

GAHC010212332015



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

Case No. : WP(C)/4699/2015

JYOTISH SARMA and ANR.
S/O SRI KARUNA KANTA SARMA VILL- HARIBHANGA P.O. HARIBHANGA,
P.S. TIHU DIST. NALBARI, ASSAM PIN - 781378

2: SRI KSHI RAM TALUKDAR
S/O LT. KHARGESWAR TALUKDAR VILL- KALOG
P.O. KALOG P.S. NALBARI DIST. NALBARI
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT, ASSAM, DISPUR, GUWAHATI -6

2:THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI -06.

3:THE COMMISSIONER

PANCHAYAT AND RURAL DEVELOPMENT ASSAM
PUNJABARI
JURIPAR
GUWAHATI - 37.

4:NALBARI ZILLA PARISHAD

REP. BY THE PRESIDENT
NALBARI
ZILLA PARISHAD
NALBARI

ASSAM.

5:CHIEF EXECUTIVE OFFICER

NALBARI ZILLA PARISHAD
NALBARI
ASSAM

Advocate for the Petitioner : MR. R GOSWAMI

Advocate for the Respondent : SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 15.02.2023

Heard Mr. R. Goswami, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned standing counsel for finance department, Mr. S. Dutta, learned counsel for P & RD Department appearing on behalf of respondents No. 1, 3, 4 and 5.

2. The petitioners, who claim to be elected Zilla Parishad Members under the Nalbari Zilla Parishad are aggrieved by an order passed by the Commissioner, PNRD dated 04.08.2015 whereby the proposal by the Zilla Parishad for allotment of one burial ground for each Gaon Panchayat have been rejected on the ground that the sanction given by the finance department did not indicate their each Gaon Panchayat should have one cremation or burial ground.

3. The petitioners submit that in terms of a proposal which

was put up to the Government through proper channel, a request was made for allotment of 65 numbers of burial/cremation grounds for 65 numbers of Gaon Panchayats under the Nalbari Zilla Parishad.

4. Mr. R. Goswami, learned counsel for the petitioner submits by referring to Annexure-1 to the writ petition that some of the Gaon Panchayats have been allotted more than one burial/cremation ground and some even three (3). As a consequence thereof some of the Gaon Panchayats about seventeen (17) in numbers were not allotted a single burial or cremation ground. Being aggrieved, a representation were preferred before the Government and the same not having been answered, the petitioner approached this Court earlier by filing WP(C) No.3105/2015, which was disposed of by Co-Ordinate Bench on 22.06.2015 directing the petitioners to file necessary representations before the department and upon such representations being filed, the department will pass appropriate orders on the same. In terms of the directions of this Court vide order dated 22.06.2015, representations were preferred before the Commissioner Panchayat and Rural Development by a representation dated 25.06.2015, which however were rejected vide impugned Order No. PDDP.93/2015/17 Dated 04.08.2015 issued by the Commissionerate of Panchayat & Rural Development, Government of Assam. Being aggrieved the present writ petition has been filed.

5. Mr. B. Gogoi, learned standing counsel, finance department submits that an affidavit on behalf of the finance department has been filed and it is submitted that the finance department has already sanctioned and release funds for 65 numbers of burial/cremation ground for the Zilla Parishad under the Nalbari Zilla Parishad. The said sanction was granted for 2012-2013 and 2013-2014. The learned counsel for the finance submits that the finance department is only required to sanction and release of funds for total of 65 numbers of burial grounds under the Nalbari Zilla Parishad. How these burial grounds are to be distributed is for the P& RD department to decide.

6. Although no affidavit for P & RD Department has been filed, Mr. S. Dutta, learned standing counsel, P&RD department submits that since this sanction was made for the year 2012-2013, 2013-2014 as on date whether the scheme is still in-force or fresh scheme has come, he has no information to that effect. It is further submitted that the petitioners were elected Members of Zilla Parishad for that financial year. As on date fresh elections have taken place and there is no statement in the writ petition that the petitioners continue to be Members of the Nalbari Zilla Parishad. Mr. Goswami, learned counsel for the petitioner also submits that he has no instructions as to whether the petitioners continue to be Members of Nalbari Zilla Parishad.

7. Having heard the learned counsels for the parties and

upon due perusal of the pleadings on record, it is seen that there is no dispute that 65 numbers of cremation/burial grounds are to be allotted to various Gaon Panchayats under the Nalbari Zilla Parishad. Proposal was sanctioned and funds were released by the Finance department. There is also no dispute that there are 65 numbers of Gaon Panchayats under the Nalbari Zilla Parishad at the relevant point in time. The ground on which the proposal of the petitioner have been rejected by the impugned order dated 04.08.2015 issued by the Commissioner P & RD is that there are no instructions in the sanction order issued by the Finance department as to whether each Gaon Panchayat is to be allotted one cremation or burial ground. Such conclusions of the P & RD department are not supported by the affidavit filed by the finance department. According to the finance department a proposal was duly sanctioned for allotment of 65 numbers of burial/cremation grounds. Learned standing counsel for the finance department submits that how these 65 numbers of burial grounds are to be allotted each for the P & RD department to take at all.

8. Considering the affidavit filed by the Finance department and in the absence of any contrary views brought on record by the P & RD department, it has to be held that the allotment of cremation/burial grounds viz-a-viz the Gaon Panchayats under any Zilla Parishad including the Nalbari Zilla Parishad any decision thereto is to be taken by the P & RD Department.

9. Considering the fact that the proposal is for the year 2012-2013, 2013-2014 and no instructions are available with the standing counsel, P & RD Department as to whether fresh proposal are being considered or put up, and also taking into consideration that there is no averment as to whether the petitioners are presently continuing as elected Members of Zilla Parishad, this Court is of the considered view that this writ petition can be disposed of by permitting the Nalbari Zilla Parishad to ventilate their grievance for non allocation of cremation/burial ground, if any, in respect of any of the Gaon Panchayat under the Zilla Parishad before the concerned department namely, P & RD Department. If any, such representations are preferred the P & RD will consider the viability of the proposal and pass appropriate speaking order on such a representation.

10. In terms of the above, this writ petition is closed and disposed of.

11. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant