
(2005) 12 GAU CK 0001

In the Gauhati High Court

Case No : WP (C) No"s. 3021 and 5211 of 2005

Abul Hussain and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-12-2005

Acts Referred:

Assam Panchayat (Constitution) Rules, 1995 — Rule 53

Assam Panchayat Act, 1994 — Section 10, 15, 15(1), 6, 6(1)

Citation : (2006) 2 GLR 83 : (2006) GLT 195 Supp

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : B. Banerjee and HRA Choudhury, for the Appellant; B.C. Choudhury, for the Respondent

Judgement

I.A. Ansari, J.—By this common judgment and order, I, on the request made by the learned Counsel for the parties, propose to dispose of both the writ petitions, for, the two writ petitions are so closely inter-connected with each other that the decision in any of the two writ petitions would have a bearing on the out-come of the other writ petition.

2. Let me, now, set out the material facts and various stages, which have given rise to the present two writ petitions:

WP(C) No. 3021/2005

(i) The petitioners herein, six in number, are duly elected members of Balabari Gaon Panchayat, which falls under the district of Darrang, the petitioner No. 1, namely, Abul Hussain, having been elected as Vice-President of the said Gaon Panchayat. When the respondent No. 8 herein, namely, Mrs. Shamsun Nahar, was functioning as the elected President of the said Gaon Panchayat, the petitioner No. 1, herein, namely, Abul Hussain, who was, then, functioning as Vice-President of the said Gaon Panchayat, submitted along with three others a requisition to the respondent No. 8 aforementioned seeking a meeting to be held

for discussing a motion of no-confidence against the respondent No. 8, who was, as indicated hereinbefore, occupying the office of the President of the said Gaon Panchayat. The respondent No. 8, acting on the said requisition, convened a meeting on 1.1.2005. In the meeting, so held, on 1.1.2005, the motion of no-confidence was passed against the respondent No. 8. In course of time, respondent No. 8 handed over the charge to the petitioner No. 1 and, accordingly, petitioner No. 1 has been functioning as the in-charge President of the said Gaon Panchayat. While the petitioner No. 1 was so functioning as President of the said Gaon Panchayat, a notice was issued, on 8.4.2005, by the respondent No. 5, namely, Block Development Officer, Pub-Mangaldoi Block, under whose territory falls the said Gaon Panchayat, informing the petitioner and other members of the said Gaon Panchayat that as per direction of the respondent No. 2, namely, Deputy Commissioner, Darrang, a meeting would be held, on 20.4.2005, for electing President of the said Gaon Panchayat. Impugning the notice, dated 8.4.2005, aforementioned, the present petitioners have approached this Court with the help of the present writ petition, i.e. WP(C) 3021/2005 seeking to get the notice set aside and quashed on the ground, inter alia, that under the scheme of the Assam Panchayat Act, 1994 (hereinafter referred to as "the said Act"), particularly, Section 6(1)(b) and Section 10 thereof read with Rule 53 of the Assam Panchayat (Constitution) Rules 1995, (in short, "the said Rules") the office of the President has to be filled up directly by holding election for the said post by the State Election Commission, i.e., respondent No. 7 herein, whereas the impugned notice seeks to fill up the office of the President of the said Gaon Panchayat by an indirect election, which is impermissible in law.

WP(C) No. 5211/2005

(ii) While the above writ petition, namely, WP(C) No. 3021/2005 aforementioned was pending for disposal, respondent No. 8 herein filed a writ petition, which gave rise to WP(C) No. 5211/2005, her case being, inter alia, that under the provisions of Section 15 of the said Act, meeting, on the motion of no confidence against the President of a Gaon Panchayat, has to, be convened by the Secretary of the Panchayat, but since the meeting on the motion of no-confidence had been convened, on 1.1.2005, by the President herself, the meeting, so held, was without jurisdiction and the no-confidence motion passed against her as the President of the said Gaon Panchayat shall be treated as non est.

3. I have heard Mr. HRA Choudhury, learned Senior counsel, appearing on behalf of the petitioners in WP(C) No. 3021/2005 and respondent No. 8 in WP(C) No. 5211/2005 I have also heard Mr. BC Choudhury, learned Govt. Advocate, appearing on behalf of the State respondents in both the petitions, and Mr. B. Banerjee, learned Counsel, appearing on behalf of the petitioner in WP(C) No. 5211/2005, and respondent No. 8 in WP(C) No. 3021/2005

4. While considering the present two writ petitions, what may be noted, at the very outset, is that it is Section 6 of the said Act, which embodies the provisions

with regard to the constitution of Gaon Panchayat and lays down, inter alia, as to how the President of a Gaon Panchayat shall to be elected. It may be pointed out that Section 6 reads as follows:

6. Constitution of Gaon Panchayat:

(1) The Gaon Panchayat shall consist of-

(a) ten members to be directly elected by the voters of the territorial constituencies of the Gaon Panchayat area-one from each constituency in the manner prescribed;

(b) president of the Gaon Panchayat, who shall be elected directly by the voters of the territorial constituencies of the Gaon Panchayat area in the manner prescribed.

(2) For the convenience of election, the prescribed authority shall in accordance with such rules as may be prescribed in this behalf by the Government, divide the area of the Gaon Panchayat into ten territorial constituencies and allot one seat for each constituency.

(3) When the Gaon Panchayat is constituted under this Section, the Deputy Commissioner or an officer authorised by the Deputy Commissioner for this purpose shall call a meeting of the Gaon Panchayat (which shall be hereinafter called the first meeting of the Gaon Panchayat) for election of a Vice President from amongst the members in the manner prescribed.

5. A close reading of Section 6 shows that in Section 6(1)(a) and 6(1)(b), the word "election" has been qualified by the word "direct" whereas in Sub-section (3) of the Section 6, which mentions the word "election" in respect of the Vice President, the word "direct" has not been used.

6. It is also transparent from the above that since the members of the Gaon Panchayat are elected "directly by the voters of the area/areas concerned Section 6(1)(a) speaks of, "direct" election and, similarly, since the "President" too is elected by voters of the constituency "directly, Section 6(1)(b) speaks of "direct" election for the President but in the case of election of Vice- President of the Gaon Panchayat, since voters do not "directly"; elect the Vice-President and it is members of the Gaon Panchayat, who, from amongst themselves," elect the Vice President, the word "direct" or "directly" has not been used in Sub-section (3). This, in turn, shows that when the word "election" is qualified by the word "direct, it will mean, in the context in which it has been used under the said Act, only such elections, which are direct in nature.

7. It is common knowledge that in a democracy, there are two methods of electing representatives. If the voters directly participate in the election to elect their representatives, it is known as direct election. The election of the members of the House of Commons in Britain as well as election of the members of the State Assemblies and Lok Sabha, in India, are accepted examples of direct

elections. When, however, voters do not directly participate in the election of their representatives, but only choose a directly elected body of representatives as an intermediary body, which, in turn, elects the final representatives for the people, it is called indirect method of election. Thus, the elections of the speakers of the State Assembly or of Lok Sabha are examples of indirect elections. In indirect election, the directly elected representatives of the people make in-house arrangement in accordance with their laws to elect their ultimate representative. Election of Upper Chamber in France can be cited as an example of indirect election. In pre-independence era, under the Government of India Act, 1935, members of the Provincial Legislative Assembly were directly elected by the people, but the members of the Federal Legislative Assembly were indirectly elected members inasmuch as people, in general, did not elect members of the Federal Legislative Assembly directly; rather, the representatives of the people, elected for the Provincial Legislative Assembly, used to elect members of the Federal Legislative Assembly. In fact, direct and indirect elections form an acknowledged topic of study for students of Political Science.

8. From what has been discussed and held above, it is more than abundantly clear, if I may reiterate, that President of a Gaon Panchayat has to be elected "directly" by the voters of the Gaon Panchayat concerned in the same manner as is elected the members of the Gaon Panchayat. The question, now, is as to how the vacancy, which occurs in the office of the President of a Gaon Panchayat, shall be filled up? The answer to this question is found contained in Section 10 of the said Act, which reads as follows:

10. Election of President and Vice-President of Gaon Panchayat.

(i) After the election of the President of the Gaon Panchayat u/s 6(1)(b) and the Vice-President u/s 6(3), if any, vacancy occurs by reason of death, resignation or removal in the office of the President or the Vice-President, as the case may be, the Gaon Panchayat shall elect the President u/s 6(1)(b); or the Vice-President u/s 6(3), as the case may be:

Provided that no election shall be held if the vacancy is for a period of less than one month.

9. A close reading of the provisions contained in Section 10 makes it transparent that if the vacancy, which occurs in the office of the President on account of death, resignation or removal is for more than one month, the vacant post of the President has to be filled up by holding election in terms of Section 6(1)(b) of the said Act, Section 6(1)(b), I have already indicated above, lays down that the President of the Gaon Panchayat has to be directly elected by the voters of the territorial constituency of the Gaon Panchayat concerned. In short, thus, if the vacancy in the office of the President of a Gaon Panchayat is for a period of more than one month, it is mandatory to have a person elected as President of the Gaon Panchayat in terms of Section 6(1)(b).

10. The next question, which the writ petitions call for determination, is as to

who is the authority responsible for conducting the elections for the office of the President of Gaon Panchayat? My quest for an answer to this question brings me to Rule 53 of the said Rules. The relevant portion of Rule 53 reads as follows:

53. Vacancy in the Offices of the President, the Vice President and the Member of Gaon Panchayat, Anchalik Panchayat or Zilla Parishad. - (1) In the event of occurring vacancy in the offices of either of the President or the Vice-President or the members, the Secretary in respect of Gaon Panchayat, the Executive Officer in respect of Anchalik Panchayat and the Chief Executive Officer in respect of Zilla Parishad shall, immediately inform the Deputy Commissioner or the Sub-divisional Officer concerned as the case may be, with details and the Deputy Commissioner or the Sub-Divisional Officer concerned as the case may be, shall report the matter to the State Election Commission with his comment for necessary action.

(2) To fill up the casual vacancy of the office of the President of Gaon Panchayat, these rules for Panchayat election shall apply.

10A. A close reading of Rule 53 makes it beyond dispute that even a casual vacancy in the office of the President of a Gaon Panchayat has to be filled up in accordance with Section 6(1)(b) read with Section 10 by the State Election Commission and not by the elected members of the Gaon Panchayat.

11. As against the provisions of the said Act and the Rules with regard to the filling up of the casual vacancy in the office of the Gaon Panchayat, it is the Block Development Officer, Darrang, who has, on the direction of the Deputy Commissioner, Darrang, convened the meeting of the elected members of the said Gaon Panchayat to elect the President of the said Gaon Panchayat. The impugned notice is, thus, wholly without jurisdiction and contrary to the scheme, which the statute and the rules made thereunder perceive, for the purpose of filling up of the casual vacancy in the office of the President of the Gaon Panchayat. Such a notice shall, if allowed to stand good on record, cause serious miscarriage of justice.

12. Turning to the grievance of the respondent No. 8 in WP(C) 3021/2005 and of petitioner in WP(C) 5211/2005, it is of immense importance to note that at the time of hearing of the present writ petitions, challenge has been posed by the petitioner, in WP(C) No. 5211/2005, to her removal from the office of the President of the said Gaon Panchayat on sole the ground that u/s 15 of the said Act, the meeting to discuss the motion of no-confidence against the President has to be convened by the Secretary of the Gaon Panchayat and not by the President. In the present case, points out Mr. Banerjee, since the meeting to discuss the motion of no-confidence was convened by the respondent No. 8 in WP(C) 3021/2005, who is petitioner in WP(C) No. 5211/2005, while she was President of the Gaon Panchayat, the meeting held, on 1.1.2005, was without jurisdiction and the resolution passed therein shall be treated as non-est and the petitioner in WP(C) 5211/2005 shall still be treated as President of the said Gaon

Panchayat. The grievance so raised by the petitioner in WP(C) 5211/2005, brings me to Section 15 of the said Act, which reads as follows:

15. No confidence motion against the President and Vice-President. - (1) Every President or Vice-President shall be deemed to have vacated his office forthwith when resolution expressing want of confidence in him is passed by a majority of two third of the total number of members of the Gaon Panchayat. Such a meeting shall be specially convened by the Secretary of the Gaon Panchayat with approval of the President of the Gaon Panchayat. Such meeting shall be presided over by the President if the motion is against the Vice-President, and by the Vice-President, if the motion is against the President.

13. From a microscopic reading of what Sub-section (1) of Section 15 embodies, it is clear that the meeting to discuss the motion of no-confidence against the President of a Gaon Panchayat has to be convened by the Secretary of the Gaon Panchayat on approval thereto received from the President of the Gaon Panchayat concerned. The decision to held such a meeting is really of the President and not of the Secretary. Considered thus, it is not really material that it was the President of the Gaon Panchayat, who had convened the meeting on 1.1.2005, particularly, when I notice that the petitioner, in WP(C) No. 5211/2005, who was removed, as far back as on 1.1.2005, from the office of the President of the Gaon Panchayat, has approached this Court as late as on 21.7.2005 and that too, after the WP(C) No. 3021/2005 aforementioned, had already been filed.

14. Coupled with the above, the Gaon Panchayat is a democratic institution and the President cannot continue if the members of the Gaon Panchayat do not have confidence in him/her. Such being the scheme of the relevant statute, when the no confidence motion had been approved in the said meeting against the petitioner, who had lost confidence of the elected members of the Gaon Panchayat, she cannot be brought back to the office of the President merely on the ground that instead of the Secretary, who ought to have convened the said meeting with approval of the President, it was the President herself, who had convened the said meeting.

15. Because of what have been discussed and pointed out above, I am firmly of the view that the removal of the petitioner of WP(C) No. 5211/2005 and/or of the respondent No. 8 of WP(C) 3021/2005 from the office of the President of Gaon Panchayat needs no interference. However, as the notice, dated 8.4.2005, aforementioned, which stands impugned in WP(C) 3021/2005, is ex facie without jurisdiction and contrary to the entire scheme of the relevant statute, such a notice cannot be allowed to survive.

16. In the result and for the foregoing reasons, WP(C) No. 5211/2005 fails; but the WP(C) No. 3021/2005. The impugned notice, dated 1.1.2005, aforementioned is hereby set aside and quashed. However, respondent No. 7, namely, State Election Commission, is hereby directed to take necessary step(s) for holding election to the officer of the President of the Gaon Panchayat in

accordance with law.

17. With the above observations and directions, both the writ petitions shall stand disposed of.

18. No order as to cost.