

GAHC010163512022



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

Case No. : WA/329/2022

JHUMA NANDI
W/O BINOY NANADI, PRESIDENT, BINNAKANDI BAGAN GAON
PANCHAYAT, R/O VILL- BINNAKANDI GRANT PART-I, P.O.-BINNAKANDI
TEA ESTATE, DIST-CACHAR, ASSAM, PIN-788126

2: RABI SHANKAR BAURI
S/O LATE SUSHIL BAURI
MEMBER
WARD NO. 2
BINNAKANDI BAGAN GAON PANCHAYAT
R/O VILL-BINNAKANDI GRANT PART-I
P.O.-BINNAKANDI TEA ESTATE
DIST-CACHAR
ASSAM
PIN-788126

3: MD. NURUL ALAM
S/O MD. ANAR ALI
MEMBER
WARD NO. 7
BINNAKANDI BAGAN GAON PANCHAYAT
R/O VILL-KHALKURI (HATIGURI GRANT)
P.O.-BINNAKANDI TEA ESTATE
DIST-CACHAR
ASSAM
PIN-788126

4: SANJOY BAURI
S/O LATE ANIL BAURI
MEMBER
WARD NO. 04
BINNAKANDI BAGAN GAON PANCHAYAT
R/O VILL- BINNAKANDI GRANT PART-I
P.O.-BINNAKANDI TEA ESTATE

DIST-CACHAR
ASSAM
PIN-788126

5: AMIT KUMAR BAURI
S/O SRI PURNA BAURI
MEMBER
WARD NO. 05
BINNAKANDI BAGAN GAON PANCHAYAT
R/O VILL-BINNAKANDI GRANT PART-I
P.O.-BINNAKANDI TEA ESTATE
DIST-CACHAR
ASSAM
PIN-788126

6: SMTI NANDA LOHAR
W/O SRI IMON LOHAR
MEMBER
WARD NO. 03
BINNAKANDI BAGAN GAON PANCHAYAT
R/O VILL-BINNAKANDI GRANT PART-I
P.O.-BINNAKANDI TEA ESTATE
DIST-CACHAR
ASSAM
PIN-78812

VERSUS

THE STATE OF ASSAM AND 12 ORS. E
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM, DEPARTMENT OF PANCHAYAT AND RURAL
DEVELOPMENT, DISPUR, GUWAHATI, ASSAM, PIN-781006

2:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR
PIN-788001

3:THE SUB-DIVISIONAL OFFICER (CIVIL)
LAKHIPUR
P.O.-LAKHIPUR
DIST-CACHAR
ASSAM

4:THE CHIEF EXECUTIVE OFFICER
CACHAR ZILLA PARISHAD
CACHAR
SILCHAR

P.O. AND P.S.-SILCHAR
PIN-788001
DIST-CACHAR
ASSAM

5:THE BLOCK DEVELOPMENT OFFICER
BINNAKANDI DEVELOPMENT BLOCK
CUM EXECUTIVE OFFICER
BINNAKANDI ANCHALIK PANCHAYAT
VILL AND P.O.-BINNAKANDI
DIST- CACHAR
PIN-788120

6:THE SECRETARY
BINNAKANDI ANCHALIK PANCHAYAT
BINNAKANDI DEVELOPMENT BLOCK
VILL-KRISHNANAGAR
P.O.-BINNAKANDI T.E.
DIST- CACHAR
ASSAM
PIN-788126

7:THE PRESIDENT
BINNAKANDI ANCHALIK PANCHAYAT
BINNAKANDI DEVELOPMENT BLOCK
VILL- KRISHNANAGAR
P.O.-BINNAKANDI T.E.
DIST- CACHAR
ASSAM
PIN-788126

8:THE SECRETARY NO. 70 BINNAKANDI BAGAN GAON PANCHAYAT
VILL AND P.O.-BINNAKANDI TE
P.S.- LAKHIPUR
DIST-CACHAR
ASSAM
PIN-788126

9:SMTI SWAPNA SUTRADHAR
W/O SRI ALLAD SUTRADHAR
MEMBER
WARD NO. 01 OF BINNAKANDI BAGAN GAON PANCHAYAT
R/O VILL-KALAPOOL
P.O.-BINNAKANDI TEA ESTATE
DIST-CACHAR
ASSAM
PIN-788126

10:SMTI SEBA BEGUM BARBHUIYA
W/O AKTAR HUSSAIN
MEMBER
WARD NO. 08 OF BINNAKANDI BAGAN GAON PANCHAYAT
R/O VILL-KAPTANPUR PART-XII
P.O.-BINNAKANDI TEA ESTATE
DIST-CACHAR
ASSAM
PIN-788126

11:SMTI RIYA DAS
W/O SUBIR DAS
MEMBER
WARD NO. 09 OF BINNAKANDI BAGAN GAON PANCHAYAT
R/O VILL-SWASTIPALLY
P.O.-BINNAKANDI TEA ESTATE
DIST-CACHAR
ASSAM
PIN-788126

12:SMTI SAPTAMI DEB
D/O LATE BIPUL DEB
MEMBER
WARD NO. 10 OF BINNAKANDI BAGAN GAON PANCHAYAT
R/O VILL-ALICHERA
P.O.-BINNAKANDI TEA ESTATE
DIST-CACHAR
ASSAM
PIN-788126

13:SMTI RABANI BAURI
W/O SHANKAR BAURI
MEMBER
WARD NO. 06 OF BINNAKANDI BAGAN GAON PANCHAYAT
R/O VILL-BINNAKANDI GRANT PART-I
P.O.-BINNAKANDI TEA ESTATE
DIST-CACHAR
ASSAM
PIN-78812

Advocate for the Petitioner : MR. S ROY

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

24.01.2023

[N. Kotiswar Singh, CJ(Acting)]

Heard Mr. M.H. Laskar, learned counsel for the appellants. Also heard Mr. N. Das, learned Government Advocate, Assam, appearing for respondent Nos.2 and 3 and Mr. N.K. Debnath, learned standing counsel, P&RD, appearing for respondent Nos.1, 4 and 5.

2. Considering the nature of this case, we are of the view that the matter can be disposed of at this stage without issuing any formal notice and also without directly interfering with the impugned order dated 02.03.2022 as we are not going into the legality of the issues raised.

3. The fact remains, as also admitted by the learned counsel for the appellants that the post of President of the Office of the President of No.70 Binnakandi Gaon Panchayat under Binnakandi Anchalik Panchayat, District-Cachar had become vacant on account of removal of the present appellant No.1 as the President due to a no confidence motion carried out against him on 07.08.2021.

4. Though the said no confidence motion was the subject matter of challenge before this Court in WP(C) No.1138/2022 and also before us now, learned counsel for the appellants submits that he will be satisfied if a direction is issued to the concerned authorities to hold election for the post of President in terms of Section 10(1) of the Assam Panchayat Act, 1994 (in short "Act"), as vacancy to the post of President in the office of the President is to be filled

up as provided thereunder. Section 10(1) of the Act reads as follows:-

"10. Election of President and Vice-President of Gaon Panchayat-

(1) After the election of the President of the Gaon Panchayat under Section 6(1)(b) and the Vice-President under Section 6(3) if any vacancy occurs by reason of death, resignation or removal in the office of the President or the Vice-President as the case may be, the Gaon Panchayat shall elect the President under Section 6(1)(b) or the Vice-President under Section 6(3) as the case may be:

Provided that no election shall be held if the vacancy is for a period of less than one month."

5. It has been submitted at the Bar that the term of the said Gaon Panchayat is upto December, 2023 and as such, there about 11 months left, in which event, the bar provided under the *proviso* to Section 10(1) will not apply, wherein it has been provided that no election shall be held if the vacancy is for a period of less than one month.

6. Under the circumstances, as submitted by the learned counsel for the appellants, we direct the official respondents, more particularly, the respondent No.1 to do the needful for election of the President in terms of Section 10(1) of the Assam Panchayat Act, 1994 without any further delay, preferably within a period of 1(one) month from today.

7. With the above observation and direction, the present appeal stands disposed of.

Sd/- Soumitra Saikia
JUDGE

Sd/- N. Kotiswar Singh
CHIEF JUSTICE (ACTING)

Comparing Assistant