

GAHC010210012023



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

Case No. : WP(C)/5442/2023

UDHAB BORAH
S/O- SRI DURGESWAR BORAH,
VILL- GOSHAIBARI, P.O. NA-NADI,
P.S.- GOGAMUKH, DIST.- DHEMAJI,
PIN- 787034, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT REVENUE
GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI-6.

2:THE COMMISSIONER
NORTH ASSAM DIVISION
TEZPUR
DISTRICT SONITPUR.

3:THE DEPUTY COMMISSIONER

P.O- DHEMAJI
PIN- 787057

DIST.- DHEMAJI.

4:THE CIRCLE OFFICER
REVENUE CIRCLE
GOGAMUKH

P.O.- DHEMAJI 787057.

5:PRAFULLA BONIA

S/O- LT. LAKHIDHAR BANIA

R/O- VILLAGE TARING BONIA

P.O.- NA-NADI

DHEMAJI
PIN- 787034

Advocate for the Petitioner : J SHARMA

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

18.09.2023

1. Heard Mr. J. Sharma, learned counsel for the petitioner, who submits that the challenge made to the selection and appointment of the respondent no.5 as Gaon Pradhan of Lot No.27 under Gohainbari, Padmapur, Kashamari, Shalmari, Bhuma Revenue Circle should be set aside. He submits that the appointment of the respondent no.5 as Gaon Pradhan had been put to challenge under the amended Executive Instructions No.162-C before the Divisional Commissioner, vide Appeal Case No.17/2022. The Appeal Case No.17/2022 was disposed off by the Divisional Commissioner, North Assam Division, vide order dated 20.03.2023, by holding that there was no merit in the appeal filed by the petitioner and accordingly the appeal was dismissed.

2. The petitioner has approached this Court under Article 226 of the Constitution of India on two basic grounds. Firstly, on the ground that the respondent has two names, namely Govinda Bonia and Prafulla Bonia. On this aspect, he has referred two PAN Cards pertaining to the respondent no.5, one

issued to one Govinda Bonia and the other to one Prafulla Bonia, with two different dates of birth. Further, the respondent no.5 has to be a resident of Gohainbari, Padmapur, Kashamari, Shalmari, Bhuma villages to be appointed as Gaon Pradhan, which he is not.

3. Mr. S. Dutta, learned counsel for the respondent no.1 and Mr. J.K. Goswami, learned counsel for the respondent nos.2 & 3 submit that the petitioner has a statutory alternative remedy available under the amended Executive Instructions No.162-D, wherein a review of the order of the Commissioner of Divisions lies to the State Government, within a period of 90 (ninety) days from the date of passing of such order by the Commissioner of Divisions. They accordingly submit that the writ petition should be dismissed, as the petitioner can invoke the review jurisdiction provided in the amended Executive Instruction No.162-D.

4. I have heard the learned counsels for the parties.

5. The amended Executive Instructions No.162-D provides as follows :

“162-D. A petition for review the order of the Commissioner of Divisions shall lie to the State Government within a period of 90 (ninety) days from the date of passing of such order by the Commissioner. The State Government, on receipt of such application for review and after giving reasonable opportunity of being heard to the parties likely to be affected, may,—

(a) confirm or set aside the order of the Commissioner,

(b) remit the case directing him to take such further action or inquiry as he considers proper in the circumstances of the case provided that petition shall however be accepted by the State Government for review of any petition after the expiry of 90 (ninety) days and unless the relief sought under different appellate authorities were exhausted as provided under Executive Instructions 162B and 162C.”

6. A perusal of the above shows that the impugned order dated 20.03.2023 passed by the Divisional Commissioner in Appeal Case No.17/2022 can be put to challenge in Review under the Executive Instruction No.162-D.

7. In the case of Shri Khagen Kalita vs. State of Assam & 3 Others, WP(C) 6271/2014, this Court had directed the petitioner in that case to approach the State Government under the amended Executive Instruction No.162-D, for review of the order passed by the Commissioner of Divisions.

8. In view of the amended Executive Instruction No.162-D and in line with the judgment and order passed by this Court in WP(C) 6271/2014, this Court is of the view that the petitioner should approach the State Government under the amended Executive Instruction No.162-D. However, as ninety days have expired from the date the impugned order was issued, the petitioner would have to file an application for condonation of delay, which may be considered sympathetically by the State Government.

9. In view of there being a statutory alternative remedy available, the writ petition is dismissed, with liberty being given to the petitioner to approach the State Government for review of the impugned order, in terms of the amended Executive Instruction No.162-D.

JUDGE

Comparing Assistant