

GAHC010246302023



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

Case No. : I.A.(Civil)/3292/2023
In WP(C) No.5778/2023

ABDUL AKHER HUSSAIN AND 5 ORS
S/O- LATE ABDUL SATTAR, RESIDENT OF VILLAGE- JHOWDANGA PART-II,
P.O.- JHOWDANGA, DISTRICT- SOUTH SALMARA MANKACHAR, ASSAM,
PIN- 783131.

2: PARMINA BEGUM
W/O. ANOWAR HUSSAIN
RESIDENT OF VILLAGE- JHOWDANGA PART-II
P.O.- JHOWDANGA
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783131.

3: BUL BULI KHATUN
W/O- SURAT ZAMAN
RESIDENT OF VILLAGE- JHOWDANGA PART-II
P.O.- JHOWDANGA
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783131.

4: GOLAM MUSTOFA
S/O- MONIRUL ISLAM
RESIDENT OF VILLAGE- JHOWDANGA PART-II
P.O.- JHOWDANGA
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783131.

5: SULTANA REZIA
W/O- ABU HANIF
RESIDENT OF VILLAGE- JHOWDANGA PART-II
P.O.- JHOWDANGA

DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783131.

6: MOLINA BEGUM
W/O- CHAND MIA
RESIDENT OF VILLAGE- JHOWDANGA PART-II
P.O.- JHOWDANGA
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783131

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE DISTRICT COMMISSIONER
SOUTH SALMARA MANKACHAR DISTRICT
HATSINGIMARI
P.O.- FEKAMARI
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135.

3:THE CHIEF EXECUTIVE OFFICER
ZILLA PARISHAD
SOUTH SALMARA MANKACHAR
AT HATSINGIMARI
VILLAGE AND P.O.- FEKAMARI
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135.

4:THE MANKACHAR ANCHALIK PANCHAYAT
REPRESENTED BY ITS PRESIDENT
VILLAGE AND P.O.- MANKACHAR
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783131.

5:THE SECRETARY
NO. 15
JHALORCHAR-NAYAGAON GAON PANCHAYAT
VILLAGE- JHOWDANGA PART-II
P.O.- JHOWDANGA

DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783131.

6:RAHIMA KHATUN
W/O- ABDULLAH-AL-FARUK
R/O- VILLAGE- JHOWDANGA PART-II
P.O.- JHOWDANGA
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM.

7:ZAKIR HUSSAIN
S/O- LATE SUMMAD SK
RESIDENT OF VILLAGE- JHOWDANGA PART-II
P.O.- JHOWDANGA
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783131.

8:SHAHIDA KHATUN
W/O- ROBIAL HUSSAIN
RESIDENT OF VILLAGE- JHOWDANGA PART-II
P.O.- JHOWDANGA
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783131.

9:SHAHAJJAL HOQUE
S/O- LATE EKIN ALI
RESIDENT OF VILLAGE- JHOWDANGA PART-II
P.O.- JHOWDANGA
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783131

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

17-11-2023

Heard Shri M. Khan, learned counsel for the applicants, who have filed this application for modification/vacation of the interim order dated 29.09.2023 passed in the connected WP(C) No. 5778/2023. Also heard Shri M. Islam, learned counsel for the opposite party no. 6, who is the writ petitioner. Shri S. Dutta, learned Standing Counsel, P&RD Department is present as well as Shri N. Goswami, learned State Counsel.

2. The opposite party no. 6, who is the writ petitioner has put to challenge the convention of a special meeting which was to be held on 30.09.2023 on the subject of no confidence against her who was the President of No. 15, Jhalorchar-Nayagaon Gaon Panchayat in the district of South Salmara Mankachar. It is the contention of the writ petitioner that 2 of the members of the Gaon Panchayat were disqualified by operation of law and therefore the meeting should not be allowed to be convened.

3. This Court vide the order dated 29.09.2023 while giving opportunity to the learned counsel for the Department to obtain instructions had postponed the matter on the next date and also observed that if any resolution is adopted in the meeting to be held on 30.09.2023, the same shall not be given effect to till the next date fixed. The aforesaid interim order was extended on the next date.

4. Shri Khan, the learned counsel for the applicants has submitted that the principal ground which was projected will not have any relevance at all inasmuch as the two members whose memberships may be affected by operation of law had already resigned and the no confidence motion was duly passed by 7 numbers whose memberships are not the subject matter of any dispute. He further submits that there

is no grounds at all for maintaining the present challenge and in the meeting held on 30.09.2023, the no confidence was duly passed which may be given effect to as the Act in question prescribed such a mode of removing the President by a no confidence motion.

5. *Per contra*, Shri Islam, the learned counsel for the opposite party no. 6/writ petitioner has submitted that the procedure adopted is itself erroneous. By referring to the impugned notification dated 26.09.2023, it is submitted that the Chief Executive Officer does not have jurisdiction to convene such a meeting and such powers are only vested with the Deputy Commissioner or the Sub-Divisional Officer as the case may be.

6. By referring to Section 15 (5), it is submitted by Shri Islam, the learned counsel that though the proviso stipulates that a Gazetted Officer not below the rank of Class-I may be deputed to preside over the meeting, the meeting has to be convened by the Deputy Commissioner or the SDO as per the said Section. By referring to Section 138 (2) of the Act, Shri Islam, the learned counsel has submitted that the delegation of powers can be made only by the said Government and the same will not protect the impugned order.

7. Shri S. Dutta, the learned Standing Counsel of the Department has however submitted that the bare reading of the impugned notice dated 26.09.2023 would reveal that the same, though issued by the Chief Executive Officer, the same was done as being authorized by the Deputy Commissioner. He further submits that there is no manner of doubt that the Chief Executive Officer is a Gazetted Officer not below the rank of Class-I.

8. The rival contentions made by the learned counsel for the parties have been duly considered.

9. The procedure for passing a no confidence motion against the President and Vice President of a Gaon Panchayat is laid down in Section 15 of the ***Assam Panchayat Act, 1994***. Though the primary ground was with regard to disqualification of two members by operation of law, the said ground appears to be non-existing as it has been disclosed that those two members had already resigned and were not amongst the members who had voted in favour of the no confidence motion.

10. So far as the objection raised on behalf of the writ petitioner to the prayer for vacation of the stay order by citing Section 15 (5) read with Section 138 of the Act, this Court is of the view that deputation of a Gazetted Officer not below the rank of Class-I Gazetted Officer to preside over the meeting cannot be given a narrow meaning more so when the notice impugned in the writ proceeding clearly reveals that the meeting was convened by the Chief Executive Officer of the Zilla Parishad on being authorized by the District Commissioner, South Salmara Mankachar district. The proviso to Section 15 (5) clearly empowers the Deputy Commissioner or the Sub-Divisional Officer to depute any Gazetted Officer not below the rank of Class-I Gazetted Officer to preside over a meeting of no confidence and in the instant case, the notice preceding such meeting though issued by the Chief Executive Officer has been done as being authorized by the Deputy Commissioner. This Court is also fortified in taking the aforesaid view in this case as there was an earlier proceeding vide WP(C) No. 4052/2023 instituted by the same petitioner in which the matter was remanded back for holding the meeting afresh. The provision to have a no confidence motion being a part of the democratic process and is a prescription of the law holding the field, this Court is also of the view that when there is a clear mandate against the petitioner to continue as the President of the concerned Gaon Panchayat, this Court would be loath in interfering in such matters on mere technicalities and in the instant case, the grounds sought to be projected also appears to be non-existent.

11. In view of the above, the interim order dated 29.09.2023 which was extended from time to time stands vacated.

12. Interlocutory application stands disposed of.

JUDGE

Comparing Assistant