

GAHC010071242023



2024:GAU-AS:13061

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

Case No. : WP(C)/1870/2023

MANOJ DEVNATH AND 19 ORS
S/O BADAL DEBNATH, R/O VILL- 2 NO. PACHIM SOWALONI, P.S.-
RUPAHIHAT, MAUZA-LOWKHOWA, P.O.-AMBAGAN, PIN-782120, DIST-
NAGAON, ASSAM

2: APU BISWAS
S/O NIPEN BISWAS
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120 DIST-NAGAON
ASSAM

3: UKIL RAI
S/O NAGENDRA RAI
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN PIN-782120
DIST-NAGAON
ASSAM

4: RAJIB MANDAL
S/O JAGADISH MANDAL
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120 DIST-NAGAON
ASSAM

5: HARAN CHAKRABARTY
S/O RAJENDRA CHAKRABARTY

R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120 DIST-NAGAON
ASSAM

6: RAJESH MANDAL
S/O MINNATH MANDAL
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120 DIST-NAGAON
ASSAM

7: MINATI CHAKRABARTY
W/O GOURANGA CHAKRABORTY
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120 DIST-NAGAON
ASSAM

8: BRAHMANANDA RAI
S/O GANENDRA ROY
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120 DIST-NAGAON
ASSAM

9: GOPAL MANDAL
S/O GAGAN MANDAL
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSAM

10: SUDIP MANDAL
S/O RAJKANTA MANDAL
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT

MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSAM

11: KANDU MANDAL
S/O SUBAL MANDAL
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSAM

12: SWAPAN BISWAS
S/O SUNIL BISWAS
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSAM

13: SUMAN BANIK
S/O LATE KRISHNA BANIK
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSAM

14: MANKIK MANDAL
S/O DHANANJAY MANDAL
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSAM

15: SUBHASH BISWAS
S/O DINESH BISWAS

R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSAM

16: RATUL CHAKRABARTY
S/O DHIRENDRA CHAKRABORTY
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSAM

17: UDAY BANIK
S/O SASANKA SEKHAR BANIK
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSAM

18: BAPAN RAI
S/O NAISHINI RAI
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSAM

19: CHANDRA DEBNATH
S/O NARAYAN DEVNATH
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSAM

20: CHITTARANJAN RAI
S/O CHANDAN RAI
R/O VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN
PIN-782120
DIST-NAGAON
ASSA

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY OF GOVT. OF
ASSAM, REVENUE DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DEPUTY COMMISSIONER
NAGAON
P.O.-NAGAON
DIST-NAGAON (ASSAM)
PIN-782002

3:ADDITIONAL DEPUTY COMMISSIONER REVENUE NAGAON
P.O.-NAGAON
DIST-NAGAON (ASSAM)
PIN-782002

4:SELECTION COMMITTEE FOR THE SELECTION OF GAON PRADHAN IN 2
NO. BORGHULI
NAGAON
ASSAM

5:THE SUB-DIVISIONAL OFFICER
KALIABOR (REVENUE BRANCH)
DIST-NAGAON
ASSAM

6:THE CIRCLE OFFICER
KALIABOR REVENUE CIRCLE
DIST-NAGAON
ASSAM

7:BADAL CH. BANIK
S/O LT. SUKUMAR BANIK
VILL- 2 NO. PACHIM SOWALONI
P.S.-RUPAHIHAT
MAUZA-LOWKHOWA
P.O.-AMBAGAN

PIN-782120
DIST-NAGAON
ASSA

Advocate for the Petitioner : MS. G BORAH, MS RIMA DAS

Advocate for the Respondent : SC, REVENUE, MR P P PHUKAN, MR H BARUAH, GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT & ORDER [ORAL]

17.12.2024

In this writ petition instituted under Article 226 of the Constitution of India, the petitioners, 20 [twenty] in nos., have joined together to assail a selection process undertaken *inter-alia* for selection of Gaon Pradhan for Lot/Village, 4 No. Pachim Sowaloni, Mouza – Lawkhowa, Samaguri Revenue Circle, District – Nagaon.

2. An Advertisement dated 05.09.2022 was published by the Office of the Deputy Commissioner, Nagaon inviting applications for filling up a nos. of vacant posts of Gaon Pradhan, in various villages under Nagaon Sadar Revenue Circle; Dhing Revenue Circle; Raha Revenue Circle, Kampur Revenue Circle; Samaguri Revenue Circle; Rupahi Revenue Circle; and Kaliabor Revenue Circle; in the district of Nagaon. One of the posts to be filled up by the said selection process was the post of Gaon Pradhan for Lot/Village, 4 No. Pachim Sowaloni, Mouza – Lawkhowa, Samaguri Revenue Circle, District – Nagaon.

3. It is the case of the petitioners that in response to the said Advertisement, the petitioner no. 1 and the respondent no. 7 along with others, submitted their candidatures by submitting applications. The last date of submission of applications was 21.09.2022. After the last date of submission of applications was over, the applications were scrutinized and after scrutiny, the application of the petitioner no. 1 was found incomplete and was therefore, rejected.

4. It has been projected that the petitioner no. 2 to petitioner no. 20 are public spirited persons and the instant writ petition is preferred by them joining with the petitioner no. 1 seeking *inter-alia* a writ in the nature of *quo warranto* and for setting aside and quashing of a select list dated 11.03.2023 published under the hand of the Deputy Commissioner, Nagaon on 11.03.2023.

5. Heard Ms. G. Borah, learned counsel for the petitioners; Mr. S. Dutta, learned Standing Counsel, Revenue Department for the respondent no. 1; Mr. D. Bora, learned Junior Government Advocate, Assam for the respondent nos. 2, 3, 4, 5 7 6; and Mr. H. Baruah, learned counsel for the respondent no. 7.

6. Ms. Borah, learned counsel for the petitioners has submitted that the petitioner no. 1 submitted his application in response to the Advertisement dated 05.09.2022 for the post of Gaon Pradhan for Lot/Village, 4 No. Pachim Sowaloni, Mouza – Lawkhowa, Samaguri Revenue Circle, District – Nagaon but no call letter was issued to the petitioner no. 1 despite that the petitioner no. 1 fulfilled all the eligibility criteria for the post of Gaon Pradhan of the concerned village. When the respondent authorities scheduled the interview for the purpose of selection of Gaon Pradhan for Lot/Village, 4 No. Pachim Sowaloni, Mouza – Lawkhowa, Samaguri Revenue Circle, District – Nagaon on 27.02.2023, the petitioner no. 1 filed an application before the Deputy Commissioner, Nagaon for allowing him to sit in the interview on 27.02.2023. The said application was, however, not allowed and as a result, the petitioner no. 1 could not sit in the interview held on 27.02.2023. After completion of the selection process, the Selection Board headed by the Deputy Commissioner, Nagaon constituted for the purpose, published a select list of candidates for appointments in the posts of Gaon Pradhan on 11.03.2023 and in the select list, the respondent no. 7 has been selected for the post of Gaon Pradhan for Lot/Village, 4 No. Pachim Sowaloni, Mouza – Lawkhowa, Samaguri Revenue Circle, District – Nagaon. A complaint came to be lodged thereafter before the Deputy Commissioner, Nagaon on 20.03.2023 stating *inter-alia* that the respondent no. 7 ought not to have been selected for the post of Gaon Pradhan as he did not fulfill the criteria laid down in the Notification dated 10.04.2018 whereby the Revenue & Disaster Management

Department [L.R.], Government of Assam, had prescribed the qualifications for appointment of Gaon Pradhan [earlier, Gaonbura]. Ms. Borah has submitted that as the respondent no. 7 is a member of a political party, his candidature is required to be disqualified.

7. Mr. Baruah, learned counsel appearing for the respondent no. 7 has submitted that there is no material to substantiate that the respondent no. 7 is a member of any political party. He has further submitted that the selection process was validly undertaken and the select list has been prepared on the basis of marks given by the Selection Board, headed by the Deputy Commissioner. It is his submission that neither the petitioner no. 1 nor the petitioner nos. 2 to 20 has/have any *locus standi* to prefer this writ petition. He has further submitted that the application of the petitioner no. 1 having been rejected, he could not have instituted this writ petition as a person aggrieved. On the other hand, at the time of instituting the writ petition, the respondent no. 7 was not holding any post and as such, the writ petition could not have been instituted seeking a writ in the nature of *quo warranto*.

8. Mr. Dutta, learned Standing Counsel, Revenue & Disaster Management Department and Mr. Bora, learned Junior Government Advocate apart from endorsing the submissions of Mr. Baruah, learned counsel for the respondent no. 7, have submitted that the selection was made on the basis of marks obtained in the interview and after taking into consideration the suitability of the candidate for the post. The Selection Board had followed all the procedures laid down in the extant executive instructions, notified by the Notification dated 10.04.2018.

9. I have duly considered the submissions of the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings. The pleadings include the writ petition; the affidavit-in-opposition filed by the respondent nos. 2 & 3; and the affidavit-in-opposition filed by the respondent no. 7.

10. The Government of Assam in the Revenue & Disaster Management [L.R.] Department had issued a Notification bearing No. R.L.R. 187/2007/39 on 10.04.2018 amending certain provisions of the earlier Executive Instructions contained in the Assam Land Revenue and Regulation, 1886. The provisions pertain to minimum qualification, duties and responsibilities,

etc. of a Gaonbura. By way of substitution, the Notification dated 10.04.2018 have laid down the following minimum qualifications for selection and appointment of Gaonbura.

162.[1] Minimum Qualification :

The Deputy Commissioner/Principal Secretaries of Autonomous Council areas appoint Gaonburas from the persons having the following qualifications :

- [i] He/she should be a citizen of India and a permanent resident of the area in respect of which he/she seeks appointment;
- [ii] He/she should be of minimum 35 years of age; he/she should be minimum 10th pass from a Board/Institution recognized by the State Government;
- [iii] He/she should be physically fit and have sound mind;
- [iv] He/she should not have been declared as an insolvent or defaulter in payment of government dues;
- [v] Preference shall be given to the family members of Gaonburas and views of the Mouzadar shall be taken into consideration;
- [vi] He/she should not be a Government employee;
- [vii] He/she should have landed property/immovable property in his/her name in the area in which he/she intends to be appointed as Gaonbura;
- [viii] He/she should not be a member of any political party;
- [ix] He/she should be a person of high status and command and have a respectable position in the society;
- [x] He/she should have worked/volunteered for the advancement of the Government policies and programmes and rendered assistance in natural calamities.

11. The Advertisement dated 05.09.2022 have also prescribed the above criteria mentioned in the Notification dated 10.04.2018.

12. Thus, one of the qualifications for selection and appointment of Gaon Pradhan is that the candidate should not be a member of any political party. By another Notification bearing no. R.L.R. 187/2007/Pt./24 dated 19.07.2019, the Executive Instruction no. 162 had been

further amended by incorporating a qualification criterion to the effect that the candidate should not have more than two living children from a single or multiple partners. In the Advertisement, it had been stipulated that a candidate had to file an affidavit along with his application stating that he did not have more than two children at the time of submission of his application. It was further stipulated that submission of such an affidavit was mandatory.

13. It is an admitted position that the petitioner no. 1 did not submit any affidavit along with his application in response to the Advertisement dated 05.09.2022 stating about the number of children he had at the time of submission of the application.

14. Ms. Bora, learned counsel for the petitioners has submitted that since the petitioner no. 1 was unmarried at the time of submission of the application, he did not feel the necessity of submission such an affidavit along with his application.

15. It is a settled proposition that eligibility or otherwise of a candidate in the absence of any rule to the contrary, has to be examined taking the last date of submission of application as the yardstick. Since the petitioner no. 1 did not submit such an affidavit which as per the Advertisement was a mandatory condition, the application after scrutiny was rejected rightly by the Selection Board. Submission of such an affidavit was mandatory irrespective of the fact whether the candidate was married or unmarried. Since the candidature of the petitioner no. 1 was rejected after scrutiny, he could not participate in the selection process initiated for the Gaon Pradhan for Lot/Village, 4 No. Pachim Sowaloni, Mouza – Lawkhowa, Samaguri Revenue Circle, District – Nagaon.

16. The writ petition was filed on 22nd March, 2024. There is no averment in the writ petition to the effect that at the time of institution of the writ petition, the respondent no. 7 after being selected, has been appointed in the post of Gaon Pradhan for Lot/Village, 4 No. Pachim Sowaloni, Mouza – Lawkhowa, Samaguri Revenue Circle, District – Nagaon. It is found that the petitioners have assailed the selection of the respondent no. 7 for the post of Gaon Pradhan for Lot/Village, 4 No. Pachim Sowaloni, Mouza – Lawkhowa, Samaguri Revenue Circle, District – Nagaon. The basis of their challenge is a complaint lodged before the Deputy

Commissioner, Nagaon by a number of persons on 20.03.2023 wherein it was asserted that the respondent no. 7 was an active member of a political party and his selection and appointment would stand in violation of Clause [viii] of Executive Instruction no. 162[1]. On perusal of the complaint dated 20.03.2023, it is noticed that an allegation was made to the effect that the respondent no. 7 was an active member of a political party. Clause [viii] of Executive Instruction no. 162[1] has stipulated that a candidate for the post of Gaonbura could not be a member of any political party. Other than an allegation, the petitioners have not annexed any document to substantiate that the respondent no. 7 is a member of a political party. As a result, the allegation made by the petitioners to that effect has remained in the realm of allegation only.

17. Reliance is placed in the decision in *Rajesh Awasthi vs. Nand Lal Jaiswal and others*, reported in [2013] 1 SCC 501, by the learned counsel for the petitioners to submit that in the fact situation obtaining in the case, a writ petition seeking a writ in the nature of *quo warranto* is maintainable. It has been observed in *Rajesh Awasthi* [supra] that the *quo warranto* proceeding affords a judicial enquiry in which an person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise, or liberty, and if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of *quo warranto* ousts him from that office. It has been held that the real test is to see whether the person holding the office is authorized to hold the same as per law.

18. Mr. Dutta, learned Standing Counsel, Revenue & Disaster Management Department has relied in the decision in *State of West Bengal vs. Anindya Sundar Das and others*, reported in AIR 2022 SC 4902, to submit that the writ of *quo warranto* can be issued to protect the public from usurpers of public office in case a person who is not entitled to continue to hold, holds public office. Both afore-mentioned decisions have referred to the following paragraph of the Constitution Bench decision in *University of Mysore vs. C.D. Govindra Rao*, reported in [1964] 4 SCR 575 :-

6. ...Broadly stated, the *quo warranto* proceeding affords a judicial enquiry in which any

person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of *quo warranto* ousts him from that office. In other words, the procedure of *quo warranto* confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons, not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of *quo warranto* is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of *quo warranto*, he must satisfy the court, *inter alia*, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

19. After considering the situations in which a writ in the nature of *quo warranto* is possible to be issued vis-à-vis the fact situation obtaining in the case in hand, it is found that the present one is not a case where a writ in the nature of *quo warranto* is possible to be issued. One of the reasons is that at the time of institution of the writ petition, the respondent no. 7 was not holding any public office. When the writ petition was instituted, the respondent no. 7 was only selected for appointment as a Gaon Pradhan for Lot/Village, 4 No. Pachim Sowaloni, Mouza – Lawkhowa, Samaguri Revenue Circle, District – Nagaon. It is also settled that even if a candidate's name is on a select list, there is no indefeasible right to be appointed.

20. In the counter affidavit filed on behalf of the respondent nos. 2 & 3, it has been averred that for undertaking the selection process, a Selection Board headed by the Deputy Commissioner, Nagaon was constituted to select the candidates for appointment in the post

of Gaonbura of the concerned villages. It has been further averred that the selection was made on the basis of marks obtained in the interview and after taking into consideration the suitability of the candidates for the post. After consideration of the marks obtained by the candidates, the select list was prepared and published. It has also been averred that all the procedures laid down by the extant Executive Instructions at the time of selection of candidates were followed. It has also been averred that no objection regarding the fact that the respondent no. 7 is a member of any political party during the period of selection was received.

21. Having regard to the facts and circumstances which have emerged in the case in hand, this Court is of the considered view that the petitioner no. 1 after his candidature was rejected due to his incomplete application, could not have challenged the selection process by instituting the present writ petition as he does not fall in the category of persons aggrieved. In so far as the petitioner nos. 2 to 20 who projected themselves to be public spirited persons are concerned and who did not participate in the selection process, it is not open for them to institute the present writ petition seeking a writ in the nature of *quo warranto*. In other words, none of the petitioners has the *locus* to institute the writ petition seeking a writ in the nature of *quo warranto*. Other than the grounds urged above, the petitioners have not raised any other ground touching upon the validity and legality of the selection process, which led to the selection of the respondent no. 7.

22. In such view of the matter, the writ petition is found to be bereft of any merits and the same is liable to be dismissed. It is accordingly ordered. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant