GAHC010177872020

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

Case No. : WP(C)/5278/2020

JUGITA WALI PAWE
W/O- SRI JAYANTA PAWE, VILL- NO. 01 BONGALMORA MIRI, P.O. ISLAM GAON, P.S. BIHPURIA, PIN- 787054, DIST.- LAKHIMPUR, PHONE- 8749875545

VERSUS

THE STATE OF ASSAM AND 17 ORS
REP. BY COMM. AND SECY., TO THE GOVT. OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DISPUR, GHY-06

2:THE DIRECTOR
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
JURIPAR
GHY-22

3:THE DY. COMMISSIONER
LAKHIMPUR DISTRICT LAKHIMPUR
ASSAM
PIN- 787001

4:THE PRESIDENT
LAKHIMPUR ZILLA PARISHAD
P.O. LAKHIMPUR
DIST.- LAKHIMPUR
ASSAM
PIN- 787001

5:THE CHIEF EXECUTIVE OFFICER
LAKHIMPUR ZILLA PARISHAD
P.O. LAKHIMPUR
DIST.- LAKHIMPUR

ASSAM
P.O. BIHPURIA
DIST.- LAKHIMPUR
ASSAM
PIN- 784161

6:THE PRESIDENT
ANCHYALIK PONCHYAT
KORUNABARI
BIHPURIA
P.O. BIHPURIA
DIST.- LAKHIMPUR
ASSAM
PIN- 784161

7:BLOCK DEVELOPMENT OFFICER AND EXECUTIVE OFFICER
KORUNABARI DEVELOPMENT BLOCK
ANCHYALIK PONCHYAT
KORUNABARI
BIHPURIA
P.O. BIHPURIA
DIST.- LAKHIMPUR
ASSAM
PIN- 784161

8:THE VICE PRESIDENT
BONGALMORA GAON PONCHYAT
P.O. BONGALMORA
P.S. BIHPURIA
DIST.- LAKHIMPUR (ASSAM)
PIN- 787058

9:SECRETARY
OF BONGALMORA GAON PONCHYAT
P.O. BONGALMORA
P.S. BIHPURIA
DIST.- LAKHIMPUR (ASSAM)
PIN- 787058

10:ANJUMONI DAS
W/O- LT. BOHURAM DAS
WARD NO- 4 (MEMBER) VILL- BONGALMORA GRAZING
P.S. BIHPURIA
PIN- 787058
P.O. BONGALMARA
DIST.- LAKHIMPUR
ASSAM

11:MD NAZRUL ISLAM
WARD MEMBER
BONGALMORA GAON PONCHYAT
WARD NO- 10
P.S. BIHPURIA
PIN- 787058
P.O. BANGALMARA
DIST.- LAKHIMPUR
ASSAM

12:AMIYA MIRI
WARD MEMBER
BONGALMORA GAON PONCHYAT
WARD NO- 1
P.O. BONGALMARA
P.S. BIHPURIA
PIN- 787058
DIST.- LAKHIMPUR
ASSAM

13:SULTANA BEGUM
WARD MEMBER
BONGALMORA GAON PANCHYAT
WARD NO- 9
P.O. BONGALMARA
P.S. BIHPURIA
PIN- 787058
DIST.- LAKHIMPUR
ASSAM

14:SARESWATI SAIKIA
W/O- SRI MAKHON SAIKIA
MEMBER
BONGALMORA GAON PANCHAYAT
VILL- BONGALMORA THENGAL
DIST.- LAKHIMPUR
P.O. BIHPURIA
P.S. BIHPURIA
PIN- 787058
DIST.- LAKHIMPUR
ASSAM

15:RITUMONI SAIKIA
W/O- PRODIP SAIKIA
VILL- HOSAIPUKHURI
DIST.- LAKHIMPUR
P.O. BIHPURIA
P.S. BIHPURIA

PIN- 787058
DIST.- LAKHIMPUR
ASSAM

16:ANIL BORA
C/O- LT. BHUBON BORA
VILL- KHORA CHAPORI
DIST.- LAKHIMPUR
P.O. BIHPURIA
P.S. BIHPURIA
PIN- 787058

17:RANJIT BORUAH
C/O- SRI BOLU BORUAH
VILL- 2ND BONGALMORA (MIRI BORALIGURI)
DIST.- LAKHIMPUR
P.O. BIHPURIA
P.S. BIHPURIA
PIN- 787058

18:KRISNA DEORI
C/O- LT. MATAI DEORI
VILL- SANDAH KHOWE
DIST.- LAKHIMPUR
P.O. BIHPURIA
P.S. BIHPURIA
PIN- 78705

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SUMAN SHYAM

17.12.2020

Heard Mr. MK Choudhury, learned senior counsel assisted by Mr. M Saikia, learned counsel appearing for the writ petitioner. I have also heard Mr. M Nath, learned Standing Counsel, PNRD Department, Assam, appearing for respondent Nos.1, 2, 5, 7 and 9 as well as Ms. M Bhattacharjee, learned Additional Senior Govt. Advocate, Assam appearing for respondent No.3. Mr. S Borthakur, learned counsel has appeared in this case on behalf of the

respondent Nos.8 and 10 to 18 on the strength of a caveat.

The resolution adopted in the meeting of Bongalmora Gaon Panchayat held on 13.11.2020 removing the petitioner from the post of President of the Gaon Panchayat, has been assailed in the writ petition *inter alia* on the ground that the Secretary of the Gaon Panchayat had neither brought the requisition dated 8.10.2020 to the notice of the petitioner seeking her approval to convene the special meeting nor has proper procedure prescribed under Section 15 (1) of the Assam Panchayat Act, 1994 been followed in this case. On such grounds, submits Mr. Choudhury, the resolution dated 13.11.2020 stands vitiated and therefore, is liable to be set aside by this Court.

Mr. S Borthakur, learned counsel appearing for the private respondents/requisitionists had fairly submitted on the last date admitting the fact that there were some serious procedural irregularities in convening the meeting to discuss the No Confidence Motion having a vitiating effect on the resolution and therefore, he would have no objection if the impugned resolution is set aside by fixing a date for holding the meeting to discuss the No Confidence Motion.

In order to verify the contentions advanced by learned counsel for both the sides, this Court had directed the learned departmental counsel to obtain written instruction. Accordingly, Mr. M Nath, learned Standing Counsel, PNRD Department, has obtained instructions from the Secretary of the Gaon Panchayat, i.e. respondent No.9 and has produced the same for perusal by this Court. The written instruction dated 15.12.2020 goes to show that the Vice-President and the members of the aforesaid Gaon Panchayat had submitted a requisition on 8.10.2020 with a request to convene a special meeting so as to discuss No Confidence Motion brought against the President of the Gaon Panchayat, i.e. the writ petitioner. According to the respondent No.9, the requisition was put up before the petitioner on 18.10.2020 itself but, she had refused to accept the same or to grant approval for holding the meeting. Situated thus, the respondent No.9 had forwarded the matter to the Deputy Commissioner, Lakhimpur, i.e. the respondent No.3. It further appears from the documents produced by the learned departmental counsel that on 14.10.2020, the respondent No.3 had directed the respondent No.9 to convene a meeting so as to discuss the No Confidence Motion brought against the petitioner. Accordingly, on 9.11.2020, notices were

issued by the respondent No.9 notifying the convention of the special meeting on 13.11.2020 wherein the impugned resolution was adopted. The documents produced by the learned departmental counsel, however, establishes beyond doubt that the respondent No.9 had never forwarded the matter to the President of the Anchalik Panchayat as per mandate of Section 15(1) of the Panchayat Act, 1994. That apart, the notice dated 09.11.2020 was also not issued to the petitioner, as a result of which, she was not present in the meeting.

It is settled law that the procedure prescribed in Section 15(1) of the Act, 1994 requiring the Secretary of the Gaon Panchayat to refer the matter to the President of the concerned Anchalik Panchayat within three days if the President of the Gaon Panchayat fails to grant approval for convening a special meeting to discuss No Confidence Motion within a period of 15 days from the date of receipt of the notice was mandatory in nature. It is only when the Anchalik Panchayat fails to act in the matter within the specified period of 7 days as mentioned in the said provision that the matter can be referred to the Deputy Commissioner to take appropriate action.

In this case, as noticed above, this matter was not referred to the Anchalik Panchayat President. As such, it is apparent that there has been clear violation of the mandate of Section 15(1) of the Act of 1994. Moreover, the respondent No.9 had also not served notice of the meeting upon the petitioner which she was entitled to under the law.

For the above reasons, I am of the view that proceeding of the meeting held on 13.11.2020 and the resolution adopted therein stood vitiated on the ground of breach of mandatory provision of the Act of 1994 and also for violation of principles of natural justice. As such, the impugned resolution dated 13.11.2020 is hereby set aside. Consequently, the petitioner is restored in the office of the President of the Bongalmora Gaon Panchayat with immediate effect.

As agreed to by learned counsel for the parties, since there is already a requisition submitted by the Vice-President and the members of the Gaon Panchayat to convene a special meeting to discuss the proposal of No Confidence Motion against the petitioner, a meeting shall now be convened by the respondent No.9 within a period of 15 (fifteen) days from today. In doing so, the approval of the writ petitioner on that account shall be deemed

to have already been obtained. The respondent No.9 shall only notify the date, time and venue of the meeting to all the members including the President and Vice-President of the Gaon Panchayat by issuing formal notice and thereafter proceed with the matter.

With the above observation, this writ petition stands allowed.

JUDGE

Comparing Assistant