

GAHC010178322015



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

Case No. : WP(C)/5400/2015

IBRAHIM ALI
S/O LT. MAHIM UDDIN SARKAR, R/O BHAKHURA DIA, P.O. NAGARBERA,
P.S. NAGARBERA, DIST- KAMRUP RURAL, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, DEPTT.
OF REVENUE, DISPUR, GHY-6

2:THE DY. COMMISSIONER
KAMRUP RURAL
AMINGAON
GUWAHATI
ASSAM

3:THE CIRCLE OFFICER
NAGARBERA REVENUE CIRCLE
NAGARBERA
DIST- KAMRUP
ASSAM
PIN-781127

4:JALAL UDDIN
S/O SORHAB ALI @ DARAG ALI
R/O BHAKHURA DIA
P.O. NAGARBERA
P.S. NAGARBERA
DIST- KAMRUP RURAL
ASSAM
PIN-78112

Advocate for the Petitioner : MR.D K SARMAH

Advocate for the Respondent : MR.A PARAMANIKR-4

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

27.06.2023

Heard Ms. A. Talukdar, learned counsel for the petitioner. Also heard Mr. J.

Handique, learned Standing Counsel, Revenue Department, Assam appearing for the respondent No.1. Mr. J. K. Goswami, learned Addl. Senior Govt.

Advocate, Assam has appeared for the respondent Nos.2 and 3 and Mr. I. H.

Saikia, learned counsel has appeared for the respondent No.4.

It appears that the respondent No.2 had issued an advertisement notice dated 04.03.2015 inviting applications for filling up posts of Gaonburahs including the post of Gaonburah of No.1 Bhakhura dia village. In response to the aforesaid advertisement the petitioner and the respondent No.4, besides other candidates had submitted their applications. On completion of the selection process the respondent No.4 was found to be successful candidate and therefore, he was recommended for appointment as Gaonburah of No.1 Bhakhura dia village under Kamrup(R) district. At that stage, the petitioner had approached this Court by filing the instant writ petition assailing the selection of the respondent No.4 inter-alia on the ground that the respondent No.4 did not meet the eligibility norms as provided under the advertisement notice dated 04.03.2015 as well as under the Executive Instructions framed under the provisions of Assam Land & Revenue Regulations, 1886.

Ms. Talukdar submits that as per the advertisement notice as well as the

provisions of Rule 162(1)(v) of the Executive Instructions, preference was required to be given to the family members of Gaonburahs. However, no such exercise was done in this case. She also submits that as per Rule 162(1)(vii) the candidate was required to have landed property within the local area which the respondent No.4 did not have. As such, he could not have been selected for appointment in the post of Gaonburah. Ms. Talukdar, however, has fairly admitted that her client did score lesser marks than the respondent No.4 in the selection process.

Mr. I. H. Saikia, learned counsel for the respondent No.4 submits that the arguments advanced by the petitioner's counsel is on the basis of the Executive Instructions dated 10.04.2018 which was not in force when the advertisement notice was issued in the year 2015 and therefore, the same would not have any relevance in the matter. The learned counsel for the respondent No.4 also submits that the petitioner did have landed property but the same was in the name of his father and therefore, he did fulfil the eligibility norms as provided under the advertisement notice as well as the Executive Instructions in force on the date on which the advertisement was issued.

Mr. Handique, learned departmental counsel submits that the issues raised in the writ petition would require factual enquiry which can be conducted by the Deputy Commissioner of the District and therefore, the matter be remanded to the concerned authorities to take appropriate decision in the matter.

Similar is the stand of Mr. J. K. Goswami, learned Addl. Sr. Govt. Advocate, Assam appearing for the respondent Nos.2 and 3.

It appears that due to the interim order dated 11.09.2015 passed in this case, no order of appointment has yet been issued in favour of the respondent No.4.

Situated thus and taking note of the submission made by the learned counsel for all the parties, this writ petition is being disposed of by providing that the respondent No.2 i.e. the Deputy Commissioner, Kamrup(R) shall make an enquiry or cause an enquiry to be made by a competent person so as to ascertain as to whether the respondent No.4 did fulfil the eligibility norms under the advertisement notice as well as the Executive Instructions in force at the relevant point of time. If it is found that he did fulfil the eligibility norms, order of appointment be issued in favour of the respondent No.4 without any further delay. The aforesaid exercise be carried out and completed within a period of six weeks from the date of receipt of a certified copy of this order.

Until such time the exercise is carried out and completed, the interim order dated 11.09.2015 shall hold the field.

With the above observations, the writ petition stands disposed of.

JUDGE

Comparing Assistant