

GAHC010030692023



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

Case No. : WP(C)/841/2023

ISLAM UDDIN TALUKDAR
S/O LATE TAZAMUL ALI TALUKDAR, VILL-JALALABAD, P.O.-SOUTH
SONAPUR, P.S.-RATABARI, DIST-KARIMGANJ, PIN-788737

VERSUS

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

2:THE DEPUTY COMMISSIONER
KARIMGANJ
DIST-KARIMGANJ
ASSAM
PIN-788701

3:THE BLOCK DEVELOPMENT OFFICER
DULLAVCHERRA DEVELOPMENT BLOCK
DIST-KARIMGANJ
ASSAM
PIN-788736

4:THE PRESIDENT
DULLAVCHERRA ANCHALIK PANCHAYAT
P.O.-DULLAVCHERRA
DIST-KARIMGANJ
PIN-788736

5:THE SECRETARY
PATHAKHAURI GAON PANCHAYAT
P.O.-SOUTH SONAPUR

DIST-KARIMGANJ
PIN-788737

6:SMTI. SABITRI BIN
W/O PARASH NATH BIN
VICE-PRESIDENT OF PATHAKHAURI GAON PANCHAYAT
P.O.-SOUTH SONAPUR
P.S.-RATABARI
DIST-KARIMGANJ
PIN-78873

For the Petitioner(s)	: Mr. S. B. Laskar, Advocate
For the Respondent(s)	: Mr. S. Dutta, SC, P&RD : Mrs. S. Sharma, Addl. Jr. GA

Date of hearing	: 12.01.2024
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Date of Judgment	: 12.01.2024
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**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. B. Laskar, the learned counsel appearing on behalf of the Petitioner and Mr. S. Dutta, the learned Standing counsel appearing on behalf of the P&RD Department. I have also heard Mrs. S. Sharma, the learned Additional Junior Government Advocate appearing for the State.

2. The instant writ petition has been filed by the Petitioner being aggrieved by the actions of the Respondent Authorities in not allowing the Petitioner to perform the duties of the President of Pathakhauri Gaon Panchayat under Dullavcherra Development Block in spite of the fact that the No Confidence Motion which was passed against the Petitioner vide the resolution dated

25.07.2022 was interfered with by this Court.

3. The brief facts of the instant case is that in the year 2018, the Petitioner was elected as the President of Pathakhauri Gaon Panchayat under Dullavcherra Anchalik Panchayat (for short "the Gaon Panchayat in question"). A No Confidence Resolution was passed on 25.07.2022 against the Petitioner and resultantly, the Petitioner was removed from his post and the Respondent No.4 was allowed to take over the charge as In-charge President of the Gaon Panchayat in question. The Petitioner challenged the said No Confidence Resolution dated 25.07.2022 by filing a writ petition which was registered and numbered as WP(C) No.5142/2022.

4. This Court vide an order dated 20.12.2022 in WP(C) No.5142/2022 had set aside the resolution of No Confidence dated 25.07.2022 and directed for a fresh meeting for No Confidence Motion against the Petitioner to be held on 17.01.2023 in the Office of Pathakhauri Gaon Panchayat at 11 AM and under the supervision of an Officer to be deputed by the Deputy Commissioner, Karimganj. It has been alleged that the Secretary of the Gaon Panchayat did not take necessary steps. It has also been stated that the Petitioner on 12.01.2023 issued a letter requesting the Secretary to convene the special meeting in compliance to this Court's order dated 20.12.2022 however, the Secretary refused to acknowledge the receipt of the letter dated 12.01.2023. The Petitioner further has alleged that he had informed the Block Development Officer, Dullavcherra Development Block vide notice dated 10.01.2023 for convening the special meeting on 17.01.2023 at 11 AM in the Office of the Deputy Commissioner, Karimganj. Further to that, it is also alleged in the writ petition that the special meeting as convened by the Block Development

Officer, Dullavcherra Development Block was not held inasmuch as the Petitioner went to the venue of the meeting at 11 AM and waited till 4 PM but nobody appeared in the meeting and by virtue of the last proviso to Section 15 of the Assam Panchayat Act, 1994 (for short "the Act of 1994"), the No Confidence Motion against the Petitioner was deemed to have been lost.

5. It is the further case of the Petitioner that the Petitioner had submitted representation before the authorities and more particularly to the Deputy Commissioner, Karimganj to allow him to discharge his duties as the President of the Gaon Panchayat in question. However, the said Respondent Authorities did not take any action on the said representation and on the other hand had allowed the Respondent No.6 to continue as the In-charge President of the Gaon Panchayat in question. It is under such circumstances, the instant writ petition was filed on 13.02.2023.

6. The records reveals that this Court vide a detailed order dated 15.02.2023 issued notice returnable by 20.03.2023 and directed the Standing counsel of the P&RD Department to obtain the relevant records of the proceedings, if any, held pursuant to the directions passed by this Court in its order dated 20.12.2022 in WP(C) No.5142/2022.

7. It further appears from the materials on record that an affidavit-in-opposition was filed by the Respondent No.2 through the Block Development Officer, Pathakhauri Development Block. In the said affidavit-in-opposition, it was mentioned that a fresh meeting for discussion of the No Confidence Motion against the Petitioner was convened to be held on 17.01.2023 at 11 AM and in that regard a notice was circulated under cover Memo No.DAP.76/2022-23/2/2333-40 dated 10.01.2023 by the BDO, In-Charge,

Dullavcherra Development Block. One Shri J. K. Barman, ACS, ADC, Karimganj was deputed by the Deputy Commissioner, Karimganj in accordance with the aforesaid order dated 20.12.2022 passed by this Court. It was also mentioned that the Petitioner in the meanwhile submitted a petition dated 17.01.2023 to the Block Development Officer, Dullavcherra Development Block requesting him to withhold the said special meeting of No Confidence Motion which was convened on 17.01.2023 in pursuance to this Court's order dated 20.12.2022. It was further stated that the meeting of No Confidence was convened on 17.01.2023 but could not be held. Further to that, the Petition so submitted by the Petitioner on 17.01.2023 was forwarded to the Deputy Commissioner, Karimganj by the In-charge, Block Development Officer, Dullavcherra Development Block vide a letter dated 17.01.2023 for information and necessary action. On receipt of the said petition dated 17.01.2023 of the Petitioner, necessary enquiry was initiated against the Gaon Panchayat Ward Members (1) Mrs. Fatima Begam of Ward No.7 and (2) Mrs. Najma Begum of Ward No.3 of 18 No. Pathakhauri Gaon Panchayat by the Deputy Commissioner, Karimganj by issuing and serving due notice upon both the aforesaid Gaon Panchayat Ward Members vide notice. The police was also asked to confirm the services of the said notices upon the said Gaon Panchayat Ward Members by the District Development Commissioner, Karimganj vide a communication dated 22.02.2023. Further to that, the Inspector of Ratabari Police Station vide a communication had confirmed that the aforesaid notices were duly served upon the Gaon Panchayat Ward Members concerned.

8. In the backdrop of the above materials on record, this Court has also heard the learned counsels appearing on behalf of both the parties. This Court has also taken note of Section 15 of the Act of 1994 which categorically

mentions that every President or the Vice-President shall be deemed to have vacated his office forthwith when a resolution expressing want of No-Confidence in him is passed by a majority of two-third of the total number of members of the Gaon Panchayat. In the instant case, it is relevant to mention that vide the order dated 20.12.2022, the No Confidence Resolution dated 25.07.2022 which was adopted was set aside. Under such circumstances, pursuant to the order dated 20.12.2022, there exists no No Confidence Resolution against the Petitioner as per law. Under such circumstances, the question of the Petitioner having vacated his office on the basis of a No Confidence Resolution does not arise and consequently, the Petitioner continues to remain the President of the Gaon Panchayat in question.

9. It is the further opinion of this Court that if the Petitioner continues to be the President of the Gaon Panchayat in question, the powers conferred under Section 13(1) of the Act of 1994 can only be discharged by the President and the Vice President in terms with Section 13(2)(d) cannot exercise the functions of the President unless the President is removed in accordance with the provisions of the Act of 1994 or dies or resigns. It therefore being the mandate of Section 13(1) read with Section 15(1) of the Act of 1994 that the President duly elected continues to discharge the functions in terms with Section 13(1), the actions of the Respondent Authorities in not permitting the Petitioner to function as the President is in conflict to the provisions of Section 13(1) of the Act of 1994.

10. Accordingly, this Court therefore directs the District Commissioner, Karimganj to take appropriate steps for handing over the charge of the President of the Gaon Panchayat in question to the Petitioner forthwith upon

furnishing a certified copy of the instant order. The said direction needs to be complied with if and only if the term of the Gaon Panchayat in question had not expired as per the mandate of Section 7 of the Act of 1994.

11. With above observations and directions, the instant writ petition therefore stands allowed.

12. Before parting with the records, this Court makes it clear that the directions herein so passed to the District Commissioner, Karimganj to hand over the charge to the Petitioner and permitting the Petitioner to discharge the duties of the President of the Gaon Panchayat in question in terms with Section 13 of the Act of 1994 shall not preclude the Members of the Gaon Panchayat in question to take appropriate steps, if so advised, in terms with Section 15 of the Act of 1994.

JUDGE

Comparing Assistant