

GAHC010149502021



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

Case No. : WP(C)/4773/2021

KHEM RAJ KARKI AND 7 ORS
SON OF LATE MON BAHADUR KARKI
VILL- BATIAMARI
P.O. PANPUR, P.S. JAMUGURI
DIST. SONITPUR, ASSAM, PIN-784182

2: BRAJADHAR HAZARIKA
SON OF LATE MOLAN HAZARIKA
R/O VILL- NO. 2 BATAMARI
P.O. RANGACHAKUA
P.S. JAMUGURI
DIST. SONITPUR
ASSAM
PIN-784182

3: KALPANA KAKATI
W/O LATE DURLOV KAKATI
R/O HOLAKAN
P.O. BAKOLA
P.S. JAUGURI
DIST. SONITPUR
ASSAM
PIN784182

4: GOLAP KAKATI
SON OF LATE MOLAN KAKATI
VILL- HOLAKAN BORIGAON
P.O. BAKOLA
P.S. JAMUGURI
DIST. SONITPUR
ASSAM
PIN-784182

5: MON BAHADUR THAPA

SON OF LATE RISHIKESWAR THAPA
VILL- NO. 1 BORDIKARAI
P.O. BORDIKARAI
P.S. JAMUGURI
DIST. SONITPUR
ASSAM
PIN-784182

6: KESHAB NATH
SON OF LATE LAKHIRAM NATH
VILL- BAKULA MAJGAON
P.O. BAKOLA P.S. JAMUGURI
DIST. SONITPUR
ASSAM

PIN-784182

7: RATIKANTA BHARALI
SON OF LATE MODKARAM BHARALI
VILL- UPPAR TALAKABARI
P.O. KARSONTALA
P.S. JAMUGURI
DIST. SONITPUR
ASSAM
PIN-784189

8: DILIP SAIKIA
SSON OF LATE HARAKANTA SAIKIA
VILL- RISHIPATTY (DEKA SUNDAR)
P.O. JAMUGURIHAT
P.S. JAMUGURI
DIST. SONITPUR
ASSAM
PIN-78418

VERSUS

THE STATE OF ASSAM AND 12 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HOME AND POLITICAL DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE DIRECTOR GENERAL OF POLICE

ASSAM
ULUBARI
GUWAHATI-7

3:THE DEPUTY IGP (ADMIN)

ASSAM
ASSAM POLICE HEADQUARTERS
ULUBARI
GUWAHATI-781007

4:THE SUPERINTENDENT OF POLICE CUM DISTRICT VILLAGE DEFENCE
OFFICER

SONITPUR DISRICT

P.O. TEZPUR
DIST. SONITPUR
ASSAM
PIN-784001

5:THE OFFICER-IN-CHARGE CUM THANA VILLAGE OFFICER

JAMUGURI POLICE STATION
JAMUGURI
P.O. JAMUGURIHAT
DIST. SONITPUR
ASSAM
PIN--784180

6:BIDDUMAN LAMA
SON OF PADMA BAHADUR LAMA
R/O VILL- AMDARA HOKMA
P.O. PANPUR
P.S. JAMUGURI
DIST. SONITPUR
ASSAM
PIN-784182

7:RABIN KALITA
SON OF BINOD KALITA
R/O VILL- NO. 2 BATAMARI
P.O. RANGACHAKUA
P.S. JAMUGURI
DIST. SONITPUR
ASSAM
PIN-784182

8:REKHAMONI BORA
W/O SRI PABITRA BORA
R/O VILL- HOLAKAN
P.O. BAKOLA
P.S. JAMUGURI
DIST. SONITPUR

ASSAM
PIN-784182

9:DIPEN DUWARA
SON OF PADUM DUWARA
R/O HOLAKAN BORIGAON
P.O. BAKOLA P.S. JAMUGURI
DIST. SONITPUR
ASSAM

PIN-784182

10:NARAYAN KHANDAL
SON OF LATE NANDALAL KHANDAL
VILL- NO. 1 BORDIKARAI
P.O. BORDIKARAI
P.S. JAMUGURI
DIST. SONITPUR
ASSAM
PIN-784182

11:SRI GYANJYOTI BORA
SON OF MOHENDRA BORA
VILL- MAZGAON
P.O. BAKOLA
P.S. JAMUGURI
DIST. SONITPUR
ASSAM
PIN-784182

12:MANOJ CHUTIA
SON OF KUNDA CHUTIA
VILL- UPPAR TALAKABARI
P.O. KARSONTALA
P.S. JUMUGURI
DIST. SONITPUR
ASSAM

PIN-784189

13:RAIZ KUMAR DAS
SON OF SRI NIRANJAN DAS
VILL- RISHIPATTY (DEKA SUNDAR)
P.O. JAMUGURIHAT
P.S. JAMUGURI
DIST. SONITPUR
ASSAM
PIN-78418

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 15/09/2023

Heard Mr. R.P. Sharma, learned senior counsel assisted by Mr. P.N. Sharma, learned counsel for the petitioners. Also heard Mr. S. R. Baruah, learned Government Advocate and Mr. N. Borah, learned counsel for respondent Nos. 6 to 13.

2. These writ petition has been filed by the petitioners who are being aggrieved by the fact that the Village Defence Parties (VDP) have been reconstituted by the concerned Superintending of Police-cum-District Village Defence Officer, namely, respondent No.4, before expiry of the period of 5 (five) years and in contravention with the procedure prescribed under the Assam Village Defense Organization Rules, 1986 (herein after referred to as Rule). It is the grievance of the petitioners that under the provisions of Rule 5 of the said Rules, the Village Defense Primary Committee is to be formed by the Village Defense Officer, namely, the Superintendent of Police of the concerned district only on the recommendation of the thana and Sub-Divisional Village Defense Officers with one adult member from each family of the village or a group of villages. The prescribed age for the adult members for Village Defence Parties (VDPs) are between the age group of 18 to 50 years.

3. Mr. R. P. Sharma, learned senior counsel for the petitioners submits that

the petitioners were members of the Amdara Hokma, Botiyamari Bhairobi VDP. It is submitted that contrary to the prescription under the Rules, before expiry of the stipulated 5 (five) years, the committee was reconstituted by the respondent No.4.

4. Mr. Sharma, learned senior counsel has fairly admitted that although some of the members in the meantime have crossed the upper age limit of 50 years yet there are several members who are still within the prescribed age limit of 18-50 years. That apart, no speaking order, etc. has been passed by the competent authority as to the reasons which require reconstitution of the Village Defence Committee. Under such circumstances, the present writ petitions have been filed praying for appropriate writ, directions or orders.

5. This court while issuing Notice by orders dated 08.10.2021 suspended until further orders the operation of the communication dated 05.08.2021 by which the new Thana Advisory Committee has been constituted for 8 (eight) referred villages under the Jamuguri Police Station. According to the learned senior counsel for the petitioners, this impugned order has been passed contrary to the provisions of the Assam Village Defense Organization Rules, 1986. That apart it is submitted that the names which are not recommended by the thana and the Sub-Divisional Village Defense Officers are also included in the new committee.

6. Mr. Baruah, learned counsel appearing for the Government submits that an affidavit has been filed by the concerned Village Defence Officer, namely the Superintendent of Police of Sonitpur District, Tezpur.

7. Upon perusal of the said affidavit, it is stated therein that some of the petitioners have been stated to have crossed the age limit of 50 years. And as such the committees have been reconstituted. No other ground has been cited

in the said affidavit leading to the reconstitution of the new committee. No order passed by the Superintendent of Police of the concerned district disclosing the reasons as to why the committee had to be reconstituted is also found enclosed to the pleadings filed before the court.

8. Under such circumstances, this court is of the view that while the learned senior counsel has fairly admitted that some of the members have in the meantime cross the age of 50 years, but having regard to the fact that no specific reasons have been cited by the respondent authorities, besides the averment in the affidavit that some of the members have crossed the age of 50, the committee was reconstituted before the expiry of 5(five) years. When the power under the Rules is available to the competent authority to replace any member who may have crossed the age of 50, without necessarily having to reconstitute the entire committee, this court is of the view that the writ petition need not be kept pending for want of specific instructions.

9. Accordingly, this court is of the considered view that ends of justice will be met if the matter is disposed of at the stage relegating the petitioners to file necessary applications or representations before the competent authority, namely the Superintendent of Police of the respective Districts of the concerned districts. The Superintendent of Police of the respective districts, who is the Village Defence Officer, will thereafter, proceed to hear the petitioners and thereupon pass a speaking order in respect of the grievances which may be urged before the Superintendent of Police regarding the reconstitution of the committee before the expiry of the fixed tenure of 5(five) years as prescribed under the Rules. The Superintendent of Police will conduct the hearing and pass appropriate speaking orders by taking note of the provisions of the Assam Village Defense Organisation Act, 1966 read with the Assam Village Defense

Organization Rules, 1986.

10. This entire exercise will be completed by the Superintendent of Police within a period of 30 (thirty) days from the date of receipt of a certified copy of this order. Any such particulars as may be required can be sought for by the Superintendent of Police from the petitioners during the process of personal hearing. Upon consideration of the grievances as directed above by the Superintendent of Police and upon passing necessary orders, the copies of such speaking orders as maybe passed shall be furnished to the respective petitioners as well as the other stakeholders. During the process of hearing besides the petitioners all other stakeholders will also be allowed to participate in the hearing and thereafter the respondent authorities will pass a speaking order. The petitioners will furnish a certified copy of this order within ten (10) days from the date of receipt of the certified copy and thereupon the Superintendent of Police of the concerned district will proceed to hear the matter within a period of 30 (thirty) days and thereupon pass necessary speaking orders within further 15 (fifteen) days thereafter.

11. The writ petitions stand disposed of in terms of the above directions. The interim order dated 08.10.2021, by which the constitution of the new committee has been suspended, will continue till such date the speaking orders are passed and served upon the petitioners.

12. With the above observation the writ petitions stands disposed of.

JUDGE

Comparing Assistant