

GAHC010234132022



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

Case No. : WP(C)/6412/2022

NABA KR SARMA
S/O- LT. HARI NATH SARMA
R/O- VILL- MAKHIBAHA
P.O. MAKHIBAHA
P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781374

VERSUS

THE STATE OF ASSAM AND 14 ORS
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
DISPUR
GHY-06

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
PANJABARI
JURIPAR
GHY-37

3:THE CHIEF EXECUTIVE OFFICER (CEO)
NALBARI ZILLA PARISHAD
NALBARI
ASSAM
PIN- 781335

4:THE BLOCK DEVELOPMENT OFFICER
TIHU CUM EXECUTIVE OFFICER
TIHU ANCHALIK PANCHAYAT
TIHU
NALBARI

ASSAM
PIN- 781371
5:THE SECRETARY
41 NO. MAKHIBAHA GAON PANCHAYAT
MAKHIBAHA
P.O. MAKHIBAHA
P.S. TIHU
NALBARI
ASSAM
PIN- 781374
6:THE PRESIDENT
TIHU ANCHALIK PANCHAYAT
TIHU
NALBARI
ASSAM
PIN- 781371
7:RUPA BANIA
MEMBER BANIA PARA
VILL- BANIAPARA
P.O. MAKHIBAHA
P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781371
8:NARAYAN BARMAN
MEMBER BALABARI
VILL- BALABARI
P.O. MAKHIBAHA
P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781371
9:SOPNA DEKA
MEMBER KSHETRA PARA
VILL- KSHETRA PARA
P.O. MAKHIBAHA
P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781371
10:MOTHURA PATHAK
MEMBER BOR MAKHIBAHA
P.O. MAKHIBAHA
P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781371
11:ANJALI DEKA

MEMBER KSHETRA PARA
VILL- KSHETRA PARA
P.O. MAKHIBAHA
P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781371

12:JAMINI PATHAK

MEMBER NAN KAR
VILL- NAN KAR
P.O. MAKHIBAHA
P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781371

13:CHANAKYA PATHAK

MEMBER KAMARPARA
VILL- KAMARPARA
P.O. MAKHIBAHA
P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781371

14:BHANITA RAJBONGSHI

MEMBER DEKA PARA
VILL- DEKA PARA
P.O. MAKHIBAHA
P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781371

15:MOLIN PATHAK

MEMBER KAMARPARA
VILL- KAMARPARA
P.O. MAKHIBAHA
P.S. TIHU
DIST.- NALBARI
ASSAM
PIN- 781371

Advocate for : MR. T J MAHANTA

Advocate for : SC

P AND R.D. appearing for THE STATE OF ASSAM AND 14 ORS

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 26.06.2023

Heard Mr. S.U. Ahmed, learned counsel for the petitioner, Mr. S. Dutta, learned standing counsel for the P&RD Department, respondent nos. 1 to and Mr. A. Khanikar, learned counsel for the respondent nos. 8 to 15. There is no representation on behalf of the respondent no.6.

2. This writ petition under Article 226 of the Constitution of India is by the petitioner, who is the elected President of 41 number Makhibaha Gaon Panchayat. By a resolution dated 04.08.2022, no confidence motion was brought against the petitioner. It is projected that the intimation of the notice of no confidence motion was made by letter dated 16.08.2022 and the petitioner gave his approval to hold the meeting on 18.08.2022. It is projected that in the meeting held on 18.08.2022, no confidence motion had failed as there was no consensus amongst the members attending the said meeting. Accordingly, the Secretary of Makhibaha Gaon Panchayat, by a letter dated 25.08.2022, forwarded the matter to the BDO-cum-Executive Officer, Tihu Anchalik Panchayat.

3. It is projected that in violation of the provisions of Section 15(1) of the Assam Panchayat Act, 1994, by a letter dated 02.09.2022, the Anchalik Panchayat had directed that a meeting be held on 05.09.2022. The case of the petitioner is that on the date fixed i.e. 05.09.2022, the meeting to consider no confidence motion against the petitioner as directed by the Anchalik Panchayat was cancelled due to absence of two members including the petitioner. However, in violation of provisions of section 15(1) of the Assam Panchayat Act,

1994, the adjourned meeting of no confidence motion was held on 19.09.2022 and a resolution dated 19.09.2022 was passed against the petitioner, which is impugned in the present writ petition.

4. This Court by order dated 30.09.2022, as an interim measure, permitted the petitioner to continue in office of President of 41 number Makhibaha Gaon Panchayat until further orders. Having regard to the submissions made by the learned counsel for the petitioner, standing counsel for the P&RD Department and the learned counsel for the private respondents, the Court is of the considered opinion that on failure of the no confidence motion, such resolution cannot be moved for a period of 6(six) months and thereafter the Court does not find that there is bar in the provisions of Assam Panchayat Act and rules framed thereafter to the members of the Board of the Gaon Panchayat to bring fresh motion for no confidence against the petitioner.

5. Therefore, in view of the statutory remedy available to the members of the Gaon Panchayat to take recourse of the appropriate statutory provisions, if they find themselves dissatisfied with the functioning of the petitioner, the Court is of the considered opinion that no point would be served in keeping the matter pending. As this Court had kept in abeyance the resolution adopted in meeting dated 19.09.2022, the Court is of the considered opinion that the said interim order be made absolute. However, this order shall not preclude the right of the members of the Board of Directors of Makhibaha Gaon Panchayat and take appropriate measures if they find themselves dissatisfied with the functioning of the petitioner in the manner which is permitted by law.

6. Accordingly, this writ petition stands partially allowed to the extent as indicated above.

7. There shall be no order as to cost.

JUDGE

Comparing Assistant