

GAHC010086652024



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

Case No. : WA/137/2024

NOUSHAD ALI
S/O TAIJUDDIN AHMED, VILL-DURGAMARI, P.O.-BIDYAPUR, P.S.-
BONGAIGAON, DIST-BONGIAGAON, ASSAM, PIN-783380

VERSUS

PIYAR ALI AND 4 ORS
S/O NURUL HAQUE, VILL-DURGAMARI, P.O.-BIDYAPUR, DIST-
BONGAIGAON, ASSAM, PIN-783372

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GHY- 6.

3:THE DISTRICT DEFENCE OFFICER CUM SUPERINTENDENT OF POLICE
BONGAIGAON
ASSAM.

4:THE CIRCLE ORGANIZATION OF VILLAGE DEFENCE ORGANIZATION
BONGAIGAON
ASSAM.

5:THE SUB-DIVISIONAL DEFENCE OFFICER CUM OFFICER IN-CHARGE
BONGAIGAON POLICE STATION
P.O. AND P.S.-BONGAIGAON

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGMENT & ORDER (ORAL)

Date : 02-05-2024

(Suman Shyam, J)

This writ appeal arises out of the judgment and order dated 26-04-2024 passed by the learned Single Judge in Review Petition No. 125/2023 instituted by the respondent No. 1 herein as review petitioner. By the order dated 26-04-2024, the learned Single Judge has not only allowed the review application but has also dismissed the writ petition itself filed by the appellant, which was earlier allowed by the judgment and order dated 12-10-2023 passed in W.P.(C) No. 3053/2022. It appears from the materials available on record that the appellant herein had approached this Court by filing W.P.(C) No. 3053/2022 assailing the order dated 07-04-2022 by means of which, Durgamari VDP was constituted with the respondent No. 1 as its Secretary.

2. The case of the writ appellant in the writ petition, in a nutshell, is that he is qualified and experienced for being appointed as Secretary of the VDP and in a general meeting of villagers, held on 27-02-2022, it was resolved that the allegations brought against the writ petitioner were not correct and therefore, he was expecting to be appointed as the Secretary of the Durgamari VDP. The Officer-in-Charge and the In-Charge of the concerned Police Station, who were also present in the meeting, after considering the candidature of as many as two candidates, had also selected the writ petitioner for the post of Secretary of the VDP. However, by the communication dated 07-04-2022, the Superintendent of Police of Bongaigaon district had appointed the respondent No. 1 (respondent No. 5 in the writ

petition) as the Secretary of the Durgamari VDP. Aggrieved by the order dated 07-04-2022, the present appellant had filed W.P.(C) No. 3053/2022.

3. By the judgment and order dated 12-10-2023 passed in W.P.(C) No. 3053/2022, the learned Single Judge had interfered with the communication dated 07-04-2022 and had also issued a direction to constitute the VDP with the writ appellant/ writ petitioner as its Secretary. Consequent to the aforesaid direction, the writ appellant was appointed as the Secretary of the VDP. It was only thereafter, that the respondent No. 1 had approached this Court by filing the Review Petition No. 125/2023, *inter alia*, contending that the writ petitioner had suppressed material facts inasmuch as the projections made in the writ petition were entirely erroneous. Therefore, the judgment and order dated 12-10-2023 deserves to be reviewed/ recalled.

4. It appears from the materials on record that despite service of dasti notice, the respondent No. 1 (respondent No. 5 in the writ petition) had refused to accept notice, as result of which, service was deemed to be complete upon the said respondent. But he did not appear before the learned Single Judge. As such, the judgment dated 12-10-2023 was passed without hearing the respondent No. 1/ review applicant.

5. After hearing the learned counsel for the parties, the learned Single Judge had allowed the review petition by the order dated 26-04-2024. The operative part of the order dated 26-04-2024 is reproduced here-in-below for ready reference:-

“25. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the applicant has made out a case for review. The judgment and order in question dated 12.10.2023 passed in the connected WP(C) No. 3053/2022 is apparently dehors the Rules of 1986 which was not brought to the notice and accordingly the same stands reviewed. This Court holds that the appointment of the review applicant as Secretary of the Durgamari VDP in the district of Bongaigaon

does not suffer from any legal infirmity. Consequently, the writ petition WP(C) No. 3053/2022 is dismissed.

26. The records in original be returned back to the learned State Counsel."

6. On a careful reading of the judgment and order dated 26-04-2024, we find that the learned Single Judge had recorded elaborate reasons, by relying upon various decisions of the Hon'ble Supreme Court, so as to come to the conclusion that a good case for review of the judgment and order dated 12-10-2023 has been made out by the review petitioner. By the judgment and order dated 26-04-2024 the learned Single Judge had, however, not only allowed the review petition but had also dismissed the writ petition on merit by recording certain observations in the order dated 26-04-2024 on the merit of the writ petition.

7. Law is well settled that while exercising review jurisdiction, the Court is called upon to examine as to whether the order under review is to be reviewed/ recalled and the entire matter be re-heard on merit. Such determination is required to be made by the review court by bearing in mind the legal principles pertaining to exercise of review jurisdiction as emanating from Order XLVII Rule 1 of the CPC. If the review petition is allowed and the order under review is recalled, then the consequence would be that the original proceeding will be revived/ restored to its file and the matter shall have to be re-heard on merit. In other words, while exercising review jurisdiction, it would not be open for the review court to allow the review application and at the same time enter into the merit of the order under review as such a recourse would be impermissible under the law.

8. In the present case, as noted above, the learned Single Judge has not only allowed the review application but has also decided the writ petition on merit by the judgment and order dated 26-04-2024 passed in Review Petition No. 125/2023. This, in our considered

opinion, was impermissible in the eyes of law. Therefore, in our view, the judgment and order dated 26-04-2022 insofar as the same relates to dismissal of the writ petition on merit is concerned, suffers from error in exercise of jurisdiction and deserves to be set-aside by this Court.

9. Mr. B.D. Das, learned Sr. counsel appearing for the respondent No. 1 has also fairly submitted that once the review is allowed, the writ petition ought to have been heard on merit.

10. In view of the above, the impugned judgment and order dated 26-04-2024, insofar as the same relates to dismissal of the W.P.(C) No. 3053/2022 is concern, is hereby interfered with. The remaining part of the order dated 26-04-2024, pertaining to the exercise of review jurisdiction is, however, affirmed. In the result the review application shall be deemed to have been allowed and the order under review is recalled.

Registry to list the W.P.(C) No. 3053/2022 before the learned Single Judge, as per roster, within 02 weeks from today.

With the above observation, this writ appeal stands disposed of.

There shall be no order as to cost.

JUDGE

CHIEF JUSTICE

GS

Comparing Assistant