GAHC010098782020

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

Case No. : WP(C)/2932/2020

JOYMOTI KUMAR
W/O- SRI BABUL KUMAR, VILL- ROSEKANDI, P.O. ROSEKANDI, P.S. SILCHAR, DIST.- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 14 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPTT., DISPUR, GHY

2:DY. COMMISSIONER
CACHAR
P.O. SILCHAR
DIST.- CACHAR

3:THE CHIEF EXECUTIVE OFFICER
CACHAR ZILLA PARISHAD
P.O. SILCHAR
DIST.- CACHAR
ASSAM

4:THE SECRETARY CUM EXECUTIVE OFFICER
TAPANG ANCHALIK PANCHAYAT
DIST.- CACHAR
ASSAM
PIN- 788026

5:THE EXECUTIVE OFFICER
TAPANG ANCHALIK PANCHAYAT
P.O. SRIKONA
DIST.- CACHAR
ASSAM

PIN- 788026

6:THE PRESIDENT
TAPANG ANCHALIK PANCHAYAT
P.O. SRIKONA
DIST.- CACHAR
ASSAM
PIN- 788026

7:THE SECRETARY
ROSEKANDI GAON PANCHAYAT
P.O. ROSEKANDI
DIST.- CACHAR
ASSAM
PIN- 788117

8:MEGHNATH RABIDAS
S/O- LT. BUDU RABIDAS
ROSEKANDI GAON PANCHAYAT
GROUP MEMBER
WARD NO. 1
ROSEKANDI GAON PANCHAYAT
VILL- ROSEKANDI T.E.
P.O. ROSEKANDI
DIST.- CACHAR
ASSAM
PIN- 788117

9:MAYARANI RABIDAS
W/O- RAMLOCHAN RABIDAS
GROUP MEMBER
WARD NO. 2
VILL- ROSEKANDI T.E.
P.O. ROSEKANDI
DIST.- CACHAR
ASSAM
PIN- 788117

10:SWAPNA REE
W/O- MOHAN LAL REE
GROUP MEMBER
WARD NO. 3
ROSEKANDI GAON PANCHAYAT
VILL- ROSEKANDI T.E.
P.O. ROSEKANDI
DIST.- CACHAR
ASSAM
PIN- 788117

11:MONI KALINDI
W/O- SHIBU KALINDI
GROUP MEMBER
WARD NO. 6
ROSEKANDI GAON PANCHAYAT
VILL- ROSEKANDI T.E.
P.O. ROSEKANDI
DIST.- CACHAR
ASSAM
PIN- 788117

12:SABITA BAKTI
W/O- SAJAL BAKTI
GROUP MEMBER
WARD NO. 7
ROSEKANDI GAON PANCHAYAT
VILL- ROSEKANDI T.E.
P.O. ROSEKANDI
DIST.- CACHAR
ASSAM
PIN- 788117

13:LAKHIRAM ROY
S/O- LT. MONORANJAN ROY
GROUP MEMBER
WARD NO. 8
ROSEKANDI GAON PANCHAYAT
VILL- MECHIPUR
P.O. ROSEKANDI
DIST.- CACHAR
ASSAM
PIN- 788117

14:RANJIT REE
S/O- SUDAM REE
GROUP MEMBER
WARD NO. 9
ROSEKANDI GAON PANCHAYAT
VILL- MECHIPUR
P.O. ROSEKANDI
DIST.- CACHAR
ASSAM
PIN- 788117

15:AJITLAL DAS
S/O- RAGHUNATH DAS
GROUP MEMBER

WARD NO. 10
ROSEKANDI GAON PANCHAYAT
VILL- KATHALM TILLA
P.O. ROSEKANDI
DIST.- CACHAR
ASSAM
PIN- 78811

Advocate for the Petitioner : MR M J QUADIR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

18.12.2020

Heard Shri MJ Quadir and Shri K Mira, learned counsel for the petitioner, who by referring to the additional affidavit dated 11.12.2020 has submitted that though service by *dasti* was attempted upon the respondent no. 6, the said respondent has refused to accept the same. The rest of the respondents are represented by Shri M Nath, learned Standing Counsel, PNRD. Shri FA Laskar, learned counsel represents the respondent nos. 8 to 15.

2. Service is held to be complete.

3. Considering the subject matter in dispute and having held that the service upon the respondents is complete, the writ petition itself is taken up for disposal at the admission stage.

4. The petitioner is the President of Rosekandi Gaon Panchayat under the Tapang Anchalik Panchayat in the district of Cachar. It is the case of the petitioner that from the very beginning of his tenure, the private respondents are interfering with his candidature and have been conspiring to remove the petitioner as their vested interests were not fulfilled. Ultimately, a requisition notice dated 26.05.2020 was issued to the petitioner and as per

Section 15 (1) of the Assam Panchayat Act, 1994 (Act for short), 15 days time is available to the petitioner to hold the meeting. It is the case of the petitioner that before expiry of the period of 15 days, the matter was brought to the notice of the Anchalik Panchayat which, according to the petitioner, is in gross violation of the safeguards granted to him by the Act. The petitioner is also aggrieved by the meeting held on 23.06.2020 as a consequence of the illegal activities in which a resolution to remove from the office was taken. It is the minutes of the meeting of No-Confidence dated 23.06.2020 and the entire procedure adopted which is the subject matter of dispute.

5. Shri Quadir, learned counsel for the petitioner by referring to Section 15 (1) of the Act submits that 15 days period is available to a President to convene a meeting of No-Confidence after requisition notice is made in accordance with law. It is only on the inability or failure to convene the meeting within the stipulated time, the consequences laid down in the said section would follow. He has also submitted that this Court in a catena of judgments has held the said provision to be mandatory in nature and any deviation from the said would render the entire action illegal and liable for interference by this Court. The learned counsel for the petitioner submits that the role of the Anchalik Panchayat would come only when the President deliberately or for whatsoever reasons does not convene the meeting within the stipulated time and prior to that no jurisdiction is vested on the Anchalik Panchayat to intervene in a matter of No-Confidence against the President of a Gaon Panchayat. He, accordingly, prays for interference by this Court in exercise of powers under Article 226 of the Constitution of India.

6. Shri M Nath, learned Standing Counsel, PNRD, however, refuted the allegation made in the writ petition. By producing the records, Shri Nath submits that it is factually incorrect on the part of the petitioner to plead that the period of 15 days was not followed in the instant case. The records produced before this Court would show that the Secretary of the Rosekandi Gaon Panchayat had issued a communication dated 05.06.2020 giving a reminder of the requisition letter dated 26.05.2020 and the letter dated 28.05.2020, in spite of which no steps were taken to hold the meeting. Subsequently, by a communication dated

11.06.2020, the Secretary of the Rosekandi Gaon Panchayat had informed the President of the Tapang Anchalik Panchayat regarding the failure of the President of the Rosekandi Gaon Panchayat to hold the meeting. He, accordingly, submits that there is no violation at all of the safeguards granted to a President, who is facing a No-Confidence Motion.

7. Shri FA Laskar, learned counsel for the private respondent nos. 8 to 15 submits that in a democratic process, the members are given the liberty to bring a No-Confidence Motion in accordance with law, which they have brought and there is no violation of the statute in this regard. He submits that the No-Confidence Motion had been duly passed after deliberate failure of the petitioner-President to convene the meeting in spite of expiry of 15 days from the date of notice of such No-Confidence.

8. Rejoining his submissions, Shri Quadir, learned counsel submits that in his affidavit-in-reply, the contention of the Department has been refuted and he reiterated that the mandatory provision of Section 15 (1) of the Act has been violated. He further submits that the principal object of providing the safeguards is to ensure that the principles of natural justice are adhered to as a No-Confidence Motion would bring adverse consequence to him.

9. After considering the rival submission and on perusal of the materials on record, including the records placed before this Court by Shri Nath, this Court does not *prima facie* find that there has been any violation of the Section 15 (1) of the Act. However, even assuming that the case projected by the petitioner is correct, by accepting the allegations, the petitioner cannot shy away from holding a meeting of No-Confidence once such a requisition letter is issued by the members in accordance with law. This Court has also considered that the matter involves factual disputes and therefore, without even entering into such dispute and by balancing the equities, interest of justice would be served if a fresh opportunity is granted to the petitioner to hold the meeting of No-Confidence against him.

10. In that view of the matter while setting aside the resolution dated 23.06.2020, this Court holds that the period of 15 days can be reckoned from today i.e., 18.12.2020 when the

petitioner is very much represented by his learned counsel. Consequently, the meeting is directed to be convened within 15 days from today. To clarify the entire matter, the meeting is directed to be convened on 03.01.2021 in the premises of the Gaon Panchayat office at 10.30 am. The meeting would convene under the supervision of an Officer to be deputed by the Deputy Commissioner of the district to ensure strict compliance of the provisions of the Assam Panchayat Act, 1994.

11. Writ petition is accordingly disposed of. No costs.

JUDGE

Comparing Assistant