

GAHC010179352023



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

Case No. : WP(C)/4655/2023

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

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE CHIEF ELECTORAL OFFICER

JANATA BHAWAN
DISPUR

GUWAHATI
ASSAM.

3:THE DEPUTY COMMISSIONER
TINSUKIA
DISTRICT- TINSUKIA
ASSAM.

4:SUB DIVISIONAL OFFICER (CIVIL)
MARGHERITA
DISTRICT- TINSUKIA.

5:BLOCK DEVELOPMENT OFFICER
MARGHERITA BLOCK
DISTRICT- TINSUKIA.

6:THE SECRETARY
NO. 1 GOLAI GAON PANCHAYAT
P.O. AND P.S.- DIGBOI

DISTRICT- TINSUKIA (ASSAM)

PIN- 786171.

7:BHADRA KANTA BORAH
SON OF MAHENDRA BORA

RESIDENT OF PANBARI FOREST

VILLAGE- DIGBOI

P.O.- BHIMPATHAR

DISTRICT- TINSUKIA
ASSAM

PIN- 786171

Advocate for the Petitioner : MR. T J MAHANTA

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

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 21-08-2023

Heard Mr. P.P. Dutta, learned counsel for the writ petitioner. Also heard Ms. M. Barman, learned Govt. Advocate, Assam appearing for the respondent Nos. 3 and 4 as well as Mr. N.K. Debnath, learned standing counsel, P&RD Department, Assam appearing on behalf of respondent Nos. 1, 5 and 6.

The grievance of the writ petitioner is to the effect that although the respondent No. 7 had incurred disqualification on the ground of contravention of Section 111(2) of the Assam Panchayat Act, 1994 for having more than two children and therefore, he was ineligible to participate in the specially convened meeting of the Gaon Panchayat held on 16-08-2023 for discussing the "No Confidence Motion" brought against the petitioner, no action has been taken by the district administration against the respondent No. 7, although the writ petitioner had lodged a formal complaint before the authority.

In terms of the order dated 14-08-2023 passed by this Court, Ms. Barman, learned Govt. Advocate, Assam has produced written instruction issued by the respondent No. 3. I have perused the same. It appears that the entire matter is presently under examination by the respondent No. 3 and an appropriate decision in the matter is still pending.

Mr. Dutta, learned counsel for the writ petitioner has also apprised this Court that in the meeting of the Gaon Panchayat held on 16-08-2023, only six members were present but no resolution could be adopted in the said meeting. He further submits that records of the meeting have been transmitted to the office of the respondent No. 3.

In view of the fact that the respondent No. 3 has taken cognizance of the complaint lodged by the petitioner and since the allegation made against the respondent No. 7 would require factual verification so as to take further action in the matter as per law, this Court is of the opinion that instead of keeping the writ petition pending before this Court, the proper course of action would be to direct the respondent No. 3 to examine the allegation made by the petitioner and thereafter, take appropriate decision in the matter, as may be permissible under the law. The learned counsel for both the sides

have also agreed to such a recourse.

In view of the above, without expressing any opinion on the merit of the case projected by the writ petitioner, this writ petition stands disposed of at the stage of motion hearing with a direction upon the respondent No. 3 to examine the complaint made by the petitioner in the light of the Section 111(2) of the Assam Panchayat Act and thereafter, take appropriate action in the matter, as may be permissible under the law. In doing so, the respondent No. 3 shall give an opportunity of being heard to the petitioner as well as the respondent No. 7.

Depending on the outcome of the process, the respondent No. 3 may also take a decision on the question of validity of the proceeding of the specially convened meeting held on 16-08-2023.

With the above observations and directions, this writ petition stands closed.

JUDGE

GS

Comparing Assistant