

GAHC010146362023



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

Case No. : WA/257/2023

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)

For the appellant :Mr. T.J. Mahanta, Senior Advocate
Assisted by Ms. P. Sarma, Advocate
For the respondents : Mr. N.K. Dev Nath,
Standing Counsel, PNRD
Mr. P.J. Saikia, Senior Advocate
Assisted by Mr. A.K. Gupta, Advocate
For respondent No.9 and 11
Mr. D. Nath,
Senior Govt. Advocate, Assam
Mr. N. Das, Govt. Advocate, Assam

– B E F O R E –

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

27-07-2023

S. Mehta, C.J.

The instant intra-Court writ appeal is directed against the judgment and final order dated 26.05.2023 rendered by learned Single Judge dismissing the writ petition, being, WP(C) 3240/2021 preferred by the appellant for challenging the resolution dated 21.06.2021 adopted in the special meeting of the No.1 Golai Gaon Panchayat expressing No-confidence against the petitioner, who was the then President of No.1 Golai Gaon Panchayat, Dibrugarh, Tinsukia.

2. The core question raised for consideration of this Court in this intra-Court writ appeal is whether the mandate of Section 18(5) of the Assam Panchayat Act, 1994 (for short 'the 1994 Act'), which reads as below, was followed or not when the resolution of No-confidence was adopted against the appellant/writ petitioner.

“18. Quorum and Procedure

.....

(5) The voting, in any meeting of Gaon Panchayat, if required shall be by raising of hands, except in the meeting where no-confidence motion is discussed where the matter will be secret ballot.”

3. The appellant/writ petitioner set up categoric case at paragraph 13 of the writ petition stating therein that the procedure of voting was carried out by open ballot and not by secret ballot as mandated by Section 18(5) of the 1994 Act. The entire voting process was in violation of the mandatory provision. The members were required to put tick mark on the option “want (*LAGE*)” or “do not want (*NALAGE*)” in the sheet of papers and to put his/her seal and signature.

4. In response to pertinent facts pleaded in the writ petition, an affidavit-in-opposition was filed on behalf of respondent Nos.9, 10, 11, 12, 13, 16, 17 and 18 (the members who voted in support of the No-confidence motion). The response to the pleadings made at paragraphs 13 and 14 of the writ petition was given in paragraph 10 of the affidavit-in-opposition, which reads as below;

“10. That with respect to the statement made in paragraph 13 and 14, the deponent begs to state that section 15 and 18(5) of the Assam Panchayat Act, 1994 were fully complied with. 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. When all the members have voted then the folded ballot sheet were opened and counted. Thus secrecy of ballot were fully maintained and there was no violation of section 18(5) of Assam Panchayat Act, 1994”

5. It is thus apparent that the specific averment made by the appellant/writ petitioner regarding the members present and voting on the No-confidence

motion having appended their signatures on the ballot papers was not denied by the concerned member voters. The learned Single Judge observed at paragraph 15 of the impugned order that the petitioner did not place any material on record to prove the allegation as alleged in paragraph 13 of the writ petition. It was further observed that there was no mention as to who had informed the petitioner in respect of the requirement of putting the seal and signature in the ballot paper.

6. We find that the said observation of the learned Single Judge was rendered without appropriate consideration of the pleadings referred to (*supra*). Needless to say that the writ petitions are decided on the basis of the pleadings and affidavits of the parties. The appellant/writ petitioner made categorical assertion in paragraph 13 of the writ petition that the respective members were made to append their signatures on the ballot papers and in this process, secrecy of the voting process was compromised. The appellant himself was present during the meeting and hence, there was no reason as to why he would bank upon some other source of information while making this assertion. As is evident from the preceding discussion, the concerned members did not deny this specific assertion made by the appellant/writ petitioner in the writ petition while offering their response in paragraph 10 of their affidavit reproduced (*supra*).

7. Nevertheless, in order to ascertain the true picture, we had summoned the Deputy Commissioner concerned with the original ballot papers by the order dated 18.07.2023. In response, Mr. Swapneel Paul, Deputy Commissioner, Tinsukia appeared in the Court on 21.07.2023 and informed that the original ballot papers were handed over to the earlier Standing Counsel of the Panchayat

and Rural Development Department. Not being satisfied with the explanation so offered, we directed the learned Additional Senior Government Advocate to ensure that the ballot papers are presented for the Court's perusal. However, when the matter was taken up today, learned Additional Senior Government Advocate expressed his inability to present the ballot papers on the premise that there was no trace thereof after the same had purportedly been handed over to the Standing Counsel, PNRD.

These facts and circumstances give rise to a strong suspicion that the ballot papers are intentionally withheld and are not being presented for the Court's perusal.

8. In the backdrop of the facts and circumstances narrated above, we are of the firm view that the specific fact pleaded by the appellant/writ petitioner that the members put their signatures on the ballot papers was not controverted by the concerned parties and, thus, there is no escape from the conclusion that the mandatory process of secret ballot was violated in the meeting dated 21.06.2021 and thereby the entire process of voting on the No-confidence motion was vitiated as being in contravention to the mandate of Section 18(5) of the Assam Panchayat Act, 1994.

9. Thus, the impugned order passed by the learned Single Judge as well as the resolution dated 21.06.2021 recording No-confidence against the appellant/writ petitioner are liable to be reversed and thus the same are quashed.

It is hereby directed that a fresh meeting to consider the motion of No-confidence against the appellant/writ petition shall be held in the office of the

No.1 Golai Gaon Panchayat on **16.08.2023**. The Deputy Commissioner, Tinsukia will authorise a competent officer to supervise the said meeting. As we have interfered in the No-confidence motion drawn against the appellant/writ petitioner, he shall be restored as the President of No.1 Golai Gaon Panchayat. However, his status as President of No.1 Golai Gaon Panchayat shall be subject to the outcome of the No-confidence motion to be held on 16.08.2023, as directed above.

The writ appeal is allowed in these terms.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant