

GAHC010004202023



2024:GAU-AS:8588

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

Case No. : WP(C)/117/2023

REXONA BEGUM LASKAR
W/O MASUK AHMED LASKAR
VILL- KALINAGAR PT.VII, NORTHNARAINPUR, P.S. ALGAPUR, DIST.
HAILAKANDI, ASSAM

VERSUS

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

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM
PANJABARI
GUWAHATI-781037.

3:THE DEPUTY COMMISSIONER
HAILAKANDI
ASSAM
PIN-788155

4:THE CHIEF EXECUTIVE OFFICER
HAILAKANDI ZILLA PARISHAD
HAILAKANDI
ASSAM
PIN-788155

5:THE BLOCK DEVELOPMENT OFFICER
ALGAPUR DEVELOPMENT BLOCK
DIST. HAILAKANDI
ASSAM
PIN-788150.

6:THE SECRETARY
NORTH NARAINPUR GAON PANCHAYAT
P.O. NORTH NARAINPUR
DIST. HAILAKANDI
ASSAM
PIN-78880

Advocate for the Petitioner : MR. N H BARBHUIYA, MS N J BEGUM

Advocate for the Respondent : SC, P AND R.D., GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 29-08-2024

1. Heard Mr. S Dey learned counsel for the petitioner. Also heard Mr. P Handique, learned standing counsel, PNRD appearing for respondent Nos.1, 2, 4, 5 & 6 and Mr. J Handique learned Govt. Advocate appearing for the respondent No.3.

2. By way of the present writ petition, an order dated 21.12.2022 (Annexure – 9 to the writ petition) passed by the Deputy Commissioner, Hailakandi, whereby, the petitioner who was a ward member of Ward No.3, North Narainpur GP was disqualified to be member of No.3, North Narainpur GP under Algapur Development Block on the ground that she gave birth to the fourth child on 14.09.2019, which disqualifies her under Rule 62 of Assam Panchayat (Constitution) (Amendment) Rules, 2018 read with sub-section 2 of Sec.111 of the Assam Panchayat Act, 1994.

3. The basic ground raised by the petitioner is that the Deputy Commissioner had passed the aforesaid order on an erroneous presumption of facts and law, inasmuch as the fourth child

of the petitioner was born on 14.03.2018, whereas the Deputy Commissioner had held it to be 14.09.2019. It is her further case that no reasonable opportunity of hearing was granted to her to defend her case.

4. The brief facts of the case is that, one organisation namely, Axom Jatiyatabadi Juva Satra Parishad lodged a complaint before the Deputy Commissioner, Hailakandi requesting removal of the petitioner as the ward member of the concerned GP on the ground that she had given birth to her fourth child on 14.03.2019.

5. It is also on record that the Joint Secretary, to the Govt. of Assam, Panchayat & Rural Development Department communicated to the Deputy Commissioner Hailakandi that the President of Dr. Himanta Biswa Sarma Fans Club, has informed the said Joint Secretary that the petitioner had given birth to her fourth child on 14.09.2019 and therefore, in the event such fact is true, same is in violation of the Rules 62 of the Assam Panchayat (Constitution) (Ammendment) Rules, 2018 and accordingly, the Joint Secretary requested the Deputy Commissioner to submit a report and take necessary action. Thereafter by communication dated 10.10.2022, the Chief Executive Officer, Zila Parishad, Hailakandi asked the petitioner to appear before the Chief Executive Officer, Zila Parishad, Hailakandi on 11.00 AM to respond to the allegation that she had violated Section 2 (1)(b) of Assam Panchayat Raj (Amendment) Act, 2018. It was further asked to the petitioner to explain why actions should not be inflicted upon her.

6. Thereafter the petitioner requested the Executive Officer for providing a complaint petition and other documents on the basis of which the aforesaid notice was issued. However, no such document was furnished though a hearing took place at 15.12.2022 at 11.00 AM. In that proceeding a written statement was also recorded which shows that the petitioner has refuted such allegation. Thereafter on 21.12.2022, the impugned order was passed.

7. An affidavit has been filed by the Additional Deputy Commissioner, Hailakandi, wherein the fact that a complaint has been received from the Dr. Himanta Biswa Sarma Fans Club, North Narainpur and the communication of the Joint Secretary are admitted. It is also discernible from the affidavit that on receipt of such representation from Dr. Himanta Biswa Sarma Fans Club, North Narainpur, an enquiry was conducted through one Namrata Sahu, ACS, Assistant Commissioner & Executive Magistrate, Hailakandi and she was asked to submit a report along with all supporting documents within seven days. Thereafter, as per the affidavit-in-opposition, said Ms. Sahu submitted a report on 09.12.2022, with an observation that as per existing report, concerned SDM&HO, 4th child namely Sahil Ahmed Laskar of the petitioner was born on 14.09.2019. Thereafter a report dated 06.10.2022 was received from the BDO, Algapur and another report dated 28.10.2022 from the CEO, Zilla Parishad on the matter and both the report suggested that fourth child of the petitioner was born on 14.09.2019 and on the basis of such report the Deputy Commissioner, Hailakandi has issued the order of removal dated 21.12.2019.

8. From the specific averments made in the affidavit, it is seen that the entire decision was taken on the basis of the report submitted by the Executive Magistrate, the BDO and the CEO of Zilla Parishad. However, admittedly such enquiry was done by the aforesaid authorities without the petitioner being part of such enquiry, no copy of such enquiry report or the materials of such enquiry report was disclosed to the petitioner giving her an opportunity to rebut the finding of such enquiry report and admittedly the Deputy Commissioner arrived at the final conclusion on the basis of such report.

9. Rule 62 of the Assam Panchayat (Constitution) (Amendment) Rules, 2018 prescribes that an affidavit is to be filed at the time of filing of the nominations by a candidate that the candidate is having not more than two living children from a single or multiple partners. Sub rule (f) further provides that the on receipt of any information that any child is born after 19.03.2018, the Gaon Panchayat Secretary shall inform the same to the concerned Deputy Commissioner through Chief Executive Officer, Zilla Parishad and on receipt of such information the concerned Deputy Commissioner is to examine the matter and on established fact (emphasis supplied) can remove President, Vice President of the Gaon Panchayat concerned accordingly under intimation to the State Government as well as Assam State Election Commission.

10. Thus from the aforesaid rule, it is clear that an elected member cannot have more than two children on or after 19.03.2018.

Therefore, in the considered opinion of this court, to have a conclusion of existence of an “established fact”, as required under sub rule (f) shall necessarily mean giving a reasonable opportunity of hearing to the person concerned against whom the information as regards violation of clause 3 of Rule 62 is alleged.

11. In the case in hand, admittedly the complaint was not initiated by the Gaon Panchayat Secretary, rather it was initiated by the Deputy Commissioner himself on the basis of the complaint received from an organisation namely Himanta Biswa Sarma Fan Club and the affidavit clearly establishes that the petitioner was neither given any copy of such complaint nor any copy of the enquiry conducted by the Deputy Commissioner was furnished to the petitioner.

12. That being the position, in the considered opinion of this court the impugned order has been passed in derogation of the principles of natural justice.

13. The principles of natural justice mandates that a reasonable opportunity must be given to a person before taking any action against him. The adjudicating authority must disclose all the material placed before it and must give reasonable opportunity to the affected to submit his/ their case. A fair hearing means that a person against whom an adverse order is passed should be informed of the charges against him giving him an opportunity to submit his explanation to the charges and the person is also have a right to know the material on the basis of which the allegation is proposed to

be decide.

14. Law is by now well settled that until and unless the adherence of principles of natural justice is excluded, every action which results in civil consequences must follow due procedure of principles of natural justice which has not been followed in this case. On this count alone the impugned decision of the Deputy Commissioner is liable to be set aside.

15. A reasonable opportunity means a fair chance to present the case/respond to the show cause. In the case in hand, in a situation, when the petitioner had appeared before the authority and sought for copies of the complaint, non grant of the same and non furnishing of the enquiry report on the basis of which determination was made, cannot be termed as a reasonable opportunity, though a notice was issued.

16. Accordingly the writ petition stands allowed by setting aside the order dated 21.12.2022 issued by the Deputy Commissioner, Hailakandi. However, it is made clear that the respondent shall be at liberty to initiate a fresh enquiry, strictly in accordance with law, if so advised.

17. The parties to bear their own cost.

JUDGE