

(2015) 12 GAU CK 0005
In the Gauhati High Court
Case No : WP(C) 5134/2015

Anowara Begum

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 07-12-2015

Acts Referred:

Assam Panchayat Act, 1994 — Section 15, 15(1), 15(2), 15(5), 18

Citation : (2016) 1 GLT 648

Hon'ble Judges : Manojit Bhuyan, J.

Bench : Single Bench

Advocate : A.M. Buzarbaruah, Senior Advocate and J.H. Saikia, for the Appellant; B. Dutta Advocate and J.M. Konwar, for the Respondent

Final Decision : Allowed

Judgement

Manojit Bhuyan, J.—Heard Mr. AM Buzarbaruah, learned Senior counsel assisted by Mr. JH Saikia, Advocate, representing the petitioner. Also heard Ms. B Dutta, learned Senior counsel assisted by Ms. JM Konwar, Advocate, representing Respondent Nos. 1, 2, 3, 4, 6 and 7, Mr. DA Kaiyum, learned counsel representing Respondent No. 5, Mr. MK Choudhury, learned Senior counsel assisted by Mr. J Hussain, Advocate, representing Respondent Nos. 8 to 15.

2. The petitioner, who was the President of 65 No. Kurihamari Barsulia Gaon Panchayat, under Barkhetri Anchalik Panchayat, Narayanpur, Mukalmua, puts to test the Notice dated 3.7.2015 issued under the hand of the Executive Officer of the aforesaid Anchalik Panchayat, informing the President i.e. the petitioner of the convening of the special meeting on 6.7.2015 pursuant to the order dated 26.6.2015 in WP(C) 2943/2015. Challenge is also made to the proceedings and Resolutions adopted in the said Meeting of 6.7.2015.

3. Brief facts unfolding and leading to the issuance of the Notice dated 3.7.2015 can be had as follows:

"i) On 24.4.2015, as many as 9 (nine) members of the 65 No. Kurihamari

Barsulia Gaon Panchayat (hereinafter alluded to as the "Gaon Panchayat") made a requisition under sub-section (5) of Section 15 of the Assam Panchayat Act, 1994 (hereinafter referred to as the "Act") expressing want of confidence in both the President and the Vice-President of the Gaon Panchayat. The said Requisition Notice was addressed to the Secretary of the Gaon Panchayat, who in turn informed the President i.e. the petitioner vide letter dated 28.4.2015.

ii) The Secretary of the Gaon Panchayat brought the matter to the knowledge of the President of Barkhetri Anchalik Panchayat (hereinafter alluded to as the "Anchalik Panchayat") as per sub-section (5) of Section 15 of the Act by letter dated 2.5.2015. The holding of the scheduled special meeting on 18.5.2015 was informed to the President/Vice President/Members of the Gaon Panchayat by a letter of the Executive Officer of the Anchalik Panchayat dated 16.5.2015.

(iii) The special meeting was held on the scheduled date and time i.e. 18.5.2015 at 11.00 AM under the Chairmanship of the President of the Anchalik Panchayat. The agenda for discussion on the no-confidence motion brought against the petitioner was presented by the Executive Officer of the Anchalik Panchayat. Although the petitioner was not present in the said meeting, the nine requisitionists/Members of the Gaon Panchayat present in the meeting expressed their opinions and accordingly Resolution No. 1 was passed/adopted to the effect that the motion of no-confidence brought against the petitioner stood unanimously accepted by oral votes.

(iv) The proceedings of the special meeting dated 18.5.2015 was challenged by the petitioner in WP(C) 2943/2015. By order of this Court dated 22.5.2015, Notice was issued with interim stay of the proceedings dated 18.5.2015 primarily on the ground that the motion had been passed by oral votes and not by means of secret ballot, which is a statutory requirement under sub-section (5) of Section 18 of the Act and reinforced by the decision in the case of Forhana Begum Laskar Vs. State of Assam and Others, .

(v) The said WP(C) 2943/2015 stood finally disposed of on 26.6.2015. This Court, by making reference to an order passed in another case i.e. WP(C) 3164/2015, issued direction to the appropriate authority to convene the special meeting against the petitioner by adopting appropriate resolution as per Section 15 of the Act within the period stipulated therein. The operative part of the order dated 26.6.2015 passed in WP(C) 2943/2015 is reproduced as under:

"Mr. MK Choudhury, learned Sr. Counsel, representing the private respondents submits that having regard to the grievance of the petitioner, the writ petition is liable to be disposed of providing holding of the fresh special meeting to discuss the no-confidence motion resolution against the petitioner. In this connection he has referred to the order of this Court dated 1.6.2015 passed in WP(C) No. 3164/2015. By the said order, under similar circumstance, direction was issued for holding of fresh special meeting to discuss the no-confidence motion resolution. Following the said decision, the writ petition is disposed of directing

the appropriate authority to convene the special meeting against the petitioner with adoption of appropriate resolution as per the stipulation made in Section 15 of the Assam Panchayat Act, 1994, within 15 days from today to discuss the no-confidence motion resolution in question.

With the above direction, the writ petition is disposed of."

(vi) Thereafter, Notice dated 3.7.2015, as referred to above, was issued, followed by the resolutions adopted in the special meeting dated 6.7.2015 whereby 8 (eight) members of the Gaon Panchayat expressed want of confidence in the petitioner in his capacity as the President of the said Gaon Panchayat."

4. Questioning the legality and validity of the Notice dated 3.7.2015 and all consequential actions, Mr. AM Buzarbaruah submits that the Notice dated 3.7.2015 having marked a clear departure from the mandate under Section 15 (5) of the Act, as such, the same is non-est and without jurisdiction. Reference is made to the order of this Court dated 26.6.2015 in WP(C) 2943/2015 whereby a clear direction was made to the appropriate authority to convene the special meeting as per stipulation made in Section 15 of the Act. Mr. Buzarbaruah submits that as per provision under Section 15 of the Act, statutory obligation is cast upon the President of the Anchalik Panchayat to convene the meeting and preside over it. Objection is raised, in that, pursuant to the Court's order for convening the special meeting as per Section 15 of the Act, the Executive Officer of the Anchalik Panchayat had, on his own, issued the Notice dated 3.7.2015 instead of the same being issued by the President of the said Anchalik Panchayat. The pin-pointed challenge to the Notice is that the President of the Anchalik Panchayat alone has the power to arrange to convene the meeting and not the Executive Officer. As such, the Notice dated 3.7.2015 is per se without jurisdiction and on this count alone the proceedings of the special meeting dated 6.7.2015 is liable to be adjudged illegal, null and void. Besides relying upon the mandate under Section 15 (5) of the Act, Mr. Buzarbaruah also refers to the following decisions:

"(i) Basanti Das Vs. State of Assam and Others,

(ii) Dipali Talukdar Vs. State of Assam and Others,

(iii) Swapna Sen Vs. State of Assam and Others, "

An additional submission is also made that despite the statutory flaw in the Notice dated 3.7.2015, even the Notice was not served upon the petitioner.

5. Mr. MK Choudhury, learned Senior counsel representing the 8 (eight) members who had expressed want of confidence in the petitioner in the special meeting dated 6.7.2015 submits that there is no infirmity in the Notice and the same was issued pursuant to clear direction of this Court in WP(C) 2943/2015. It is also contended that the proceedings had originally arisen from the Requisition Notice dated 24.4.2015 and the same was in terms of sub-section (5) of Section 15 of the Act, meaning thereby, that want of confidence was expressed simultaneously

in both the President and the Vice-President of the Gaon Panchayat. The Notice under challenge had been issued by the Executive Officer as part of his ministerial functions upon directions so issued by the President of the Anchalik Panchayat. In that view of the matter, the Notice dated 3.7.2015 and the proceedings of the meeting dated 6.7.2015 cannot be called into question. Mr. Choudhury, to buttress his arguments, places reliance on:

- "(i) Swapna Sen Vs. State of Assam and Others,
- (ii) Habibur Rahman Vs. State of Assam and Others,
- (iii) 2010 (5) GLT 117 (Akkabar Ali (Md.) v. State of Assam)
- (iv) Shri Jugal Borah and others Vs. The State of Assam and others--> "

6. The issue for adjudication is on a narrow compass and involves as to whether or not the Notice dated 3.7.2015 had been issued in compliance of Section 15 of the Act and what would be the consequence thereof either way. Before delving into the issue for adjudication, having regard to the provisions under sub-section (5) of Section 15 of the Act as well as on a conspectus of the decisions relied upon by the respective parties, it would be apposite to refer to the various orders of this Court passed in the instant proceedings and events arising therefrom.

7. By order of this Court dated 8.9.2015 the State counsel was asked to obtain the records pertaining to the special meeting dated 6.7.2015 from the office of the Respondent No. 6. The records were duly produced on the next date of listing of the case i.e. 11.9.2015. However, on perusal of the same it was found that the records so produced were incomplete. Also, certain documents therein did not inspire the confidence of this Court. Accordingly, the Respondent No. 6 was directed to furnish the entire set of records commencing from the Requisition letter dated 24.4.2015 until the Resolution that was adopted on 6.7.2015. The matter was adjourned to 18.9.2015. The Notice dated 3.7.2015 of the Executive Officer of Barkhetri Anchalik Panchayat was not found. Also, there appeared a hand-written letter of the President of the said Anchalik Panchayat, not rendered in the office stationery, showing that the Executive Officer of the Anchalik Panchayat had been requested to convene a meeting on 6.7.2015 for discussion on the No-Confidence motion. The letter was dated 3.7.2015. The authenticity of the said letter being put to question, a direction was issued to the Respondent No. 5, i.e. the President of Barkhetri Anchalik Panchayat to file affidavit explaining its authenticity and the circumstances under which the same was issued, if at all done.

8. The primary issue being the compliance of sub-section (5) of Section 15 of the Act, the authenticity of the letter dated 3.7.2015 became of vital importance, inasmuch as, if the same had been issued by the President of the Anchalik Panchayat, it would mean that the Executive Officer of the said Panchayat had acted under the instructions of the President and to that end no infirmity can be attached to the Notice dated 3.7.2015 of the Executive Officer.

9. The affidavit filed by the Respondent No. 5 in terms of the order of the Court dated 18.9.2015 makes interesting and shocking revelations. At paragraph 2 thereof it is stated that the Notice dated 3.7.2015 was issued by the Executive Officer regarding the meeting to be held on 6.7.2015 and he was requested by the said Executive Officer to preside over it. In the said meeting the no-confidence motion was passed by means of secret ballot. At paragraph 3 the Respondent No. 5 disclosed that the Executive Officer did not seek his permission or approval for convening the meeting on 6.7.2015 prior to issuance of the Notice dated 3.7.2015. It was only after 10/12 days of the meeting that the Executive Officer had asked the Respondent No. 5 to issue a letter instructing him to convene the meeting. Pressure was mounted upon the Respondent No. 5 by some local political leaders to write the letter showing the date of issue on or before 3.7.2015. Eventually, the Respondent No. 5 wrote a letter in the last part of July 2015 on a loose paper (dista paper) asking the Block Development Officer, Barkhetri to convene a meeting for discussion of the no-confidence motion brought against the petitioner. The date of the letter was shown as 3.7.2015. No copy of the letter was, however, retained by the Respondent No. 5.

10. A counter-affidavit was filed by the Respondent No. 13 denying the statements, averments and allegations made by the Respondent No. 5 i.e. the President of Barkhetri Anchalik Panchayat in his affidavit. In the said counter affidavit statement is made that firstly on 3.7.2015 a special meeting was held and motion passed against the Vice-President of the Gaon Panchayat under the chairmanship of the Respondent No. 5. After the meeting the Respondent No. 5 had asked the BDO-cum-Executive Officer to convene another special meeting on 6.7.2015 for fresh discussion of no-confidence motion brought against the petitioner. In this regard, the Respondent No. 5 had himself issued a letter dated 3.7.2015 in presence of the 8 (eight) Ward Members i.e. the Respondent Nos. 8 to 15. It is contended that only after receiving approval, the Executive Officer had issued the Notice dated 3.7.2015 in the afternoon and the same was served upon the Ward Members and to the petitioner on the same day. Further, that the husband of the petitioner had acknowledged receipt of the Notice by putting his signature on the reverse side of the Notice, a copy of which was supplied to the Respondent Nos. 8 to 15 by the Executive Officer on request made. Also, the resolution adopted in the meeting dated 6.7.2015 had been accepted and approved by the Respondent No. 5 by putting his signature.

11. It is one thing to say that the Notice dated 3.7.2015 was served upon the petitioner and another to say that the meeting dated 6.7.2015 had been convened in strict accordance with sub-section (5) of Section 15 of the Act. The pin-pointed challenge has been that under the said provision it is only the President of the Anchalik Panchayat who is to arrange convening of the meeting. In other words, the issue is not with regard to due service of the Notice upon the petitioner and the Ward Members but with regard to who initiated the issuance of the Notice. Was it a unilateral act of the Executive Officer or rendered upon instructions of the President of the Anchalik Panchayat. This is the sole issue for

determination, having regard to the facts obtaining, the relevant statutory provision and the judicial pronouncements of the Court on the legal issue.

12. As alluded to above, the point for determination is whether or not the Notice dated 3.7.2015 had been issued in terms of sub-section (5) of Section 15 of the Act. This takes us to the said relevant statutory provisions and the ratio laid down by this Court in various decisions on it. To begin with, the relevant portion of sub-section (5) of Section 15 is reproduced below:

"(5) If, under sub-section (1), the members of the Gaon Panchayat express want of confidence both in the President and Vice-President of the Gaon Panchayat at the same time and issue notices, the Secretary of the Gaon Panchayat, within seven days from the date of receipt of such notices, shall report the matter to the President of the concerned Anchalik Panchayat who shall arrange to convene the meeting within fifteen days from the date of receipt of the intimation, separately, to consider the motion against the President first and to consider the motion against the Vice-President next day and shall preside over both the meetings. The President of the concerned Anchalik Panchayat presiding the meeting shall have no vote."

(emphasis supplied)

13. The statute is clear to the extent that it is the President of the concerned Anchalik Panchayat who is to arrange convening of the meeting. In the case of Basanti Das (*supra*) the legal issue was with regard to the scheme under subsection (1) of Section 15 of the Act and the meaning of the expression "convene". The case set out therein is that 7(seven) members of the Gaon Panchayat had submitted a requisition before Basanti Das in her capacity as the President of the Gaon Panchayat. Under the scheme of Section 15, however, the matter travelled to the Anchalik Panchayat and the Executive Officer of the said Anchalik Panchayat had issued a Notice convening a special meeting of the Gaon Panchayat for discussion on the motion of no-confidence. The question that arose for consideration was whether the action of the Executive Officer was *per se* without jurisdiction when Section 15 vested power only upon the President of the Anchalik Panchayat to convene the meeting in the facts of that case. In no uncertain terms the Court held that the Executive Officer of the Anchalik Panchayat had no authority under the law to convene the meeting. In so far as the meaning of the expression "convene" is concerned, the Court held that the same cannot be given a different meaning from that of the expression "hold" and, therefore, the requirement of convening a meeting under Section 15 essentially conveys the edict of actually holding the meeting. The case in Dipali Talukdar (*supra*), although laid in the same legal premises as in the case of Basanti Das (*supra*), also set out the provisions under sub-section (5) of Section 15 of the Act to the extent that a flexibility is noticed therein where the President of the concerned Anchalik Panchayat, on being requested by the Secretary of the Gaon Panchayat, has to arrange to convene the meeting. This Court held that while the legislature in its wisdom had provided some elasticity at some stages,

however, having regard to the irreversible consequences that would visit an elected President, a strict interpretation on the laid down procedure has to be maintained. Any departure, however minimal, would be at the cost of invalidating the related process. The provision under the statute, therefore, has to be in perfect harmony to its intention.

14. In the case of Swapna Sen (*supra*), rendered by a Division Bench of this Court, the legal issues in Basanti Das (*supra*) and Dipali Talukdar (*supra*) had fallen for consideration. The facts, however, were distinct. The Secretary of the Gaon Panchayat by a communication dated 29.4.2005 had informed and requested the President of the Anchalik Panchayat to convene a meeting of the Gaon Panchayat, as required under Section 15(1) of the Act. The President, in his turn, inscribed on the body of the said communication directing the Secretary of the Anchalik Panchayat to take appropriate action and accordingly the Secretary informed Swapna Sen about the convening of the meeting. In this context, the Division Bench held that the issuance of the Notice by the Secretary of the Anchalik Panchayat was only a ministerial action taken on the basis of the decision of the President of the Anchalik Panchayat. As such, it could not be said that the President of the Anchalik Panchayat did not convene the meeting of the Gaon Panchayat merely because the Secretary of the Anchalik Panchayat had signed on the Notice.

15. What can be gathered from the aforesaid three decisions is that an order passed by the President of the Anchalik Panchayat for convening a meeting and acted upon by the Secretary of the Anchalik Panchayat by issuing notice under his signature is in due compliance of the requirement under Section 15(1) of the Act. Although some flexibility/elasticity is provided under Section 15(5) of the Act, compared to the rigour under Section 15(1) of the Act, a strict interpretation of the provision is called for. Else, any departure therefrom would only go to invalidate the procedure and will frustrate the purpose and intention of the related process. Not to forget that the salient principle on interpretation of statutes is that the Court has to interpret the law according to the intention of the legislature, which is to be ascertained from the language employed therein. If the words are unambiguous, clear and explicit, there is no need to take recourse to any rule of interpretation. The Court is not to add words to a statute or to read words into it which are not there, especially when the literal reading produces an intelligible result.

16. The case laws relied upon by Mr. Choudhury, save and except the case of Swapna Sen (*supra*) which has already been alluded to above, may now be noticed. In both the cases i.e. Habibur Rahman (*supra*) and Jugal Borah (*supra*), the legal issues were with regard to Section 15(2) of the Act, which reads as under:

"(2) The requisition for such a special meeting under sub-section (1) shall be signed by not less than one third of the total number of members of the Gaon Panchayat and shall be delivered to the President or Vice-President as the case

may be, of the concerned [Gaon Panchayat] with information to the Deputy Commissioner of the District."

The aforesaid provision deals with the procedure for making requisition (emphasis supplied) for a special meeting at the instance of the required number of Members of the Gaon Panchayat. The ratio laid down by this Court in the context of Section 15(2) is that as soon as the President or the Vice-President, as the case may be, against whom the no-confidence motion has been brought, is delivered with a copy of such requisition for a special meeting under Section 15(1) of the Act, the provision contained in Section 15(2) is complied with. With utmost respect, the case in *Habibur Rahman (supra)* and *Jugal Borah (supra)* are a far cry from the issue in hand and are without relevance. The issue here is with the validity and legality of a Notice unilaterally issued by the Secretary/Executive Officer of an Anchalik Panchayat and not with regard to a Requisition by the members. The issue here is in respect of the rigour under Section 15(1) and Section 15(5) of the Act and the law laid down by this Court in the case of *Basanti Das (supra)*, *Dipali Talukdar (supra)* and by the Division Bench in *Swapna Sen (supra)*. The aforesaid two cases, relied upon by Mr. Choudhury, do not come to his aid.

17. Finally, in the case of *Akkabar Ali (supra)*, relied upon by Mr. Choudhury, the issue was with regard to the failure on the part of the Secretary of the Gaon Panchayat in referring the matter to the jurisdictional Anchalik Panchayat within 3 days and consequent non-convening of the meeting within the time prescribed in Section 15 of the Act. The question for consideration was as to whether the stipulations of time limits are directory or mandatory in nature. To this end, reference was made to the Division Bench judgment in *Mumtaz Rana Laskar Vs. State of Assam and Others*, and in the Full Bench judgment in *Forhana Begum Laskar Vs. State of Assam and Others*, and on the attendant facts this Court held that the failure to adhere to the time limit in holding the meeting will not be fatal. The Full Bench decision was relied upon to say that each and every deviation in respect of convening the meeting to discuss the no-confidence will not be fatal. The test is whether the petitioner (*Akkabar Ali*) had the confidence of the majority of the members. In specific terms, the case of *Akkabar Ali (supra)* also do not come to the aid of the respondents in the present case - the fact situation and legal issues being completely distinct and different.

18. The unambiguous, clear and explicit provision under Section 15(5) is that the President of the Anchalik Panchayat is to arrange to convene the meeting. The role of the Executive Officer of the Anchalik Panchayat is altogether absent in so far as convening the meeting is concerned. Notwithstanding the absence of any power and jurisdiction, the Executive Officer had also conducted himself in a manner abhorrent to law. As brought on record by the respondent No. 5, the Executive Officer (Respondent No. 6) not only did not seek permission or approval prior to issuance of Notice dated 3.7.2015, remotely assuming there is a requirement under the law to that end, even his action in making the

respondent No. 5 to issue a letter after 10/12 days of the special meeting dated 6.7.2015 on a loose paper speaks volumes on his conduct as a responsible officer. The original records requisitioned from the office of the Executive Officer of Barkhetri Anchalik Panchayat contains the said letter with the date of issue shown as 3.7.2015 rendered in a loose paper and not in the office stationery. The history of the letter has been amply described in the affidavit of the respondent No. 5.

19. The scheme under Section 15(5) of the Act inheres power only upon the President of the Anchalik Panchayat to arrange for convening the meeting of the Gaon Panchayat in a situation where want of confidence is expressed in both the President and the Vice-President of the Gaon Panchayat, as in the instant case. To permit the Executive Officer of the Anchalik Panchayat to convene such a meeting will only go to emasculate the rigour of the provisions under Section 15(5) of the Act. The totality of the facts and circumstances of the case leads to the inevitable conclusion that the Notice dated 3.7.2015 issued by the Executive Officer of Barkhetri Anchalik Panchayat is not sustainable in law and is shorn of any legal support. Accordingly, the same stands quashed. The consequential proceedings i.e. the Meeting dated 6.7.2015 and the Resolutions adopted therein are also set aside and quashed. The writ petitioner is directed to be reinstated to the office of the President of 65 No. Kurihamari Barsulia Gaon Panchayat. However, all concerned will be at liberty to initiate fresh proceedings against the petitioner, if so advised. Needless to say that in case a fresh proceeding is set in motion, the same shall proceed in strict accordance to the procedure prescribed under Section 15 of the Act.

20. Before parting with the case it is observed that the conduct of the Respondent No. 6 i.e. the Executive Officer of Barkhetri Anchalik Panchayat did not inspire the confidence of the Court. To this end, the Deputy Commissioner, Nalbari shall make an enquiry and proceed accordingly after giving due opportunity to the Respondent No. 6 of being heard.

21. Resultantly, this writ petition stands allowed and the parties are left to bear their own costs. The records are returned herewith.