

(2021) 07 GAU CK 0005

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3195 Of 2021

Anjuma Ahmed

APPELLANT

Vs

State Of Assam And 14 Ors

RESPONDENT

Date of Decision : 01-07-2021

Acts Referred:

Evidence Act, 1872 — Section 114

Bombay Municipal Borough Act, 1925 — Section 35(3)

Citation : (2021) 07 GAU CK 0005

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : A Chamuah

Judgement

1. Heard Mr. A. Chamuah, learned counsel for the petitioner as well as Mr. M. Nath, learned Standing counsel for the P&RD appearing for the

respondent nos.1, 3 and 4. Ms. S. Sarma, learned Government Advocate appearing for the respondent no.2 as well as Mr. S.K. Ghosh, learned

counsel appearing for the respondent no.6/ Caveator who submits that he holds the Vakalatnama for the respondent nos.7 to 15 and he would be filing

the same.

2. Assailing the order No.DBP.1/2021/21 dated 18.06.2021 issued by the Deputy Commissioner, Dhubri to hold a meeting for the no-confidence

motion against the petitioner and resolution taken in meeting dated 21.06.2021, the petitioner has filed this writ petition on the ground that the notice

regarding no-confidence against the petitioner who was the President of No.72 Harirhat Gaon Panchayat was never served on the petitioner and that

purported notice issued by the Deputy Commissioner, Dhubri hold the special meeting for no-confidence motion on 21.06.2021 was also never served

on the petitioner.

3. In view of the nature of grievance raised in the present writ petition, let a notice returnable on 16.07.2021 be issued. Also issue notice on the prayer for interim relief.

4. The Secretary of Harirhat Gaon Panchayat (respondent no.3) shall submit a proof of service of the requisition to hold no-confidence against the petitioner by the 10 ward members and the Deputy Commissioner (respondent no.2) shall submit a proof of service of notice to hold special meeting on 21.06.2021 to consider no-confidence motion against the petitioner. The Covid pandemic situation shall not be acceptable as a ground for not transmitting the proof of requisition and notice to hold special meeting. Both the respondents are put to notice on non-transmission of the proof of service, adverse inference will be drawn by the Court under section 114, Illustration (g) of the Evidence Act against the party withholding it.

5. It may be pertinent to mention that the learned counsel for the respondent no.6 Caveator had placed reliance on the case of Mumtaz Rana Laskar

Vs. State of Assam and ors. (2006) 2 GLR 5. In the said case the Division bench of this Court while holding the provision of section 15 (1) to be not mandatory had rendered the decision under the following factual matrix:

19. In Shyabuddinsab Mohidinsab Akki v. Gadag-Betgeri Municipal Borough and Ors., (1955) 1 SLR 1268 an interesting question

arose for consideration of the Apex Court. Section 35(3) of Bombay Municipal Borough Act required the notice of special general meeting

to be given in writing but the same had not been given in writing but had only been intimated to all the Councillors who were present at a

prior meeting and the notice was not served in the manner indicated in Sub-section (3) of Section 35 of the Act. It had been contended that

the notice required Section 35(3) contemplates written notices be served and published in a manner specified, and that the meeting on

3.8.1954 could not be said to have been held after complying with the terms of Sub-section (3) of Section 35. The contention was that the

special meeting convened for the purposes of electing President/Vice-President was vitiated. The Supreme Court observed:

It is true that the notice of the meeting of 3.8.1954 had not been given in writing but had only been intimated to all the Councillors who were

present at the meeting of 30.7.1954. The notice amply satisfies the requirement of three days clear notice, though it was not in writing...the

provision of Section 35(3) are directory and not mandatory and that any omissions in the manner of service of the notice are mere

irregularities which would not vitiate the proceedings unless it was shown that those irregularities had prejudicially affected the

proceedings...if has not been either alleged or proved that the irregularities in the service of the notice or the omissions complained of had

prejudicially affected the proceedings.... It must, therefore, be held that the meeting of 3.8.1954 in substance, though not in form, complied

with the requirements of the law for holding a valid special general meeting and that, therefore, that meeting was not invalid.â??

6. The aforesaid passage would indicate that notwithstanding that no notice was physically served but the intimation was given to all the councilors

who were present in the meeting on 30.07.1954 which was constituted to satisfy the requirement of 3 days clear notice.

7. It is in that context that the Court has directed the respondent no.3 to produce before the Court of the proof of notice of service.

8. List the matter on 16.07.2021 to consider the interim prayer of the petitioner.

The learned Standing counsel for the P&RD is permitted to download a copy of the order from the website to intimate the respondent nos.2 and 3 to

act accordingly.