

GAHC010119952021



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

Case No. : WP(C)/3240/2021

JUNMONI KACHARI
WIFE OF SRI PINAKI ROY
RESIDENT OF NO.1 GOLAI
DIGBOI
P.O. AND P.S.- DIGBOI
DISTRICT TINSUKIA
ASSAM
PIN- 786171

VERSUS

THE STATE OF ASSAM AND 17 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-6.

2: COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
JURIPAR
PANJABARI
GUWAHATI - 37
ASSAM.

3: DEPUTY COMMISSIONER
TINSUKIA
DISTRICT TINSUKIA
ASSAM.

PIN-786125
4: SUB DIVISIONAL OFFICER (CIVIL)
DISTRICT TINSUKIA
ASSAM
PIN- 786181

5:BLOCK DEVELOPMENT OFFICER

MARGHERITA DEVELOPMENT BLOCK CUM EXECUTIVE OFFICER
MARGHERITA ANCHALIK PANCHAYAT
MARGHERITA
DISTRICT TINSUKIA
ASSAM
PIN- 786181
6:NO. 1 GOLAI GAON PANCHAYAT
DIGBOI

DISTRICT TINSUKIA
ASSAM. REPRESENTED BY ITS VICE-PRESIDENT

7:THE VICE PRESIDENT
NO. 1 GOLAI GAON PANCHAYAT
DIGBOI
DISTRICT TINSUKIA
ASSAM
PIN-786171

8:THE SECRETARY
NO. 1 GOLAI GAON PANCHAYAT
DIGBOI
DISTRICT TINSUKIA
ASSAM
PIN-786171

9:SRI BHADRA KANTA BORAH
S/O-MAHENDRA BORA
RESIDENT OF PANBARI FOREST VILLAGE DIGBOI

P.O.- BHIMPATHAR

DISTRICT TINSUKIA
ASSAM

PIN- 786171
(MEMBER WARD NO. 1
NO.1GOLAIG.P.)
10:SMTI SANGITA SONOWAL
W/O PAWAN SONOWAL
RESIDENT OF VILLAGE BHIMPATHAR
DIGBOI
P.O.- BHIMPATHAR

DISTRICT TINSUKIA
ASSAM

PIN- 786171

(MEMBER WARD NO. 2
NO.1 GOLAI G.P.)
11:KOROB SONOWAL
W/O LOKHESWAR SONOWAL
RESIDENT OF VILLAGE KALGAON
DHEKIAJAN
P.O.- DHEKIAJAN

DISTRICT TINSUKIA
ASSAM

PIN- 786171

(MEMBER WARD NO. 3
NO.1 GOLAI G.P.)
12:SMTI UMA SHARMA
W/O LATE PREM SHARMA
RESIDENT OF VILLAGE GOLAI NO.1
P.O. - GOLAI
DISTRICT TINSUKIA
ASSAM

PIN-786171

(MEMBER WARD NO.4
NO.1
GOLAI GP)
13:SRI ROBERT SINGH
S/O SHYAM SINGH
RESIDENT OF VILLAGE GOLAI NO.1
P.O. - GOLAI
DISTRICT TINSUKIA
ASSAM

PIN-786171 (MEMBER WARD NO.5
NO. 1
GOLAI GP)
14:SMTI SUMAN BARUAH
W/O ASHISH BARUAH
RESIDENT OF VILLAGE GOLAI NO.1
P.O. - GOLAI
DISTRICT TINSUKIA
ASSAM

PIN-786171

(MEMBER WARD NO.6
NO. 1
GOLAI GP)
15:PRINCE WILLIAM
SON OF LATE MINU WILLIAM
RESIDENT OF VILLAGE GOLAI NO.2
P.O. - GOLAI

DISTRICT TINSUKIA
ASSAM

PIN-786171
(MEMBER WARD NO.7
NO. 1
GOLAI GP)
16:SRI DAWA LAMA
S/O UMANG LAMA
RESIDENT OF VILLAGE GOLAI NO.3
P.O. - GOLAI

DISTRICT TINSUKIA
ASSAM

PIN-786171
(MEMBER WARD NO.8
NO. 1
GOLAI GP)
17:SMTI SIMI DAS
WIFE OF PINTU DAS
RESIDENT OF HAWKINS PARA
STATION AREA
DIGBOI

P.O. - DIGBOI
DISTRICT TINSUKIA
ASSAM

PIN-786171
(MEMBER WARD NO.9
NO. 1 GOLAI GP)
18:MAMATA BEGUM
WIFE OF INAMUDDIN AHMED
RESIDENT OF STATION AREA
DIGBOI

P.O.- DIGBOI
DISTRICT TINSUKIA
ASSAM

PIN-786171
(MEMBER WARD NO.10
NO. 1
GOLAI GP) -----

Advocate for the Petitioner : Mr. T. J. Mahanta, Sr. Advocate
Mr. A. Baruah, Advocate

Advocate for the Respondents : Mr. N. K. Debnath, Advocate
Mr. A. K. Gupta, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 26.05.2023

Date of Judgment : 26.05.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. T. J. Mahanta, the learned senior counsel assisted by Mr. A. Baruah, the learned counsel for the petitioner and Mr. N. K. Debnath, the learned counsel appearing on behalf of the P&RD Department as well as Mr. A. K. Gupta, the learned counsel appearing on behalf of the respondent Nos.7, 9 to 13 & 16 to 18.

2. The instant writ petition was filed challenging the special meeting held on 21.06.2021 in pursuance to the letter No.GGP/OL/21-22 dated 19.06.2021 issued by the Secretary, Golai Gaon Panchayat as well as the Resolution dated 21.06.2021 passed in the special meeting dated 21.06.2021 expressing No-confidence against the petitioner as President, No.1 Golai Gaon Panchayat, Dibrugarh, Tinsukia.

3. A perusal of the materials on record shows that the grievance of the petitioner who was the President of the Golai Gaon Panchayat in question primarily was that the mandate as required under Section 18 (5) of the Assam Panchayat Act, 1994 (for short, 'the Act of 1994') of holding a No-confidence motion through secret ballot was not carried out for which the Resolution so adopted is liable to be interfered with.

4. The instant writ petition was filed at the time when this Court in the administrative side permitted filing of the writ petition without an affidavit on the basis of a certificate issued by the counsel. Pursuant to the notice so issued by this Court on 12.07.2021, an affidavit-in-opposition was filed by the respondent Nos.7, 9 to 13 & 16 to 18 wherein at paragraph No.10, it was categorically mentioned that the members were called one by one and provided with a ballot paper and they were asked to vote one by one and to submit the ballot sheet in folded condition. It was only after all the members have voted, then

the folded ballot sheet were opened and counted, and as such, secrecy of ballot was fully maintained and there was no violation of Section 18(5) of the Act of 1994. The said affidavit was filed on 07.08.2021. Thereupon, the matter was listed on 07.09.2021; 13.09.2021; 30.09.2021; 05.10.2021; 07.10.2021; 26.10.2021; 12.11.2021 and 10.12.2021.

5. It is also relevant to take note of that an Interlocutory Application was filed being I.A.(C) No.1236/2021 seeking modification and/or vacation of the order dated 12.07.2021 passed by this Court in the instant writ petition. The said application was filed on 07.08.2021. When the said Interlocutory Application was taken up for consideration on 20.08.2021, this Court taking into account that the issue and the nature of argument placed if taken into consideration would ultimately lead to the decision of the matter on merits directed the said writ petition to be listed on 07.09.2021 for final disposal. In the said Interlocutory Application, at paragraph No.7 in the same vein as has been stated in paragraph No.10 of the affidavit-in-opposition, it was mentioned that all the members were called one by one and provided with a ballot paper and they were asked to vote one by one and to submit the ballot sheet in folded condition. It was further mentioned that when the members have voted, then the folded ballot sheet were opened and counted, and as such, the secrecy of ballot was fully maintained and there was no violation of Section 18(5) of the Act of 1994.

6. There was no reply to the said application even and more particularly to paragraph No.7 of the Interlocutory Application although the records if seen would clearly show that the petitioner duly had the opportunity to rebut to such allegations made in the Interlocutory Application as well as also file a reply rebutting the statement made in paragraph No.10 of the affidavit-in-opposition, more so, when the writ petition so filed was not verified by way of an affidavit.

7. In the backdrop of the above, let this Court therefore take into consideration the submission made by the learned counsels for the parties.

8. Mr. T. J. Mahanta, the learned senior counsel submitted that Section 18 (5) of the Act of 1994 categorically mandates that in the case of a Non-confidence motion, the voting shall be done by way of secret ballot. The learned senior counsel, therefore, submitted that the Legislature have intentionally put the secret ballot for No-confidence motion. However, in respect to other Resolutions, the same could be done by show of hands. Therefore, the Resolution so adopted which has been impugned in the instant proceedings having been adopted not by way of secret ballot as in the ballot papers there was the requirement of putting the signature and seal, therefore, the impugned Resolution so adopted stand vitiated. The learned senior counsel further submitted that the President of a Gaon Panchayat is an Office elected by the people and under such circumstances, the strict mandate of the law has to be enforced.

9. On the other hand, Mr. N. K. Debnath, the learned counsel appearing on behalf of the P&RD Department submitted that from the affidavit as well as the Interlocutory Application so filed by the members who were present there are categorical statement to the effect that the voting was done in ballot papers which were submitted in folded condition and they were opened upon completion of the voting. The members present therein on affidavit have categorically mentioned that the mandate of Section 18 (5) of the Act of 1994 of having a secret ballot was duly maintained. Mr. N. K. Debnath, the learned counsel further submitted that in respect to the instant Gaon Panchayat, there are 10 members of which 8 members submitted the requisition in terms with Section 15 of the Act of 1994 and from the Resolutions it would be seen that 7 members voted for the No-confidence motion against the petitioner, one member voted against the No-confidence motion and one another member refrained from voting. Mr. N. K. Debnath, the learned counsel, therefore, submitted that in the spirit of democracy which is the touch stone in respect to a Gaon Panchayat, the petitioner has no right to continue further as the President of the said Gaon Panchayat.

10. Mr. A. K. Gupta, the learned counsel appearing on behalf of the respondent Nos.7, 9 to 13 & 16 to 18 submitted that the members who were present in the meeting have filed the affidavit and have specifically stated that the secret ballot was maintained. This aspect was

not been denied by the petitioner nor any materials has been produced which would show otherwise. Mr. A. K. Gupta, the learned counsel, therefore, submitted that as the petitioner was not a member. When the question of No-confidence of the President is taken up in a meeting, it is the Vice-President presides over the meeting and as the petitioner was not a member, the ballot paper was not given to him. Under such circumstances, the question of the petitioner making the allegations in paragraph No.16 of the writ petition does not arise.

11. I have heard the learned counsel for the parties and perused the materials before this Court. The materials on record clearly show that that the petitioner herein had filed the writ petition alleging the violation of Section 18 (5) of the Act of 1994. In paragraph No.13, it has been mentioned that the secrecy of the ballot was not maintained in as much as in the ballot papers, the members were asked to put their seal and signatures. As already stated herein above, this Court on the administrative side had permitted filing of writ petitions on the basis of the certificate by the counsel, and as such, the said statement is based upon a certificate given by the counsel. This was done so on account of the COVID-19 pandemic situation in order to avoid mass infection by Corona Virus.

12. Be that as it may, the petitioner being the President and as the meeting was called for deciding the No-confidence of the President, it is the Vice-President who has to preside over the meeting in view of the mandate of Section 15(1) of the Act of 1994. In paragraph No.11 of the said writ petition, the petitioner has categorically mentioned that he was not present in the meeting. However, in the minutes of the meeting, it appears that the petitioner was allowed to speak against the No-confidence motion.

13. Mr. T. J. Mahanta, the learned senior counsel further submitted that although in paragraph No.10 of the writ petition, it has been mentioned that the petitioner was not present in the meeting, but actually the petitioner was present in the said meeting as would be apparent from the Resolutions so adopted on 21.06.2021 wherein there is a mention that the petitioner had expressed her views against No-confidence motion.

14. On the other hand, Mr. N. K. Debnath, the learned counsel appearing on behalf of the

P&RD Department submitted that when a meeting is called to decide the No-confidence motion, the President is given an opportunity to explain and the same was duly done and therefore recorded in the minutes of the meeting dated 21.06.2021. But the President cannot take part in the voting. The said submission of Mr. N. K. Debnath, the learned counsel duly explains as to why the petitioner had mentioned in paragraph No.10 that he was not present in the meeting.

15. In the backdrop of the above, the respondents in their affidavit have categorically mentioned that the members were called one by one and provided with a ballot paper and they were asked to vote one by one and to submit the ballot sheet in folded condition. It was further mentioned that when all the members voted, then the folded ballot sheet were opened and counted, and as such, the secrecy of ballot was fully maintained and there was no violation of Section 18(5) of the Act of 1994. It is also seen that the petitioner having had the opportunity did not rebut to the statement made in paragraph No.10 of the affidavit-in-opposition filed by the private respondents as well as the paragraph No.7 which is also in the said vein in the Interlocutory Application. The petitioner also did not place on record any materials to prove the allegations as alleged in paragraph No.13 of the writ petition. Even there is no mention as to who informed the petitioner in respect to the requirement of putting the seal and signature in the ballot paper. At this stage, this Court finds it relevant to refer to the judgment of the Supreme Court in the case of *Bhagat Singh vs. State of Haryana & Others*, reported in (1988) 4 SCC 534 and more particularly paragraph No.13 which is quoted herein below:

“13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be

substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.”

16. Under such circumstances, this Court is of the considered opinion that the petitioner has failed to make out a case for violation of Section 18 (5) of the Act of 1994.

17. Even otherwise, this Court finds it relevant to observe that the mandate of secret ballots in the case of No-confidence motion in Section 18 (5) of the Act of 1994 is to protect the identity of voters so that he/she can vote without any fear. None of the members who voted are before this Court challenging their right to secret ballot being infringed. There is also no material placed that there was a complaint by the members that their right to secret ballot was infringed. On this court also this Court finds no justifiable grounds to interfere with the impugned Resolutions.

18. Accordingly, this Court dismisses the instant writ petition. Pending applications, if any, stands disposed of in terms with the instant judgment.

JUDGE

Comparing Assistant