

(2004) 08 GAU CK 0016

In the Gauhati High Court

Case No : Writ Petition (C) No's. 1795, 2307, 3085 of 2004 and M.C. No. 1800 of 2004

Aleya Khatun and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Assam Panchayat (Amendment) Act, 1964 — Section 15
Constitution of India, 1950 — Article 226, 329

Citation : (2004) 3 GLT 361

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : G.K. Bhattacharjee, M.H.R. Bhuiyan, N.A. Laskar, A. Mannaf, N.A. Laskar, B. Ahmed, J. Begum and N. Haque, for the Appellant; B. Ahmed, N. Haque, J. Begum, K.C. Mahanta, G.K. Bhattacharjee, M.H.R. Bhuiyan, N.A. Laskar and A. Mannaf, for the Respondent

Judgement

Amitava Roy, J.—The controversy arises out of the process for no confidence motion initiated against the President of Anipur Gaon Panchayat (for short "Panchayat"). The writ petition No. W.P.(C) No. 1795/2004 and W.P.(C) No 2307/2004 were filed by the President, Anipur Gaon Panchayat and the members of the Anipur Gaon Panchayat who initiated the move being aggrieved by the interference made by the Chief Executive Officer, Karimganj Zilla Parishad (for short "Zilla Parishad") have filed W.P.(C) No. 3085/2004. This Court by order dated, 30.3.2004 has stayed the process which is sought to be vacated by an application registered as MC No 1800/2004. As the issues are common, the Petitioners were heard together and are being disposed of by this common judgment.

2. I have heard Mr G.K. Bhattacharjee, Senior Advocate assisted by Mr. M.H.R. Bhuiyan, Advocate for the Petitioner in W.P.(C) Nos. 1795/2004 and 2307/2004 and Dr. B. Ahmed, Advocate for the Petitioner in W.P.(C) No 3085/2004. Mr. K.C. Mahanta, GA, Assam, for the official Respondents was heard.

3. The facts lying in a short compass are that on 25.2.2004 the Respondent members of the Panchayat submitted a requisition with its Secretary requesting him to convene a meeting for moving a no confidence motion against the President, Ms. Aleya Khatun. As she Med to convene the meeting as requested, the Secretary of the Panchayat referred the matter to the Incharge President of Dullarveherra Anchalik Panchayat (hereinafter referred to as the "Anchalik Panchayat") on 11.3.2004. On the instructions of the said authority, the incharge Executive Officer and the Ex-officio Secretary of the Anchalik Panchayat issued notice on 19.3.2004 fixing the meeting on 26.3.2004.

4. In the meantime, the President being aggrieved by the initiation of the process as aforementioned approached this Court with W.P.(C) No. 1795/2004 for interdicting with the same. This Court while issuing notice refused to grant interim relief with the observation that the apprehension of the Petitioner that the Respondents may remove her was prima facie unfounded.

5. Thereafter, the President of the Panchayat presumably moved the President of the Zilla Parishad for his intervention by WT Message dated 22.3.2004 instructed the Executive Officer of the Anchalik Panchayat to defer the date of holding of the meeting. However, by notice dated 26.3.2004 impugned in W.P.(C) No 2307/2004 the meeting was rescheduled on 1.4.2004. This factual background along with the calendar of dates is not in dispute. As referred to above, this Court by order dated 30.3.2004 being prima facie satisfied that the process was being taken in breach of the mandatory requirements of Section 15 of the Assam Panchayat Act, 1964, had stayed the operation of the notice dated 26.3.2004.

6. Meanwhile, the members of the Panchayat backing the no confidence motion being aggrieved by the intervention of the Chief Executive Officer, Zilla Parishad, approached this Court with W.P.(C) No. 3085/2004 contending inter alia that such interference was not only uncalled for but also without any authority of law. On the apprehension being expressed that the President of the Panchayat was likely to siphon off the Rural Development funds at her disposal, this Court on 14.5.2004 directed that status quo as regards the said funds at the disposal of the Panchayat be maintained. The state of affairs as indicated hereinabove continues to as on date.

7. Mr. Bhattacharjee has strongly contended that a bare perusal of the records containing the relevant dates relatable to the impugned process would reveal that there has been a breach of the time limit prescribed by Section 15 of the Act and, therefore, on that ground alone the said process is liable to be adjudged illegal, null and void. According to him, the matter was referred to the Anchalik Panchayat before the expiry of 15 days from the date of receipt of the requisition notice and further, the meeting convened on 26.3.2004 was also beyond the time prescribed by the said provision of the Act. He maintained that in the face of the above contravention of the Act, the so-called interference of the Executive Officer in the process is wholly irrelevant moreso in view of the impugned notice dated 26.3.2004 convening the meeting on 1.4.2004 which however is

incomprehensible under the scheme of Section 15 of the Act.

8. Strongly reacting to the above submissions Dr. Ahmed has forcefully contended that keeping in view the purpose of Section 15 of the Act any breach of the mandate thereof cannot entire to the benefit to the person against whom a no confidence motion is brought According to him, any other interpretation would defeat the very purpose of the said provision. He contended that the process envisaged u/s 15 of the Act is analogous to that of an election process and, therefore, once the requisition notice is placed before the Secretary of the Panchayat, the process is set on motion and no Court of law should interfere with the same till the exercise is completed. He was particularly critical of the role of the Chief Executive Officer of the Zilla Parishad, and argued that a plain reading of Section 15 of the Act reveals that no such role has been attributed to the said authority for intercepting the process at any stage. According to him, the marginal breach of the prescribed time limits in the said provision of the Act cannot vitiate the process and when two interpretations are available the one, which advances the purpose of a legislation ought to be accepted. Section 15 of the Act having been incorporated to weed out undesirable incumbents of the office of the President or the Vice President of a Panchayat, this Court in exercise of its power of judicial review would not accept a view that would render the provision otiose.

9. Before advertng to the rival contentions of the parties it would be appropriate to set out the law as contained in Section 15 of the Act the, relevant portion of which is extracted herein below.

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. In case such a meeting is not convened within a period of fifteen days from the date of receipt of notice the Secretary of the Gaon Panchayat shall within three days, refer the matter to the President of the concerned Anchalik Panchayat, who shall convene the meeting within seven days from the date of receipt of the information from the Secretary of the Gaon Panchayat and preside over such meeting.

In case of the President of the Anchalik Panchayat does not take action as above, within the specified seven days time, the concerned Gaon Panchayat secretary shall inform the matter to the Deputy Commissioner/Sub-Divisional Officer (civil) as the case may be within three days after the expiry of the stipulated seven days time and the concerned Deputy Commissioner/sub-Divisional Officer (civil)

shall convene the meeting within seven days from the date of the receipt of the information with intimation to the Zilla Parishad and the Anchalik Panchayat and preside over the meeting so convened:

Provided that the concerned Deputy Commissioner/sub-Divisional Officer (C) as the case may be, in case of his inability to preside over the meeting, may depute one Gazetted Officer under him not below the rank of Class-I Gazetted Officer to preside over the meeting. Provided further that when a no-confidence motion is lost, no such motion shall be allowed in the next six months.

10. A bare perusal of Section 15 of the Act makes it patently clear that a meeting for moving a no confidence motion against a President or a Vice-President has to be specially convened by the Secretary thereof with the consent of the President. In case such meeting is not convened within 15 days from the date of receipt of the notice, the Secretary of the Panchayat has to within three days refer the matter to the President of the concerned. Anchalik Panchayat who shall then convene the meeting within seven days from the date of receipt of the information from the Secretary of the Panchayat and preside over the same. In case the President of the Anchalik Panchayat does not take the action as prescribed within the time limit specified, the Secretary of the Panchayat would have to inform the matter to the Deputy Commissioner or the Sub-Divisional Officer (Civil) as the case maybe within three days after the expiry of the stipulated seven days and then the concerned Deputy Commissioner or the Sub-Divisional Officer (civil) as the case may be shall have to convene the meeting within seven days from the date of receipt of the information with the intimation to the Zilla Parishad and the Anchalik Panchayat and preside over the meeting.

11. The above provision of the Act, therefore, comprehends a three tier system to deal with a requisition notice for a no confidence motion against the President or of a Vice President of the Gaon Panchayat. The time limits of the corresponding stages have been clearly outlined. The opening line of Section 15 of the Act demonstrates that the President or the Vice-President shall be deemed to have vacated his office as and when a no confidence motion is passed by majority of 2/3 members of the Panchayat. It follows, therefore, that no sooner a resolution expressing want of confidence is passed by the required number of the members of the Panchayat against its President or the Vice President, by fiction of law he would be construed to have vacated the office. It is in this back ground that the requirements of the said section of the Act would have to be interpreted.

12. The procedure prescribed and time limits restricted extend the statutory safe guards to the President or the Vice President facing a no confidence motion. It is thus incumbent on the authorities concerned to adhere to the prescription of the section and to be vigilant to ensure a strict compliance thereof having regard to the disastrous consequences that would follow after a no confidence motion is passed there cannot be two opinions that-the requirements are mandatory in nature and no deviation there from is permissible. If that be not so, the procedure prescribed and time limits provided would be rendered redundant and

the whole process will be at the disposal of the authorities concerned as well as the members of the Panchayat supporting the motion to carry it in a way as per their convenience which cannot be the intention of the legislature.

13. As alluded above there is no wrangle at the bar that there has been a breach of time limits till the notice dated 19.3.2004 was issued by the secretary of the Anchalik Panchayat convening the meeting on 26.3.2004. The requisition notice having been received on 25.2.2004 the matter was referred to the Anchalik Panchayat before the expiry of 15 days, thereafter, the date 26.3.2004 fixed for holding the meeting was also beyond the period as contemplated u/s 15 of the Act.

14. In view of the opinion expressed with regard to the nature of the requirements and edicts contained in Section 15 of the Act, the inescapable conclusion has to be that the process is vitiated by non-compliance of the provisions of the Act.

15. This Court while declining to grant the interim relief in, W.P.(C) No. 1795/2004 did not dilate on the purport of the dictates of Section 15 of the Act. The writ petition was filed being aggrieved by the initiation of the process by the requisition notice dated 25.2.2004. The notice dated 19.3.2004 provided the cause of action for W.P.(C) No. 2307/2004. The contention of Dr Ahmed that the second writ petition is barred by constructive res judicata, therefore cannot be entertained. The analogy of elections as has been introduced by Dr. Ahmed also appears to be misplaced, inasmuch as, while there is a Constitutional bar under Article 329 of the Constitution prohibiting such interference once the election process commences with the election notification, there is no such impediment either in the Constitution or in the Act prohibiting this Court to interfere in matters involving the issue in hand in exercise of power under Article 226 of the Constitution. The submissions of Dr. Ahmed to the contrary do not appeal to this Court. In view of the fact that the process stood vitiated by the contravention of the Act even before the interference by the Chief Executive Officer of the Zilla Parishad and that in face of the notice dated 26.3.1994, the WT message dated 22.3.2004 fades into insignificance and W.P.(C) No. 3085/2004 has been rendered infructuous.

16. In the wake of the above and on a consideration of the entire facts and circumstances qua Section 15 of the Act and the findings recorded hereinabove, I am constrained to hold that the process of no confidence motion initiated by the requisition notice dated 25.2.2004 against Ms. Aleya Khatun, President, cannot be sustained in law and is, therefore, adjudged illegal, unconstitutional, null and void. As a result, W.P.(C) No. 1795/2004 and W.P.(C) No 2307/2004 succeed and are allowed. The W.P.(C) No. 3085/2004 and the Misc. Case No. 1800/2004 are accordingly dismissed. No costs.