

**BEFORE  
HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**27.06.2022**

Heard Mr. R. P. Sarmah, learned senior counsel assisted by Ms. P. Choudhury, learned counsel appearing for the writ petitioner. Also heard Mr. K. Konwar, learned Standing Counsel, PNRD, Assam appearing for the respondent Nos.1 and 3 to 7. Mr. D. K. Sharma, learned Addl. Sr. Govt. Advocate, Assam has appeared for the respondent No.2. None has appeared for the private respondent Nos.9 to 16.

It appears that the petitioner herein was elected as the President of Bongalmara Gaon Panchayat in the district of Lakhimpur. On 30.12.2020, a special meeting of the Gaon Panchayat was convened so as to discuss the no confidence motion brought against the writ petitioner. In the said meeting a resolution was adopted expressing "no confidence" against the petitioner as a result of which she was removed from office. The resolution dated 30.12.2020 has been assailed in this writ petition inter-alia on the ground that the respondent No.8, who was a member of the Gaon Panchayat and had voted against the writ petitioner, had given birth to her 3<sup>rd</sup> child on 18.08.2019 and therefore, by virtue of Section 111(2)(a) of the Assam Panchayat Act, 1994 read with Rule 62 of the Assam Panchayat (Constitution) Rules, 1995 she stood automatically disqualified on the date of voting. Notwithstanding the same, her vote was taken into account for passing the resolution against the petitioner.

By referring to the materials available on record, more particularly the order dated 12.01.2021 passed by the Deputy Commissioner, Lakhimpur Mr. Sarmah, learned senior counsel appearing for the petitioner, submits that the

allegation brought against the respondent No.8 is correct and taking note of the said fact she had already been disqualified from her membership of Ward No.4 of the Gaon Panchayat. If that be so, the impugned resolution stood vitiated on such count alone. Mr. Sarmah therefore, prays for setting aside the impugned resolution and for issuance of a direction to restore his client back in office. The learned senior counsel has, however, submitted that he would have no objection if liberty is granted to the respondents to initiate a fresh proceeding, if so advised, by following the due process of law.

Mr. Konwar, learned Standing Counsel, PNRD, Assam has submitted, in his usual fairness, that the respondent No.8 was disqualified by operation of Section 111(2)(a) of the Act of 1994. However, since the declaration of her disqualification came only on 12.01.2021 i.e. after the impugned resolution was passed, the same would not have any bearing on the issue of ouster of the petitioner from the office of Gaon Panchayat. Similar is the stand of Mr. D. K. Sharma, learned Govt. Advocate, Assam appearing for the respondent No.2.

There is no dispute about the fact that the respondent No.8 had incurred disqualification under the law on the date of adopting the impugned resolution. There is also no controversy about the fact that she had voted against the writ petitioner and but for her vote, the petitioner would not have been ousted from office.

In view of the above, it would not be necessary for this Court to delve into other aspects of the matter including the issue regarding requirement of procedural formalities for declaring the respondent No.8 as a disqualified candidate.

Taking note of the admitted position fact that the respondent No.8 had

incurred disqualification under the law on a date prior to the date on which the impugned resolution dated 30.12.2020 was passed, the resolution adopted against the petitioner on 30.12.2020 on the basis of the vote cast by the respondent No.8 obviously stood vitiated and therefore, is liable to be set aside. The resolution dated 30.12.2020 is therefore, interfered with. Consequently, the petitioner is restored in the office of the President of the Bongalmara Gaon Panchayat with immediate effect. The respondent No.2 to issue appropriate notification to that effect within 7 (seven) days from the date of receipt of a certified copy of this order. It is however, made clear that this order shall not come in the way of the authorities or any member of the Gaon Panchayat from proposing a fresh motion of "no-confidence" against the petitioner by following the due process of law, if so advised.

With the above observations, this writ petition stands closed.

**JUDGE**

**Comparing Assistant**