

GAHC010172392019



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

Case No. : I.A.(Civil)/2680/2023

AZIM UDDIN
S/O NAZAR RAHMAN
R/O VILL. KHARUABANDA PART I
P.O. FEKMARI
P.S. SOUTH SALMARA
PIN-783135

VERSUS

MOKIBUR HUSSAIN AND 6 ORS.
S/O LT. MAHMUD ALI
R/O FULERCHAR
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT. DISPUR
GUWAHATI-6

3:THE COMMISSIONER LOWER ASSAM DIVISION
PALTANBAZAR
GUWAHATI-1

4:THE DEPUTY COMMISSIONER OF SOUTH SALMARA MANKACHAR
HATSINGIMARI
DIST. SOUTH SALMARA MANKACHAR
ASSAM CUM CHAIMAN OF THE SELECTION COMMITTEE

5:THE ADC OF SOUNT SALMARA MANKACHAR
HATISINGIMARI
DIST. SOUTH SALMARA MANKACHAR
ASSAM CUM MEMBER OF THE SELECTION COMMITTEE

6:THE CIRCLE OFFICER

MANKACHAR REVENUE CIRCLE CUM MEMBER OF THE SELECTION COMMITTEE
DIST. SOUTH SALMARA MANKACHAR
ASSAM

7:THE CIRCLE OFFICER

SOUTH SALMARA REVENUE CIRCLE CUM MEMBER OF THE SELECTION COMMITTEE
DIST. SOUTH SALMARA MANKACHAR
ASSAM

Advocate for : MR A HAWARI

Advocate for : MR. S K DAS appearing for MOKIBUR HUSSAIN AND 6 ORS.

In WP(C)/5433/2019

MOKIBUR HUSSAIN
S/O LT. MAHMUD ALI, R/O FULERCHAR, P.S. SOUTH SALMARA, DIST.
SOUTH SALMARA MANKACHAR, ASSAM, PIN-783135

VERSUS

THE STATE OF ASSAM ANAD 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
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COMMITTEE
DIST. SOUTH SALMARA MANKACHAR
ASSAM

7:AZIM UDDIN
S/O NAZAR RAHMAN
R/O VILL. KHARUABANDA PART I
P.O. FEKMARI
P.S. SOUTH SALMARA
PIN-78313

Advocate for the Petitioner : MR. S K DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 12/12/2023

Heard Mr. T. J. Mahanta, learned senior counsel assisted by Mr. S. Islam, learned counsel for the applicant. Also heard Mr. S.K. Das, learned counsel representing the opposite party no.1, Mr. J. Handique, learned Standing Counsel, Revenue and DM Department, Assam, appearing for the opposite party no. 2 and Mr. R. Dhar, learned Additional Senior Government Advocate, Assam, representing the opposite party nos. 3 to 7.

This IA has been filed with a prayer to vacate the interim order dated 28/06/2023 passed by the learned Single Judge in WP(C) 5433/2019 staying the selection and appointment of the applicant/respondent no. 7 as the Gaonburah of Lot No.14 under Mankachar Revenue Circle in the district of South Salmara.

The facts of the case, in a nutshell, are that the applicant and the opposite party no.1, as well as several candidates had apparently participated in the selection process for appointment of Gaonburahs under the Mankachar Revenue Circle. According to the applicant, he had applied for the post of Gaonburah for Lot Nos. 13 /14 but eventually, he was selected for appointment as the Gaonburah of Lot No. 14. Thereafter, the applicant was also appointed as Gaonburah of Lot No. 14. However, his selection and appointment came to be challenged

by the opposite party no. 1 by filing Writ Petition (C) No. 5433/2019 *inter alia* contending that the entire selection process stood vitiated due to several irregularities committed in selection of candidates. Moreover, according to the opposite party no.1/writ petitioner, although the applicant had applied for the post of Gaonburah of Lot No. 13, by over-writings in the relevant records without any initial of the Officer, his application had been changed, whereafter, he was appointed as the Gaonburah of Lot No. 14.

It appears that in view of the alleged malpractices in the selection of the candidates for the post of Gaonburah, Chief Minister's Vigilance PS Case No. 5/2021 had been registered on 29/11/2021 under sections 120(B)/420/468/471 of the Indian Penal Code (IPC) read with sections 7(a) (b) (c)/13(1)(a)/13(2) of the Prevention of Corruption (Amendment) Act, 2018 wherein, several officials including the Circle Officer-cum-Member of the Selection Board of Mankachar Revenue Circle and South Salmara Revenue Circle and other officials have been implicated. Charge-sheet has already been submitted in connection with the above case.

Taking note of the facts and circumstances of the case and also the fact that the applicant/respondent no. 7, inspite of have entered appearance in the writ petition, had failed to file affidavit, the learned Single Judge had passed the interim order dated 28/06/2023, suspending his order of appointment. In view of the order dated 28/06/2023, the applicant is no longer working as Gaonburah of Lot No. 14.

Mr. Mahanta, learned senior counsel for the applicant submits that the order of appointment of his client has been stayed by the learned Single Judge, without any valid reason, that too after he had rendered service for more than two years in the post of Gaonburah of Lot No. 14. It is also the contention of Mr. Mahanta that since the applicant belongs to Village Kharuabanda, a part of which falls in the Lot No. 13 and other part in Lot No. 14, the authorities on enquiry, found that the applicant actually belongs to village Kharuabanda pertaining to Lot No. 14 and that is why, his appointment order pertains to Lot No. 14. Mr. Mahanta has strongly refuted the contention that his client had applied for Lot No. 13 but by over-writing in the records, his appointment has been made in respect of Lot No.14.

Mr. S.K. Das, learned counsel for the opposite party no.1/writ petitioner, on the other

hand, submits that since the entire appointment process is tainted with serious allegations of corruption, the interim order be maintained, since restoring the applicant back in his office at this stage, would not be in the public interest. Mr. Das has, however, failed to answer the query of the Court as to how his client or even the public would stand to benefit if the interim order is continued till disposal of the writ petition.

The learned departmental counsel have submitted that since the appointment of the Gaonburahs are made by the Deputy Commissioners/ District Commissioners and considering the fact that there is no order from the Court to cancel their orders of appointment as Gaonburah, the Government has not taken any decision in the matter. They have, however, prayed for some time to bring the stand of the Government on record by filing affidavit in the connected writ petitions.

From a careful scrutiny of the materials available on record, I find force in the submission of Mr. Mahanta, that the applicant belonged to a village which partly fell in Lot No. 13 and partly in Lot No. 14. Since there was no clarity in the matter, the applicant had mentioned both Lot No. 13 and Lot No. 14 in his application and after verification of the record, the authorities and accepted his candidature for appointment as Gaonburah of Lot No. 14, whereafter, the appointment order was issued in favour of the applicant. Therefore, *prima facie*, it cannot be said that the applicant had applied for Lot No. 13 but was appointed as Gaonburah of Lot No. 14 by manipulation of records.

In so far as the allegations of corruption and malpractices in conducting the selection process is concerned, as noted above, charge-sheet has already been submitted by the Police. The allegations are now subject matter of trial. Therefore, this Court refrains from making any observation in respect thereof, for the present. However, on a cursory reading of the charge sheet, this Court finds that save and except mentioning that the application of the applicant was for Lot No. 13 but he has been appointed as Gaonburah of Lot No. 14, there is no other allegation against the present applicant.

In view of the observations made herein above, this Court is of the opinion that some observation in the statement of facts attached to the Charge-sheet, cannot be a ground to interfere with the order of appointment of the applicant, unless his selection is found to have

been tainted due to corruption and malpractices committed during the selection process. The aforesaid aspect of the matter would be clear only at the conclusion of the trial or if and when, the Government decides to conduct an independent enquiry in the matter.

The applicant has filed his affidavit in the writ petition in the meantime by bringing his stand on record. Under the circumstances, this Court is of the opinion that preventing the applicant from discharging his duties as Gaonburah of Lot No.14, pending disposal of the writ petition, would cause serious prejudice to his interest. Consequently, the prayer made in the IA stands allowed.

The interim order dated 28/06/2023 stands vacated.

IA stands disposed of.

JUDGE

sukhamay

Comparing Assistant