



GAHC010049062018



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### THE GAUHATI HIGH COURT

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

Case No. : WP(C) 1455/2018

1: THE PUB MANGALDAI ANCHALIK PANCHAYAT AND ANR.  
 TO BE REP. BY ITS PRESIDENT, DHULA,  
 P.O. DHUBLA, DIST DARRANG, ASSAM

2: JAYNAL ABDIN  
 S/O MD. SURAJ ALI  
 VILL- BAIGARMARI  
 P.O. KHARUPETIA AND P.S. DHULA  
 DIST. DARRANG  
 ASSAM

VERSUS

1: THE STATE OF ASSAM AND 3 ORS.  
 TO BE REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, PANCHAYAT  
 AND RURAL DEVELOPMENT DEPARTMENT.

2: THE COMMISSIONER  
 PANCHAYAT AND RURAL DEVELOPMENT  
 ASSAM  
 JURIPAR  
 SIX MILE

GUWAHATI.

3: THE ASSAM STATE ELECTION COMMISSION  
 ASSAM  
 TO BE REP. BY ITS COMMISSIONER  
 PANBAZAR  
 GUWAHATI-1.

4: THE DEPUTY COMMISSIONER

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3:THE DY. COMMISSIONER  
DHUBRI  
ASSAM  
P.O. AND DIST. DHUBRI

4:THE BLOCK DEVELOPMENT OFFICER CUM EXECUTIVE OFFICER  
GOLAKGANJ ANCHALICK PANCHAYAT  
P.O. GOLAKGANJ  
P.S. GULOKGANJ  
DIST. DHUBRI  
ASSAM

Advocate for the Petitioner : MR. M U MONDAL  
Advocate for the Respondent : GA  
ASSAM

BEFORE

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI

JUDGEMENT AND ORDER  
(ORAL)

Date : 29-05-2018

Mr. A. K. Sarma, Mr. B. Baruah, Mr. A. R. Bhuyan, Mr. S. Khound, Mr. H. Rahman, Mr. A. K. Hussain, and Mr. D. Hussain, learned counsel appearing for the petitioners have advanced arguments on behalf of the petitioners and other learned counsel present for the petitioners have endorsed the submissions as a whole. From the side of the Government, Mr. D. Mazumdar, learned Additional Advocate General, Assam, assisted by Mr. R. K. D. Choudhury, learned Senior Government Advocate, and Ms. M. Bhattacharjee, learned State counsel, has addressed the court. I have also heard Mr. N. Borah, learned Standing counsel, Assam State Election Commission.

2. The petitioners in this batch of 229 writ petitions are Panchayati Raj Institutions (PRIs) and, in some cases, elected Presidents/Members of PRIs. This batch of writ petitions, essentially, raises a core question in relation to holding of election to the PRIs and as to who should discharge the duties and functions of the PRIs in respect of which the five year term

of the elected Members of the PRIs had come to an end. In some of the writ petitions, specific prayers are made for issuing a writ of mandamus directing the respondents to hold election to the PRIs without any delay. In other cases, without such a specific prayer, primarily, direction is sought for from the court to allow the existing elected bodies of the PRIs to continue till such time the reconstitution of the PRIs is effected through the process of election. In some of the writ petitions, grievance is also expressed and prayer is made for appropriate direction for making payment of honorarium to the Presidents/Members of the PRIs. In some of the writ petitions, there is also a challenge to a Notification dated 03.03.2018, issued by the Commissioner and Secretary to the Government of Assam, Panchayat and Rural Development Department, allowing the Deputy Commissioners or his authorized officers to officiate as the custodian of the property of Gaon Panchayats/Anchalik Panchayats/Zilla Parishads after completion of the term and till completion of the election process, as well as to the consequential orders passed by the Deputy Commissioners/Chief Executive Officers of the Zilla Parishads.

3. At the very outset, the prayer with regard to payment of honorarium being not intrinsically connected with the fundamental questions raised in these writ petitions, a consensus is arrived at that said prayer will not be pressed in these writ petitions. The learned counsel for the petitioners submit that liberty may be granted to such petitioners to approach this court again to seek relief in respect of payment of pending honourarium. Learned counsel for the parties are also in agreement that the writ petitions can be disposed of at the admission stage.

4. In view of the consensus arrived at, this court is not adjudicating on the issue raised for grant of payment of honorarium, which, it is claimed, has not been paid for long. Liberty is granted to such of the petitioners, who had prayed for direction to grant honorarium, to approach this court again seeking redressal on that count. In view of the consensus noticed above, the writ petitions have been taken up for consideration for disposal at the admission stage.

5. It will be appropriate to note that by way of interim orders passed in these writ petitions, the Notification dated 03.03.2018 and the consequential orders passed by the Deputy Commissioners or Chief Executive Officers of the Zilla Parishads, as the case may be,

were suspended and the existing PRIs were allowed to function. However, the PRIs were restrained from taking any policy decision and incurring any expenditure from the funds other than for the purpose of payment of salary to the staff and routine functions of the office without taking leave of the court.

6. Affidavit was filed in WP(C) 1368/2018, both by the State Government and the State Election Commission. Copies were furnished to the learned counsel for the petitioners in the writ petitions.

7. Learned counsel for the petitioners, in unison, have submitted that the attending facts and circumstances of the cases would amply demonstrate that there was a failure on the part of the State and the State Election Commission and that the ground, as projected in the affidavits that the ongoing upgradation work of National Register of Citizens (NRC) is the primary reason for not being able to hold election, is not a genuine and valid ground and, as such, the State and the State Election Commission had failed to discharge their Constitutional obligation to hold the election of the PRIs in time.

8. It is submitted on behalf of the petitioners that in identical fact situation, this court, in WP(C) 6437/2006 (*Uttar Dhemaji Gaon Panchayat and Ors. vs. State of Assam and Ors.*), decided on 25.05.2007, had allowed the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads, whose five year terms had expired, to function till the constitution of new Gaon Panchayats, Anchalik Panchayats and Zilla Parishads after election was held and, therefore, in the instant cases, when the election is not held before expiry of the term in accordance with the mandate of Article 243E of the Constitution of India, this court may direct the State to facilitate and the State Election Commission to hold election to the PRIs within a time-frame as may be considered appropriate by this court and, till such time the election is held and new members take charge, the existing bodies should be allowed to continue to discharge the duties and functions of PRIs. It is pointed out that as there is a failure on the part of the State and the State Election Commission to hold election before the expiry of the duration, Article 243E(1) will not come in the way of continuation of the existing PRI bodies beyond five years. Reliance is placed upon the judgements of the Supreme Court in the case of *Kishansing Tomar vs. Municipal Corporation of the City of Ahmedabad and Others*, reported in (2006) 8 SCC 352, *In the matter of Special Reference No. 1 of 2002 (Gujarat Assembly*

election Matter), reported in (2002) 8 SCC 237, *The Tehsildar, Hinganghat and Another vs. Deorao and Others*, reported in (1976) 1 SCC 761 and in the judgement of the Karnataka High Court in the case of *Prof. B. K. Chandrashekar and Another, etc. vs. State of Karnataka*, reported in AIR 1999 Karnataka 461.

9. Though not on record, Mr. A. R. Bhuyan, learned counsel appearing on behalf of some of the petitioners has submitted that the State Government had constituted certain committees to discharge certain functions and duties of the PRIs.

10. Mr. D. Mazumdar, learned Additional Advocate General, Assam, at the very outset, has submitted that the reliance placed on the judgement in *Uttar Dhemaji Gaon Panchayat* (supra) is misconceived as the facts of the present batch of writ petitions and that in the said case are distinguishable as, in the said case, there was an admitted failure of the State and the same was acknowledged by the State in the court, which is not the case in the cases at hand and, therefore, the directions contained therein may not bind this court. He has submitted that each case has to be seen in the singular facts presented before the court. It is submitted by him that when the State has done all that which is within its power and control and is unable to provide necessary manpower and staff to the State Election Commission for the purpose of holding election, it cannot be construed that the State was not interested in holding election for any extraneous consideration. Elaborating further, Mr. Mazumdar submits that a large portion of manpower available is deployed and engaged in the NRC upgradation work, which is taken up only in the State of Assam in the entire country after 1951. He has submitted that there is a clear mandate of the Supreme Court of India to complete the ongoing NRC upgradation work by 30.06.2018 and it was also made clear in the order dated 20.02.2018, passed by the Supreme Court in WP(C) 274/2009 (*Assam Public Works vs. Union of India and Ors.*) that holding the Local Body/Municipal/Panchayat election in the State of Assam will not be at the cost of upgradation/preparation of the final draft NRC and that the preparation/upgradation of the final draft NRC will continue as before with full deployment of manpower. NRC upgradation work is expected to be completed by 30.06.2018 and, thereafter, it will be possible on the part of the State to give all assistance, including providing of necessary manpower, to the State Election Commission for holding election smoothly. The will of the Government to hold the election is manifest from the fact that the Government had

plotted funds to the State Election Commission way back in the month of March, 2018, he submits. He further submits that if, at all, any further fund is required, the State Government will also do the needful so that there is no undue delay in holding election after 30.06.2018. Abiding by the stand taken in the affidavit, it is submitted by Mr. Mazumdar that Rule 4 of the Assam Panchayat (Constitution) Rules, 1995, does not allow delegation of any power vested upon the Deputy Commissioner and the Sub-Divisional Officer (Civil) having a bearing on election of the Members of the PRIs. He also submits that having regard to the mandate of Article 243E, it will be wholly impermissible to allow the PRI bodies, whose term of five years had already expired from the date appointed for its first meeting, to continue further as such bodies, in terms of the provisions contained in Article 243E (1) of the Constitution, can continue only for five years from the date appointed for its first meeting and no longer, more so, when no deliberate inaction can be attributed to the State for not facilitating holding of election by the State Election Commission. Drawing attention of the court to Section 125 of the Assam Panchayat Act, 1994 (for short, "Panchayat Act"), learned Additional Advocate General submits that it is permissible in certain contingencies to allow such person(s), as the Government may decide to appoint, to exercise and perform all the powers and duties of the PRIs and, therefore, the role of the Government in PRIs is not alien to the concept enshrined in the Act.

11. Mr. N. Borah, learned Standing counsel, State Election Commission, Assam, has submitted that the Election Commission had taken up the issue of holding of Panchayat Election in right earnest from the month of August, 2017 by way of issuing a letter to the Chief Secretary to the Government of Assam, intimating him that the Panchayat Election is due to be held between December 2017 to February, 2018. In a meeting held on 16.09.2017, which was attended to, amongst others, by the State Election Commissioner and the Chief Secretary to the Government of Assam, it was decided to hold Panchayat Election before commencement of High School Leaving Certificate Examinations (HSLC) and Higher Secondary School Leaving Certificate Examinations (HSSLC), which were likely to commence from the third week of February, 2018. Proposal was mooted by the State Election Commission to hold Panchayat Election in two phases. However, subsequently, suggestions had come from the Police Department that it would be advisable to hold the election in three