



GAHC010075372023

Page No.# 1/8



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

Case No. : WP(C)/1994/2023

SWAPAN BHARALI
S/O- SHUKLAI BHARALI,
R/O- VILL. MALABORI
MOUZA- CHENGA,
P.S.- TARABARI,
DIST.- BARPETA, ASSAM,
PIN- 781305.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
REVENUE DEPARTMENT.

2:THE COMMISSIONER AND SECRETARY FOR LOWER ASSAM
GUWAHATI
PANBAZAR
ASSAM
PIN- 781001.

3:THE DEPUTY COMMISSIONER
BARPETA
ASSAM.

4:THE ADDITIONAL DEPUTY COMMISSIONER
REVENUE
BARPETA
ASSAM.

5:THE CIRCLE OFFICER
CHENGA REVENUE CIRCLE



CHENGA MOUZA
BARPETA
ASSAM.

6:MRIGEN SARKAR
S/O- LATE NIMAI CHANDRA SARKAR BA
R/O VILL. BATGAON
P.O.- CHENGA
P.S. TARABARI
DIST.- BARPETA
ASSAM
PIN- 781305.

7:PRANJIT SARMA
S/O SURESH SARMA
R/O- VILL. BATGAON
P.O.- CHENGA
P.S.- TARABARI
DIST.- BARPETA
ASSAM
PIN- 781305

Advocate for the Petitioner : MR. R SARMA

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT

Date : 09-06-2023

Heard Mr. R Sarma, the learned counsel appearing on behalf of the petitioner. Also heard Mr. S Dutta, learned counsel appearing on behalf of respondent No.1, Mr. SS Roy, learned State counsel appearing on behalf of respondent Nos.2, 3, 4 and 5 and Mr. B Purkayastha, learned counsel appearing for respondent Nos.6 and 7.

2. The case of the petitioner herein is that pursuant to a selection

process, the petitioner was appointed as Gaonburah of Charge No. 11 under Chenga Mouza of Chenga Revenue Circle vide order No.BRK.G.-12/1018/363 dated 26.02.2021.

3. It is also relevant to take note that the said respondent Nos. 6 and 7 herein preferred an appeal before the Commissioner of Lower Assam Division challenging the order dated 26.02.2021.

4. Thereafter when such appeal was not proceeding, they preferred WP(C) No.4810/2021 before this Court. It may be relevant herein to take note of the fact that a perusal of the order dated 20.09.2021 passed by this Court in WP(C) No.4810/2021 shows that the grievances of the respondent Nos. 6 and 7 herein (the petitioners in the said writ petition) was that though the appeal was filed on 05.08.2021, but the Commissioner of Lower Assam Division have not proceeded with the hearing. It is under such circumstances, this Court observed that the pendency of the writ petition shall not be a bar to the Commissioner of Lower Assam Division to take up the statutory appeal filed by the respondent Nos. 6 and 7 herein (the petitioners therein). In the interim, this Court observed that till the matter was taken up, the respondent Nos. 1 to 6 in the said writ petition shall not fill up the post of Gaonburah Charge No.11 of Chenga Revenue Circle. It further appears that the said writ petition was disposed of vide an order dated 01.12.2021 thereby directing the Commissioner of Lower Assam Division to dispose of the appeal within a period of 3 months from the date of receipt of the certified copy of the said order by giving an opportunity of hearing to the private respondents prior to taking a decision on the appeal filed by the petitioners therein. It was

further mentioned in the said order that the respondent Nos. 1 to 6 shall not fill up the post of Gaonburah Charge No.11 of Chenga Revenue Circle till the appeal is disposed off.

5. Thereupon on 05.12.2022, the Commissioner of Lower Assam Division disposed of the said appeal being case No. RR 7/2021 thereby setting aside the order dated 26.02.2021 by which the petitioner herein was appointed as the Gaonburah of Charge No.11 under Chenga Revenue Circle.

6. This Court having a prima facie opinion that the said order dated 05.12.2022 was passed without assigning any reasons inasmuch as the Commissioner of Lower Assam Division, Guwahati, did not discuss why the selection of the petitioner was not in conformity with law stayed the order dated 05.12.2022 as well as the order dated 16.12.2022, whereby charge was given to another Gaon-burah.

7. Mr. S Dutta, learned State counsel appearing for the respondent No.1 submits that there is an alternative remedy to challenge the order impugned in the present writ petition as provided under Executive Instruction 162D issued under the Assam Land and Revenue Regulation, 1886 therefore, having an alternative remedy, the petitioner ought to have assailed the order before the said Appellate Authority under Executive Instruction 162D.

8. Countering such argument, Mr. Sarma, learned counsel for the petitioner submits that the appeal has been decided without even issuing a notice to the petitioner. He contends that such violation of

principle of natural justice itself is a reason for which this court can entertain the present writ petition in view of settled proposition of law. In support of such contention Mr. Sarma relies on the judgment of the Apex Court in the case of ***Ghanshyam Mishra & Sons Vs. Edelweiss Asset Reconstruction*** reported in ***(2021) 9 SCC 657***.

9. The order of the learned Appellate Court dealing with case No. RR 7/2021 has been brought on record by way of an additional affidavit. Such records are not disputed by the respondents to be incorrect. The order sheet reflects that the appeal in question was admitted on 13.12.2021 only after the order of this court dated 01.12.2021 passed in WP(C) No.4810/2021. While admitting the appeal, the Appellate Authority fixed the matter for further proceeding on 12.01.2022 at 4.00 PM and asked the Deputy Commissioner Barpeta to furnish parawise report on or before the date of hearing. The matter was not taken up on 12.01.2022 as fixed, rather it was taken on 02.02.2022, which discloses that the date was again fixed on 25.02.2022. In it seen that on 08.04.2022, the learned appellate authority asked the appellant to file affidavit from the other candidates within a month. Thereafter, the impugned order was passed on 05.12.2022.

10. From the aforesaid record it is apparent that no notice has been issued to the selected candidate and by the impugned order dated 05.12.2022, the selection of the writ petitioner was set aside and it was directed that there should be a fresh selection.

11. The principles of natural justice mandates that a reasonable opportunity must be given to a person before taking any action

against him. The adjudicating authority must disclose all the material placed before it and must give reasonable opportunity to the affected to submit his case. A fair hearing means that a person against whom an adverse order is passed should be informed of the charges against him giving him an opportunity to submit his explanation to the charges and the person is also have a right to know the material on the basis of which the allegation is proposed to be decided.

12. In the case in hand Executive Instruction 162C is silent regarding the procedure to be adopted in deciding an appeal in exercise of the aforesaid power. When an appeal is taken up on a challenge to an appointment, the person who has already been appointed or selected is a necessary party to be heard in such an appeal inasmuch as, the decision in the event of an appeal is allowed will have adverse civil consequences upon the selected candidates.

13. In the present case, the appointment of the selected candidate has been set aside without issuing a notice to him and on this count alone, the impugned order is liable to set aside and quashed.

14. The learned standing counsel also submits that no procedure has been laid down by the State authority governing such hearing of appeal under Executive Instruction 162C.

15. It is by now well settled that there must be fairness on any authority who takes a decision. In the case of **Maneka Gandhi Vs. Union of India** reported in **AIR 1978 SC 597**, the Hon'ble Apex Court observed that even when there is no specific provision for showing cause, yet if a proposed action affects the right of an individual, it is the duty of the authority to give reasonable opportunity to be heard. Such duty of the authority is

implied by nature of the function to be performed by the authority having power to take punitive or damaging action.

16. Law is well settled that availability of an alternative remedy does not operate as an absolute bar to the maintainability of a writ petition. At least in four situations a writ court shall be justified in entertaining a writ petition despite the party not having availed the alternative remedy provided. Firstly, where a violation of fundamental rights is alleged, secondly, when there is a violation of principles of natural justice, thirdly where the order or proceeding under challenge in a writ petition, are wholly without jurisdiction and fourthly, when a vires of an Act is under challenge.

17. This Court for such conclusion can very well rely upon the decision of the Hon'ble Apex Court in ***Whirlpool Corporation Vs. Registrar of Trademarks*** reported in ***(1998) 8 SCC 1***, ***Harbanslal Sahnia Vs. Indian Oil Corporation Ltd*** reported in ***(2003) 2 SCC 107***, ***CIT Vs. Chhabil Dass Agarwal*** reported ***(2014) 1 SCC 603*** and Ghaneshyam Mishra (supra).

18. In the case is hand, there is a clear violation of the principles of natural justice as discussed herein above and therefore, the contention raised by Mr. S Dutta, learned counsel for the respondent No.1 regarding the availability of alternative remedy is rejected.

19. In view of the aforesaid, the present writ petition is allowed by setting aside the impugned order dated 05.12.2022 and the matter is remanded back to the appellate authority. The writ petitioner and the respondent Nos.6 and 7 shall appear before the appellate authority on



11.07.2023. On such appearance the learned Appellate Authority shall proceed with the appeal in accordance with law and by giving reasonable opportunities of hearing to the parties. The appeal be decided within a period of 2 months from the date of appearance of parties on **11.07.2023.**

20. In view of the aforesaid, the instant writ petition stands disposed of. Parties to bear their own cost.

JUDGE

Comparing Assistant