

GAHC010271042023



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

Case No. : WP(C)/7002/2023

JARIN AKTAR LASKAR AND 8 ORS
GROUP MEMBER NO. 8,
D/O- LATE MANJIL AHMED LASKAR,
VILLAGE- DAKSHIN MOHANPUR PART-I,
P.O.- GOBINDANAGAR, DISTRICT- CACHAR,
ASSAM.

2: MIZUK AHMED LASKAR
GROUP MEMBER NO. 7

S/O- TUTA MIA LASKAR

VILLAGE- DAKSHIN MOHANPUR PART-I

P.O. - THAMJAMALAIKAI

DISTRICT- CACHAR
ASSAM.

3: SHIKHA RANI DAS
GROUP MEMBER NO. 6

W/O- BIMOL CHANDRA DAS

VILLAGE- RANGHIGHAT PART-III

P.O.- AMJURGHAT
DISTRICT- CACHAR

ASSAM.

4: PARBIN AKTAR KHANAM LASKAR
GROUP MEMBER NO. 4

W/O- AMINUL ISLAM LASKAR

VILLAGE- RANGHIGHAT PART-II

P.O.- AMJURGHAT
DISTRICT- CACHAR

ASSAM.

5: RANJAN RABIDAS
GROUP MEMBER NO. 5

S/O- RAGHUNATH RABIDAS

VILLAGE- RANGHIRGHAT PART-III

P.O.- AMJURGHAT
DISTRICT- CACHAR

ASSAM.

6: ROMOLA BEGUM LASKAR
GROUP MEMBER NO. 3

W/O- KAMRUL ISLAM LASKAR

VILLAGE- DAKSHIN MOHANPUR PART-I

P.O.- GOBINDANAGAR
DISTRICT- CACHAR

ASSAM.

7: ABDUL KHALIQUE AHMED
GROUP MEMBER NO. 1

S/O- LATE BAKTAR ALI

VILLAGE- RANGHIRGHAT PART-II

P.O.- GOBINDANAGAR
DISTRICT- CACHAR

ASSAM.

8: DHANJAY NATH
GROUP MEMBER NO. 10

S/O- PREM CHARAN NATH

VILLAGE- DAKSHIN MOHANPUR PART-I

P.O.- GOBINDANAGAR

DISTRICT- CACHAR
ASSAM.

9: SHAMIM NEWAJ LASKAR
GROUP MEMBER NO. 9

S/O- BASARAT ALI LASKAR

VILLAGE- DAKSHIN MOHANPUR PART-I

P.O.- GOBINDANAGAR

DISTRICT- CACHAR
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
PANJABARI ROAD
JURIPAR

GUWAHATI-37.

3:THE DISTRICT COMMISSIONER
CACHAR
P.O. CACHAR
DISTRICT- CACHAR

ASSAM
PIN- 788001.

4:THE CHIEF EXECUTIVE OFFICER
CACHAR ZILLA PARISHAD
P.O. AND DISTRICT- CACHAR

ASSAM
PIN- 788001.

5:THE EXECUTIVE OFFICER-CUM-BLOCK DEVELOPMENT OFFICER
SONAI DEVELOPMENT BLOCK
P.O.- KAPTANPUR PART-XVII

DISTRICT- CACHAR
ASSAM

PIN- 788119.

6:THE SECRETARY
RANGHIRGHAT GAON PANCHAYAT
P.O.- AMJURGHAT
DISTRICT- CACHAR

ASSAM
PIN- 788119

Advocate for the Petitioner : Mr. K. P. Pathak, Advocate

Advocate for the Respondent : Mr. P. Handique,
SC, P&RD Department
Mr. H. Sarma,
Addl. Sr. Govt. Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 18.12.2023

Date of Judgment : 18.12.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioners which includes the Vice-President of 14 No. Rangirghat Gaon Panchayat.

2. The grievances of the petitioners are to the effect that the concerned District Commissioner, Cachar is not following the mandate of Section 13

(2) (d) of the Assam Panchayat Act, 1994 (for short, 'the Act of 1994') which provides that if the President dies or is removed or resigns, the Vice-President shall exercise all the powers, perform all the functions and discharge all duties as the President till the Office of the President is filled up in the manner provided under Sub-Section (1) (b) of Section 6 of the Act of 1994.

3. For the purpose of deciding the said aspect, this Court finds it pertinent to take note of the relevant facts.

4. The petitioners herein were elected as members of 14 No. Rangirghat Gaon Panchayat (for short, 'the Gaon Panchayat in question') on 09.12.2018. Pursuant to the said election, one Sri Sambhu Rabidas was elected as the President of the said Gaon Panchayat. The record further reveals that a notice for no confidence was issued on 09.06.2023 expressing no confidence upon the said Sri Sambhu Rabidas as the President of the said Gaon Panchayat. Pursuant thereto, a meeting was held on 26.06.2023 wherein the President of the said Gaon Panchayat was removed. This removal led to the filing of a writ petition before this Court which was registered and numbered as WP(C) No.4285/2023. This Court disposed of the said writ petition vide the judgment and order dated 14.09.2023 wherein the resolution by which the said Sri Sambhu Rabidas was removed was set aside and quashed and the said Sri Sambhu Rabidas was given the liberty to grant permission for convening the meeting requisitioned vide the requisition letter dated 09.06.2023 within 30.09.2023. This Court made it clear that if the said President failed to grant the permission within 30.09.2023, the Secretary of the Gaon Panchayat in question shall do the needful in accordance with Section 15

of the Act of 1994.

5. The record reveals that the said President, i.e. Sri Sambhu Rabidas did not grant the permission for the meeting and pursuant thereto, proceedings were taken up in terms of Section 15 of the Act of 1994. Thereupon, on 10.11.2023, a special meeting of the said Gaon Panchayat was held in the Office of the Cachar Zilla Parishad wherein 8 members of the Gaon Panchayat had expressed no confidence upon the said President Sri Sambhu Rabidas. The District Commissioner, Cachar, Silchar was duly intimated about the meeting held on 10.11.2023 and sought for handing over of the charge of the said Gaon Panchayat in terms of Section 13 (2) (d) of the Act of 1994 on 18.11.2023. However, as the District Commissioner, Cachar did not take such action, the instant writ petition was filed on 25.11.2023. The record further reveals that on 08.12.2023, this Court sought for instructions from the respondent authorities as to why the District Commissioner, Cachar has not acted upon the communication dated 18.11.2023.

6. Today, when the matter was taken up, Mr. P. Handique, the learned Standing Counsel appearing on behalf of the P&RD Department has submitted that taking into account that the election of the Gaon Panchayats are due to be held in the month of January, 2024 tentatively, the District Commissioner, Cachar is not required to handover the charge to the Vice-President in view of the proviso to Section 10 (1) of the Act of 1994.

7. Mr. H. Sarma, the learned counsel appearing on behalf of the District Commissioner, Cachar submits no action was taken by the District Commissioner, Cachar taking into account the observation made by this

Court in WP(C) No.6516/2023 to the effect that the meeting held on 10.11.2023 shall be subject to the outcome of the said writ petition. The learned counsel submitted that the said Sri Sambhu Rabidas had challenged the Resolution dated 10.11.20223 on the basis of which the said Sri Sambhu Rabidas was ousted from the post of President of the Gaon Panchayat.

8. I have also heard Mr. K. P. Pathak, the learned counsel appearing on behalf of the petitioners who submits that the issue involved herein is not the question of holding the election in terms with the proviso to Section 10 (1) of the Act of 1994. The question which arises is as to whether the Vice-President should be permitted to function as per the statutory mandate under Section 13 (2) of the Act of 1994,

9. Upon hearing the learned counsels for the parties and upon perusal of the materials on record which categorically shows that the earlier President had been ousted in the no confidence motion held on 10.11.2023 and by dint of Section 15 of the Act of 1994, the erstwhile President would be deemed to have been also removed from his Office, the question therefore arises as to whether the Vice-President should be permitted to function in view of the mandate of Section 13 (2) of the Act of 1994. Section 13 (2) of the Act of 1994 stipulates the various powers of the Vice-President. Clause (d) of Section 13 (2) being pertinent for the purpose of the disposal of the instant writ petition is reproduced herein under:-

“(d) exercise all the powers, perform all the functions and discharge all the duties of the President as provided under sub-section (1) of Section 13, if the President be removed, and or dies or resigns, till the office of the President is

filled up in the manner as provided under sub-section (1) (b) of section 6."

10. From a perusal of the said Clause, it would be seen that the Vice-President shall exercise all the powers, perform all the functions and discharge all the duties of the President as provided under Section 13 (1) of the Act of 1994, if the President be removed, and or dies or resigns, till the Office of the President is filled up in the manner as provided under Sub-Section (1) (b) of Section 6 of the Act of 1994. If this Court further takes note of Section 6 (1) (b) of the Act of 1994, it would show that the President of the Gaon Panchayat is to be elected directly by the voters of the territorial constituencies of the Gaon Panchayat area in the manner prescribed. Therefore, a conjoint reading of Section 13 (2) (d) read with Section 6 (1) (b) of the Act of 1994 would show that till any election is held in the manner prescribed under the Act of 1994, the Vice-President shall continue to discharge all the duties of the President and exercise the powers and perform all the functions of the President as per Section 13 (1) of the Act of 1994.

11. This Court also finds it relevant to take note of the submission of Mr. P. Handique, the learned Standing Counsel appearing on behalf of the P&RD Department who refers to the proviso to Section 10 (1) of the Act of 1994. In the opinion of this Court, the proviso to Section 10 (1) of the Act of 1994 shall only apply for holding an election in terms with Section 6 (1) (b) of the Act of 1994 for electing the President and shall not effect the operation of Section 13 (2) of the Act of 1994. Therefore, the said contention, in the opinion of this Court, cannot debar the Vice-President who is otherwise statutorily mandated under Section 13 (2) (d) of the Act of 1994 to exercise the powers, perform the functions and discharge all

the duties of the President.

12. This Court further takes note of the submission of Mr. H. Sarma, the learned counsel appearing on behalf of the District Commissioner, Cachar who submits that the District Commissioner, Cachar has not acted upon the requisition made on 18.11.2023 in view of the order passed in WP(C) No.6516/2023 filed by the erstwhile President. The order to which the learned counsel for the District Commissioner, Cachar has referred to only stipulates that the outcome of the meeting held to be on 10.11.2023 shall be subject to the writ petition, and therefore, the said order under no circumstances stays the outcome of the no confidence motion held on 10.11.2023.

13. Taking into account the above, this Court therefore disposes of the writ petition directing the District Commissioner, Cachar to act in terms of the mandate of Section 13 (2) (d) of the Act of 1994 and permits the Vice-President of the Gaon Panchayat in question to exercise the powers, perform all the functions as well as discharge all the duties of the President of the said Gaon Panchayat in question. The same be done upon production of a certified copy of this judgment.

14. This Court also finds it relevant to take note of the submission of Mr. P. Handique, the learned Standing Counsel appearing on behalf of the P&RD Department to the effect that as the elections to the Panchayat are very near, any major financial decision should be taken by the Vice-President in consultation with the Chief Executive Officer of the Zilla Parishad in question.

15. This Court taking into account that the period of Gaon Panchayat in

question would be ending within a month or so from today observes that the Vice-President shall before taking any major decision having a financial impact shall consult the Chief Executive Officer of the Zilla Parishad.

JUDGE

Comparing Assistant