

GAHC010056142024



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

Case No. : WP(C)/1525/2024

SANJAY KR BARMAN
SON OF LATE KAMINI BARMAN, RESIDENT OF SILCHAR TOWN, P.S.
SILCHAR, DISTRICT- CACHAR, ASSAM, PIN-

VERSUS

THE STATE OF ASSAM AND 5 ORS
(REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT
OF ASSAM, COOPERATION DEPARTMENT, DISPUR, GUWAHATI-06)

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
GUWAHATI- 781022

3:THE DISTRICT DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
NALBARI

4:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
CACHAR
SILCHAR
ASSAM

5:THAT ELECTION COMMISSION OF INDIA
(REPRESENTED BY THE SENIOR PRINCIPAL SECRETARY TO THE
ELECTION COMMISSION OF INDIA
NEW DELHI- 110001)

6:THE DISTRICT ELECTION OFFICER
CACHAR
SILCHAR
ASSA

Advocate for the Petitioner : MR B SINHA

Advocate for the Respondent : SC, CO OP

Linked Case : WP(C)/1532/2024

NUR AHMED LASKAR
SON OF BASIR UDDIN LASKAR
RESIDENT OF VILLAGE- TUPKHANA PART-1
P.O- ARUNACHAL
DISTRICT- CACHAR
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5ORS
(REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM
COOPERATION DEPARTMENT
DISPUR
GUWAHATI -6)

2:THE REGISTRAR OF COOPERATIVE SOCIETIES

ASSAM
GUWAHATI- 781022.

3:THE DISTRICT DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES.
NALBARI.

4:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
CACHAR
SLICHAR
ASSAM.

5:THE ELECTION COMMISSION OF INDIA
(REPRESENTED BY THE SENIOR PRINCIPAL SECRETARY TO THE
ELECTION COMMISSION OF INDIA
NEW DELHI- 110001)

6:THE DISTRICT COMMISSIONER AND DISTRICT ELECTION OFFICER

CACHAR
SILCHAR
ASSAM.

Advocate for : MR B SINHA

Advocate for : SC
ECI appearing for THE STATE OF ASSAM AND 5ORS

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

01.05.2024

Heard Mr. B. Sinha, learned counsel for the petitioner. Also heard Mr. V. Rajkhowa, learned Standing Counsel, Co-operation Department and Mr. A.I. Ali, learned Standing Counsel, Election Commission.

2. These writ petitions have been filed by the petitioners assailing the order of transfer dated 25.02.2024 whereby the Senior Inspectors/Auditors of the Co-operative Society mentioned in the order are shown to be transferred to their proposed places of posting. Both the petitioners are working as Senior Inspectors under the Department of Co-operation, Government of Assam. In so far as the petitioner in W.P.(C) No. 1525/2024 is concerned, his name appears at Sl. No. 195 and petitioner in W.P.(C) No. 1532/2024, his name appears at Sl. No. 198. The petitioner in W.P.(C) No. 1535/2024, namely Sanjay Barman, was transferred to DRCS, Nalbari whereas the petitioner in W.P.(C) No. 1532/2024, namely Nur Ahmed Laskar, was transferred in the Office of ARCS, Nagaon. The grievance of the petitioners are that although these transfers are made in view of the General Election to the House of the People (Lok Sabha), 2024 by the Election Commission of India but in so far as the petitioners are concerned, they are excluded from such transfers by operation of Clause-6 of the guidelines of the Election Commission of India vide communication dated 21.12.2023. Under Clause 6 of the said guidelines, Officers who were appointed as Sector Officers/Zonal Magistrates involved in Election Duties, they are not covered by

these instructions.

3. It is the submission of the learned counsel for the petitioners that by order dated 29.02.2024, the petitioners have been given the responsibility as Civil Sector Officers and their names appears at Sl. Nos. 115 and 84 respectively in the said order. The learned counsel for the petitioners submits that since they were appointed as Civil Sector Officers, they are excluded from the transfer in terms of the guidelines issued by the Election Commission of India vide memo No. 437/6/1/INST/ECI/FUNCT/MCC/2023 dated 21.12.2023.

4. This Court by order dated 15.03.2024 permitted the respondents to complete their instructions and directed the parties to maintain status quo till the next date of listing. The status quo order has been extended from time to time.

5. The learned counsel for the respondents submits that pursuant to the orders being passed and the status quo order being issued, the petitioners were relieved of their responsibilities as Sector Officers and therefore, as on date, the very ground on which the writ petitioners have assailed the transfer order does is not available to them. He therefore submits that the writ petitions have no merit and the same should be dismissed.

6. The learned counsel for the parties have been heard. The writ petitions along with the annexures have been carefully perused. It is seen that the transfer order was issued on 25.02.2024. Prima facie the exemption from transfer as provided under the ECI guidelines vide memo No 437/6/1/INST/ECI/FUNCT/MCC/2023 are not applicable to the petitioners as the responsibilities of Sector Officers were conferred on the petitioners only on 29.02.2024 while the transfer order was issued on 25.02.2024.

7. Be that as it may, since there was a status quo order granted, the petitioners remained in their original places of posting. Subsequently, the authorities had relieved the petitioners from the responsibilities of Sector Officers or Zonal Magistrate. Being aggrieved, the writ petitioners approached this Court again and filed W.P.(C) No. 1855/2024 where the order relieving the petitioners was put to challenge on the ground that the same is violative of the status quo order passed by this Court. Upon the writ petition being filed, the Election Commission withheld the earlier order relieving the petitioners from their responsibilities as Sector Officers. Under such circumstances, W.P.(C) No. 1855/2024 was disposed of as being infructuous. Thereafter, a Co-ordinate Bench by order dated 04.04.2024 in the present writ petition while considering the matter permitted the respondents to complete their instructions and had also extended the interim order passed earlier. This Court however granted leave to the Election Commission to release the petitioners from the elections duties if so advised.

8. In terms of the leave granted by this Court on 05.04.2024 to the Election Commission of India, to relieve the writ petitioners of their responsibilities as Sector Officers, a separate order was issued whereby the petitioners were relieved from election duties vide order dated 05.04.2024. The said order is again put to challenge by the writ petitioners by filing W.P.(C) No. 2202/2024 in which Notices were issued and the matter is pending before this Court in view of the leave being granted by the Co-ordinate Bench vide order dated 04.04.2024 and order relieving the petitioners granted on 05.04.2024. As such as on date the very basis for challenge of the transfer orders that the guidelines of the ECI that Sector Officers are to be excluded from the routine transfer for election purposes have been violated is no longer a valid ground.

9. Under such circumstance, since the only ground for challenge urged by the writ petitioners is the violation of the ECI guidelines and no other/further grounds are urged, this Court does not consider that the writ petition will require any further consideration at this stage. Accordingly, the same is disposed of as being infructuous.

10. The authorities may consider re-posting the petitioners after conclusion of the election if so advised.

11. The Writ petition is accordingly disposed of.

Interim order passed earlier stands vacated.

Pending IA are also dismissed.

JUDGE

Comparing Assistant