
(2008) 04 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (C) No's. 294, 296, 1122 and 1252 of 2008

Sheikh Abdullah and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Citation : (2008) 4 GLT 932

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A.M. Mazumdar, J. Ahmed, A.S. AlImam, A.H. Ahmed, D. Khan and I. Hussain, for the Appellant; M.U. Mahmood, for the Respondent

Judgement

B.K. Sharma, J.—All the writ petitions pertain to holding of Panchayat Elections in the District of Goalpara including the areas pertaining to Rabha Hasang Autonomous Council. In W.P. (C) No. 1122/2008 it is the prayer of the Petitioners that they being the earlier elected panchayat bodies, they should be allowed to continue to discharge the duties, functions and responsibilities of the panchayat bodies till the panchayat elections are held in the District. In W.P. (C) No. 1252/08, the prayer of the Petitioners is just the opposite of the prayer made in W.P. (C) No. 1122/08. The prayer made is not to restore the defunct panchayat bodies permitting them to discharge duties, functions and responsibilities of the panchayat bodies till election is held. In W.P. (C) Nos. 294/08 and 296/08, the prayer made is for a direction to the Respondents to ensure holding of panchayat elections as expeditiously as possible.

2. I have heard Mr. A.K. Phukan, learned Advocate General, Assam and Mr. M.U. Mahmood, learned Standing Counsel, Election Commission. I have also heard Mr. A.S. Choudhury, learned Sr. Counsel appearing for the Petitioners in W.P. (C) No. 1122/08 as well as Mr. J. Ahmed, learned Counsel led by Mr. A.M. Mazumdar, learned Sr. Counsel for the Petitioners in W.P. (C) No. 1252/08. Be it stated there that the Petitioners are also party Respondents in W.P. (C) No. 1122/08. I have also heard Mr. A.K. Goswami, learned Sr. Counsel for the Petitioners in W.P. (C)

No. 296/08 and Ms. S.B. Choudhury, learned Counsel for the Petitioner in W.P. (C) No. 294/08. I have also heard Ms. R. Chakraborty, learned Addl. Sr. Govt. Advocate.

3. There is no dispute that election notification was issued for holding elections throughout the State of Assam including the District of Goalpara. Such notification was issued pursuant to the direction of this Court passed in W.P. (C) No. 1978/07. The writ petition was disposed of by judgment and order dated 25.5.2007 directing the State Govt. to ensure holding of panchayat elections throughout the State on or before 31.10.2007. In the interregnum, it was provided that the earlier elected bodies should be allowed to continue, without, however, any major policy decision or without incurring any expenditure from the funds other than payment of salaries to the staff and the routine function of the office. As noted above, election for the District of Goalpara was also notified. However, because of some stray incidents, elections had to be postponed and the Govt. issued notification to that effect. After issuance of the election notification, the panchayat bodies were run by the Govt. and presently also the panchayat bodies are being run by the Govt.

4. While it is the case of the Petitioners in the first writ petition that in terms of the earlier direction of this Court, the panchayat bodies inspite of expiry of its term should be allowed to continue till election is held in reality, the plea of the Petitioner in W.P. (C) No. 1252/08 is that since the term of office of the earlier panchayat bodies has already expired and presently the said bodies are being run by the Govt., the said bodies should be allowed to be run by the Govt. and not by the defunct bodies. In this connection, Mr. J. Ahmed, learned Counsel for the Petitioner has placed reliance on decision of the Apex Court reported in AIR 2000 SC Ranbir Singh v. Satbro Devi and Ors. In the said case the removal of the Sarpanch was stayed with the resultant effect that the removed Sarpanch would be restored to the position in which he was prior to his removal. Clarifying the stay order, the Apex Court observed that clear intention of stay order was that the Sarpanch would cease to hold office on expiry of his term. It was held that being the position, the Petitioner could not take advantage of Govt. notification postponing panchayat elections and to continue to hold office beyond his term.

5. The panchayat election has been held in terms of the aforesaid order dated 25.5.2007 passed in W.P. (C) No. 1978/07 in terms of which election was to be held on or before 31.10.2007. It is submitted that the target date 31.10.2007 was relaxed/modified by the Division Bench of this Court in Writ Appeal No. 365/07. The Division Bench by its order dated 13.11.2007 directed to start election process by 16.11.2007 and thereafter to complete the entire process in accordance with law.

6. With the issuance of the notification to hold election throughout the State of Assam, there was substantial compliance of the direction of this Court. It was on such eventuality, the expired panchayat bodies stopped functioning and as noted above, election of panchayat bodies of Goalpara District could not be held due to

postponement on account of some law and order problem. Govt. officials have been deputed to look after the affairs of the panchayat bodies. Presently, such Govt official are running the affairs of the panchayat bodies.

7. In my considered view in such a situation, it will not be conducive to issue direction to restore back the defunct bodies to discharge duties, functions and responsibilities of the panchayat bodies till such time the election which was already notified, but had to be postponed due to law and order problem is held. In the aforesaid case of Ranbir Singh (supra) the Apex Court observed that notwithstanding postponement of panchayat election, the Sarpanch could not continue to hold office beyond his term.

8. Mr. A.K. Phukan, learned Advocate General by producing a copy of the letter dated 11.3.2008, submits that a committee has been constituted to look into the affairs relating to Rabha Hasang Autonomous Council. According to him, the election in the District of Goalpara is expected without further delay, As per the said letter, issue of form a notification is in the process.

9. In the W.P. (C) Nos. 294/08 and 296/08 the prayer of the Petitioners, as noted above, is to hold early election in the District of Goalpara. Since it is submitted by the learned Advocate General that elections is expected to be hold without further delay, it is hereby directed that the State Respondents shall ensure holding of the election as expeditiously as possible preferably within 31.5.2008. Upon necessary clearance by the Govt. Election Commission shall hold election in accordance with law.

With the above directions, all the writ petitions are disposed of. A copy of this order shall be furnished to Ms. R. Chakraborty, learned State Counsel for her onward transmission to the concerned authorities.