

GAHC010149502021



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

Case No. : WP(C)/6349/2021

SOMESWAR BORAH AND 10 ORS
SON OF LATE THANESWAR BORAH
VILLAGE- PITHAGURI DOUL
P.O. KARSONTALA
P.S. JAMUGURI
DISTRICT-SONITPUR
ASSAM
PIN-784189

2: BHUBAN ACHARJYA

SON OF LATE GOURI ACHARJYA
RESIDENT OF VILLAGE NO.2 BORDIKARAI
P.O.BORDIKORAI
P.S. JAMUGURI

DISTRICT-SONITPUR
ASSAM
PIN-784182

3: BIPUL PAUL
WIFE OF LATE NARENDRA CHANDRA PAUL
RESIDENT OF JAMUGURIHAT

P.O.JAMUGURIHAT
P.S. JAMUGURI

DISTRICT-SONITPUR
ASSAM
PIN-784180

4: KUMUD BHUIYA

SON OF LATE ROSHA BHUIYA

VILLAGE-CHAMDHARA PANIGAON
P.O-NAHARBARI
P.S. JAMUGURI
DISTRICT-SONITPUR
ASSAM
PIN-784182

5: LAKHI MECH
SON OF LATE BHABEN MECH
VILLAGE- NA-BEEL
P.O. NAHARBARI

P.S. JAMUGURI

DISTRICT-SONITPUR
ASSAM
PIN-784182

6: ANUP KUMAR BORAH
SON OF LATE SUREN BORAH
VILLAGE-PACHIGAON
P.O.JAMUGURIHAT
P.S. JAMUGURI

DISTRICT-SONITPUR
ASSAM
PIN-784180

7: DIMBESWAR RABHA
SON OF LATE MONI RABHA
VILLAGE NO.1 KHALIHAMARI
P.O-KHALIHAMARI
P.S. JAMUGURI
DISTRICT-SONITPUR
ASSAM
PIN-784026

8: HARAKANTA NATH
SON OF LATE JURAI NATH
VILLAGE -UJARACHUK

P.O. NANDIKESWAR
P.S. JAMUGURI
DIST-SONITPUR
ASSAM
PIN-784180

9: BINODA BORO

WIFE OF LATE DUKHU BORO
VILLAGE-TOWBHANGA
P.O. TOWBHANGA
P.S. JAMUGURI
DIST-SONITPUR
ASSAM
PIN-784182.

10: RAJIB DAS

SON OF LATE NAREN DAS
VILLAGE-TOWBHANGA
P.O. TOWBHANGA
P.S. JAMUGURI
DIST-SONITPUR
ASSAM
PIN-784182.

11: BHABEN SAIKIA
SON OF LATE KOLIMAN SAIKIA
VILLAGE-KAMARGAON (HUKAI)
P.O. JAMUGURIHAT
P.S. JAMUGURI
DIST-SONITPUR
ASSAM
PIN-784180
VERSUS

THE STATE OF ASSAM AND 15 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-6

2:THE DIRECTOR GENERAL OF POLICE

ASSAM
ULUBARI
GUWAHATI-7
3:THE DEPUTY IGP (ADMIN)

ASSAM

ASSAM POLICE HEADQUARTERS
ULUBARI
GUWAHATI - 781007

4:THE SUPERINTENDING OF POLICE CUM DISTRICT VILLAGE DEFENCE

OFFICER

SONITPUR DISTRICT
P.O-TEZPUR
DISTRICT SONITPUR
ASSAM

PIN-784001

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

JAMUGURI POLICE STATION

JAMUGURI
P.O. JAMUGURIHAT
DISTRICT-SONITPUR
ASSAM

PIN-784180

6:DAMUDAR MECH
SON OF LATE DHIREN MECH
RESIDENT OF VILLAGE-PITHAGURI DOUL
P.O.KARSONTALA

P.S. JAMUGURI
DISTRICT-SONITPUR
ASSAM

PIN-784189

7:BASUDEV KARKI
SON OF JANAK SINGH KARKI
RESIDENT OF VILLAGE NO.2 BORDIKARAI
P.O. RANGACHAKUA

P.S. JAMUGURI
DISTRICT-SONITPUR
ASSAM

PIN-784182

8:MUKUL SAIKIA
SON OF LATE THULA SAIKIA
RESIDENT OF VILLAGE-DEKASUNDAR
P.O.JAMUGURIHAT

P.S. JAMUGURI

DISTRICT-SONITPUR
ASSAM

PIN-784180

9:KAUSHIK KAKATI
SON OF NIRANJAN KAKATI
RESIDENT OF VILLAGE-PADMAPUR
P.O.NAHARBARI

P.S. JAMUGURI

DISTRICT-SONITPUR

ASSAM
PIN-784182
10:SANKAR DAS
SON OF GADADHAR DAS
VILLAGE- NA-BEEL
P.O.NAHARBARI
P.S. JAMUGURI

DISTRICT-SONITPUR
ASSAM
PIN-784182
11:PRANJAL SAIKIA
SON OF RATNESWAR SAIKIA
VILLAGE-PACHIGAON
P.O.JAMUGURIHAT
P.S. JAMUGURI

DISTRICT-SONITPUR
ASSAM
PIN-784180
12:BHISMA ACHARJEE
SON OF LATE DEBA ACHARJEE
VILLAGE-KHALIHAMARI
P.O.GAMERIPAL
P.S. JAMUGURI

DISTRICT-SONITPUR
ASSAM
PIN-784180
13:DIPAK NATH
SON OF LATE ROSHA NATH
VILLAGE UJARCHUK
P.O. NANDIKESWAR
DISTRICT-SONITPUR

ASSAM
PIN-784180
14:LATA DAIMARI
WIFE OF BIJIT DAIMARI VILLAGE-NA-BEEL
P.O. NAHARBARI
DISTRICT-SONITPUR

ASSAM
PIN-784182
15:JITUMONI BHAGAWATI
SON OF LATE TATHIMAN BHAGAWATI
VILLAGE-TUPIA
P.O. NAHARBARI
DISTRICT-SONITPUR
ASSAM
PIN-784182

16:BANCHAMALODAS
SON OF LATE BISHAMALODAS
VILLAGE-KUMARGAON
P.O.GOMERIPAL
DISTRICT-SONITPUR
ASSAM
PIN-7884180.

Advocate for : DR. B AHMED
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 15 ORS

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. This 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. It is the grievance of the petitioner 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 appearing for the petitioners submits that the petitioners were members of the Nobil (Towbhanga). 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 petition has been filed praying for appropriate writ, direction or order.

5. This court while issuing Notice by order dated 13.12.2021 stayed the constitution of the new VDPs in respect of the VDPs in which the petitioners are Secretaries. According to the learned 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 matters are 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 concerned districts. The Superintendent of Police, who is the Village Defense 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 copy of the 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 orders dated 13.12.2021, 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