shri S.

Dutta, learned Standing Counsel, P & RD Department whereas Shri CKS Baruah, learned State Counsel represents the respondent no. 3 – Deputy Commissioner, Dhubri and the private respondent nos. 7, 8, 10 to 15 is represented by Shri MH Choudhury, learned counsel.

2. Considering the subject matter of dispute and as agreed to by the parties, the instant writ petition is taken up for disposal at the admission stage.

3. The controversy is with regard to a “No Confidence Motion” against the petitioner, who was elected as the President of No. 72 Harirhat Gaon Panchayat in the district of Dhubri.

4. Before going to the issue to be decided, it would be convenient if the basic facts of the case are put in brief.

5. The petitioner was an elected President of No. 72 Harirhat Gaon Panchayat in the district of Dhubri. As per the petitioner, the first meeting was held on 07.02.2019 and as per the relevant provision of the Assam Panchayat Act (hereinafter called the Act), the tenure of a President is 5 years. Initially, a No Confidence Motion was initiated against the President vide a requisition dated 07.05.2021 which had ultimately led to ouster to the petitioner by successful passing of the said Motion. The petitioner however challenged the said action by filing a writ petition before this Court which was registered as WP(C)/3195/2021. The pleaded case of the petitioner was that there was violation of the Act, more particularly, Section 15 and the meeting was held behind the back of the petitioner as neither the requisition letter nor any subsequent communication was issued to him.

6. This Court, after hearing the parties had passed an order dated 22.09.2021 in the aforesaid writ petition interfering with the decision. However, since the allegations were only on the issue of non-receipt of notice, this Court by taking into consideration the objective of the Act and the rights vested upon the Members had directed that a fresh meeting be held on the issue of No Confidence against the petitioner on

08.10.2021 at 11:00 AM in the Office of the Block Development Officer, Golakganj Development Block in the district of Dhubri. This Court had also directed for maintenance of *status-quo* till then. The said meeting was directed to be held under the supervision of an official of the Office of the Deputy Commissioner, Dhubri.

7. Though the meeting was directed to be held on 08.10.2021, the petitioner had submitted an application on 04.10.2021 before the Deputy Commissioner, Dhubri by stating that she was unwell being diagnosed with "Lumbar Spinal Stenosis". She had also enclosed a Medical Certificate as per which she was directed to take bed rest for a month w.e.f., 01.10.2021.

8. It appears that the application was duly considered by the Deputy Commissioner, Dhubri and thereafter the matter of No Confidence Motion was deferred to 02.11.2021.

9. The meeting was accordingly convened on 02.11.2021 and was passed against the petitioner as majority of 9 Members had voted against the petitioner.

10. It is the legality and validity of the aforesaid action of No Confidence which was communicated vide order dated 16.11.2021 which is the subject matter of challenge.

11. Shri Sheikh, learned counsel for the petitioner has submitted that the meeting held on 02.11.2021 was again held without taking the petitioner into Confidence as she was not present in the meeting and therefore she had suffered prejudice. It is submitted that the Deputy Commissioner did not take into consideration the health condition of the petitioner as per which she was still advised to be on rest. Shri Sheikh, learned counsel for the petitioner has also submitted that there were some further developments in this case which was also put on record by way of an affidavit-in-opposition by the private respondents.

12. By drawing the attention of this Court to the said affidavit-in-opposition dated 28.06.2022, more specifically the pleadings made in paragraph 7, Shri Sheikh, learned counsel for the petitioner has submitted that the private respondents have reposed

their support on the petitioner and on this ground alone, the impugned order dated 16.11.2021 is not sustainable in law. Shri Sheikh, the learned counsel accordingly submits that since the petitioner is now enjoying the support of majority of the Members, this writ petition is liable to be allowed.

13. On the other hand, Shri S. Dutta, learned Standing Counsel, P & RD Department has submitted that there is no legal infirmity in holding the meeting on 02.11.2021 in which the No Confidence Motion was duly passed against the petitioner by majority of 9 Members. The learned Standing Counsel further submits that the present stand of the private respondents made in the affidavit-in-opposition dated 28.06.2022 which is after about 8 months from the date of meeting will not make any difference to the decision which was taken on a date when the private respondents had expressed their opinion against the petitioner.

14. Shri MH Choudhury, learned counsel for the private respondents however submits that they are annoyed with the conduct of the present Vice-President of the Gaon Panchayat and would like that the petitioner be allowed to continue as the President till the expiry of the term.

15. The rival submissions made by the learned counsel for the parties have been duly considered.

16. This Court while disposing of the earlier round of litigation vide the order dated 22.09.2021 while interfering with the earlier No Confidence Motion only on a technical ground had directed a fresh meeting to be held on 08.10.2021 at 11:00 AM.

17. It appears that on 04.10.2021, an application was submitted by the petitioner on health ground with an enclosed Medical Certificate recommending rest for a month which had expired on 01.11.2021. This Court finds force in the submission of Shri Dutta, learned Standing Counsel of the Department that there was no further representation by the petitioner to the authorities for further deferring the meeting on the health ground. Though a Medical Certificate dated 04.11.2021 has been annexed

to the writ petition, there is nothing on record to show that any further representation was made before the Deputy Commissioner, Dhubri prior to the date fixed for the meeting i.e. 02.11.2021. In fact, the Medical Certificate itself is dated 04.11.2021 which is after the crucial date i.e., 02.11.2021 when the meeting was already held and the No Confidence Motion was already passed against the petitioner. It clearly reveals that taking advantage of the order of *status-quo*, the petitioner was dilly-dallying the matter.

18. Under those facts and circumstances, this Court is unable to concur with the submissions of the petitioner that there has been any fault on the part of the authorities in holding the meeting in which the No Confidence Motion against the petitioner has been successfully passed.

19. This Court also finds force in the submission made on behalf of the Department that personal presence of the petitioner is not a *sin quo none* for holding a No Confidence Motion, more so, when the petitioner was given proper notice and was aware of the date and time of such meeting.

20. This Court is also of the opinion that subsequent change in conduct of the private respondent wherein they have expressed their support in favor of the petitioner shall not make any difference to the decision taken on the date of the No Confidence Motion i.e., 02.11.2021 as the crucial date is the date on which the No Confidence Motion was held.

21. In view that, this Court is of the opinion that there is no merits in this writ petition which call for interference. Accordingly, this writ petition stands dismissed.

22. No order as to cost.

JUDGE

Comparing Assistant