



WP(C) 213/2016

BEFORE

HON'BLE MR. JUSTICE MANOJIT BHUYAN

2016:GAU-AS:677

Heard Mr. MJ Quadir, learned counsel representing the petitioner. Also heard Ms.

KK Choudhury, learned counsel representing Respondent Nos.1, 3 and 4. None appeared on behalf of Respondent No.2, i.e. the State Election Commissioner, Assam, although there is a Standing Counsel to represent the said authority. Considering the nature of the order that is being passed today, service of notice upon Respondent No.5 is not deemed necessary.

2. The petitioner claims to be a Voter of No.21 Kachudaram Gaon Panchayat under Sonai Development Block in the district of Cachar. It is contended that pursuant to Panchayat Election held in February, 2013, the said Panchayat was formed with 10 members and a directly elected President. However, in terms of Section 15 of the Assam Panchayat Act, 1994 (for short 'the Act'), the President of the said Gaon Panchayat was removed by way of a vote of No-Confidence, whereupon the Vice President commenced discharging duties of the President. The grievance raised in this writ petition is that more than two years have elapsed and no steps have yet been taken for convening fresh election to fill up the vacant post of President as per the provision under Section 10 of the Act.

3. Under Section 10 of the Act, it is provided that after the election of the President of the Gaon Panchayat under Section 6(1)(b) if any vacancy occurs by reason of death, resignation or removal in the office of the President, the Gaon Panchayat is to elect the President under Section 6(1)(b). The proviso to Section 10, however, puts an embargo that no election is to be held if the vacancy is for a period of less than one month. The facts as appearing in the instant case, does not attract the proviso to Section 10 of the Act. Under Rule 3 of the Assam Panchayat (Constitution) Rules, 1995 (for short 'the Rules'), it is provided that the first election or bye election, as the case may be, is to be conducted by the State Election Commission under Sub-Section (1) of Section 114 of the Act. Rule 53 thereof also provides that in the event of any vacancy occurring in the office of the President of the Gaon Panchayat, the Secretary of the Gaon Panchayat is to immediately inform the Deputy Commissioner or the Sub-Divisional Officer concerned, as the case may be, with the details and the Deputy Commissioner or Sub-Divisional Officer concerned is to report the matter to the State Election Commission with his comments for necessary action.

4. Having noticed the aforesaid provisions under the Assam Panchayat Act, 1994 as well as Assam Panchayat (Constitution) Rules, 1995, a clear procedure is laid down for holding bye election in the event any vacancy occurs in the office of the President. The first stage involves the details being sent by the Secretary of the Gaon Panchayat to the District Administration and thereafter, the State Election Commission is required to do the needful in accordance with the provisions laid down in the aforesaid Act and the Rules. Mr. Quadir, learned counsel representing the petitioner submits that until this date, the Secretary is yet to send the report along with his comments to the District Administration, as a result of which the matter had been inordinately delayed.

5. Considering the fact that the office of the President has remained vacant since 20.8.2013, it would be necessary to issue directions to the Respondent No.5 to take steps in accordance with Rule 53 of the Assam Panchayat (Constitution) Rules, 1995. The Respondent No.2 is also directed to take all necessary steps for conducting the election to the office of the President of No.21, Kachudaram Gaon Panchayat under Sonai Development Block as expeditiously as possible, preferably within a period of 3 (three) months from the date when report and comments is received from the Respondent No.3. It is made clear that the Respondent No.5 shall apprise the Respondent No.3 by way of a report as regards the vacancy in the office of the President within a period of 7(seven) days from today and thereafter, the said Respondent No.3 shall bring the matter to the notice of the Respondent No.2 within 7 (seven) days from the date of receipt of report from the Respondent No.5. The petitioner is permitted to furnish copies of this order to Respondent Nos.2, 3 and 5 for their doing the needful.

6. In terms of the above, this writ petition stands disposed of.



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