

WP(C) 8307/2003  
BEFORE  
THE HON'BLE MR. JUSTICE B.K. SHARMA

Shri Dibyajyoti Kalita,  
Son of Late Maheshwar Kalita,  
Vill- Lakhanyabari, Mouza: Laluk,,  
Dist- Lakhimpur, Assam.

..... &.PETITIONER

-Versus-

1. State of Assam represented by the  
Commissioner & Secretary to the Govt.  
of Assam, Department of Revenue,  
Dispur, Guwahati-6.

2. The Deputy Commissioner,  
Lakhimpur, North Lakhimpur.

3. The SDO (Sadar), North Lakhimpur,

4. Shri Bolin Baruah,  
Son of Shri Nakul baruah,  
Vill- Lakhanyabari, Mouza: Laluk,,  
Dist- Lakhimpur, Assam.

&.RESPONDENTS

#### JUDGEMENT & ORDER (ORAL)

Heard Mr SK Medhi, learned counsel appearing for the petitioner.

Also heard Mr. HRA Choudhury, learned Senior counsel assisted by Mr. FU Borbhuiya, learned counsel appearing for the Respondent No.4 and Ms. R Chakraborty, learned Additional Senior Govt. Advocate, Assam.

2. The challenge in this writ petition is the order of appointment dated 22.8.2003 (Annexure-VII) appointing the Respondent No.4, Shri Bolin Baruah temporarily as Gaonburah of Lat No.14, Harmati Merbil within Laluk Mouza. According to the petitioner, Respondent No.4 has been appointed illegally and in violation of the provisions relating to the appointment of Gaonburah.

3. The petitioner is the son of erstwhile Gaonburah of the same area. According to the petitioner he was associated with his father during his tenure as Gaonburah and thus fully acquainted with the duties, function, responsibilities of a Gaonburah.

4. The father of the petitioner died on 23.6.2003 and consequently the post of Gaonburah of the said area fell vacant. The vacancy was notified vide notice dated 5.7.2003 calling the applications from the suitable candidates to fill up the post of Gaonburah. It is on record that in response to the said notice altogether three candidates offered their candidatures which included the petitioner, Respondent No.4 and one Shri Priya Gohain.

5. The interview was conducted on 16.8.2003 and thereafter, the Respondent No.4 was appointed by the aforesaid impugned order dated 22.8.2003. Being aggrieved, petitioner has filed this writ petition.

6. The respondents have filed their counter affidavit. Official respondents in their affidavit have stated that the Respondent No.4 was appointed in consideration of the materials on record. In the affidavit-in-opposition filed by the Respondent No.4, it has been contended that the petitioner was involved in a criminal case in GR Case No.607/95 under Sections 342/376 IPC. It has been further stated in the affidavit that the petitioner was an absconder in connection with the said criminal case. According to the Respondent No.4, that was a valid ground for rejecting the claim of the petitioner.

7. In the additional affidavit filed by the petitioner it has been stated that Respondent No.4 is a surrendered militant. In this connection the petitioner has enclosed the supporting documents. Respondent No.4 has also not denied that he is a surrendered militant. However, Mr. HRA Choudhury, learned Senior counsel appearing for Respondent No.4 submitted that Respondent No.4 has come to the mainstream denouncing his past activities and that the fact that he was associated with an extremist organization, cannot stand in his way of selection as Gaonburah.

8. Mr. SK Medhi, learned counsel appearing for the petitioner referring to the Executive Instruction No.162 (A) framed under the Assam Land Revenue Manual, submits that the said guidelines have not been followed for making the selection and the matter requires fresh consideration. On the other hand, Mr. Choudhury, learned Sr. counsel appearing for Respondent No.4 submits that as the selection committee has selected the Respondent No.4 on the basis of the available materials, the writ court can not sit on appeal over the decision arrived at by the selection committee. He also submits that since there is a provision for appeal under the guidelines No.162 (B), the writ petition is not maintainable.

9. I have considered the rival submissions as well as the materials on record. The guidelines under 162 (A) provide that in the matter of appointment of Gaonburah, following factors shall be taken into consideration.

- a) The claims of the family of the Gaonburah,
- b) Views of the Mouzadar and
- c) Suitability of the person for the post.

10. Learned State Counsel has produced the records. As per minutes of the selection committee, both the petitioner and the Respondent No.4 secured 133 marks each. On the other hand, said Shri Priya Gohain secured 129. There was tie between the petitioner and the Respondent No.4.

11. When the matter was placed before the authority for a decision, the authority on the basis of the purported representation made by some of the villagers of the village opposing candidature of the petitioner, recommended the Respondent No.4 for appointment as Gaonburah. The records have revealed that there are numerous representations and reports. The said representations and reports are in favour of both the parties and on perusal of the same, nothing adverse appears against both the contenders. However, the authority without making any reference to those representations and remarks, simply on the basis of a particular representation, recommended the case of the Respondent No.4 for appointment as Gaonburah.

12. As noticed above, three requirements for appointment of Gaonburah are the claims of the family of the Gaonburah, the views of the Mouzadar and the suitability of the person for the post.

13. The records do not indicate as to how the case of the petitioner was considered, taking into account, the first factor, i.e. the claim of the family of the Gaonburah. Admittedly the petitioner being the son of the erstwhile Gaonburah, same is a valid ground for appointment as Gaonburah.

14. The Mouzadar's report is available on record and in the report there is nothing adverse against any of the parties. The selection committee awarded marks but there is nothing to indicate as to on what basis such marks are awarded.

15. Apart from the above, the authority on the basis of the representation purportedly submitted by some of the villagers against the petitioner recommended the case of the Respondent No.4 for appointment as Gaonburah. While doing so, no cross-checking was made and also no reference was made to the other materials which were in favour of the petitioner. The antecedent of the respondent No. 4 was also not considered.

16. For all the aforesaid reasons, I am of the considered opinion that the matter needs fresh consideration of the authority. At this stage, it will be appropriate to deal with the plea of non-maintainability of the writ petition as has been raised by the learned Senior counsel appearing for Respondent No.4. According to him, since there is provision for appeal, this writ petition is not maintainable.

17. This writ petition was entertained in the year 2003 for adjudication. In my considered opinion, the petitioner cannot be non-suited on the ground of alternative remedy after five years of pendency of the writ petition. It will be not appropriate to ask the petitioner to prefer an appeal against the impugned order at this stage.

18. For the aforesaid reasons, the writ petition is allowed to the extent indicated above. The matter is remanded back to the Deputy Commissioner, Lakhimpur for fresh consideration taking into account all relevant materials and consistently with the observations made above. Mr. SK Medhi, learned counsel for the petitioner submits that the petitioner has been acquitted of the criminal case in which he was involved.

19. The matter shall be decided afresh as expeditiously as possible but at any rate not later than 31.08.2008. Till then, status quo as on today shall be maintained. A copy of this order be furnished to Ms R Chakraborty, learned State counsel.