

(2021) 06 GAU CK 0063

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3001 Of 2021

Dewan Musharaf Hussain

APPELLANT

Vs

State Of Assam And 16 Ors

RESPONDENT

Date of Decision : 08-06-2021

Acts Referred:

Assam Panchayat Act, 1994 — Section 15, 17(3)

Citation : (2021) 06 GAU CK 0063

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : A R Bhuyan

Judgement

1. The Court proceedings have been conducted through Video Conference.
2. Heard Mr. A.R. Bhuyan, learned counsel for the petitioner.
3. Issue notice, returnable on 23.06.2021.

Mr. M. Nath, learned standing counsel, PNRD, accepts notice for respondent Nos.1, 2, 4, 6 and 7 and Ms. M. Bhattacharjee, learned State counsel accepts notice for respondent No.3.

Petitioner to take steps for service of notice on the remaining respondents by registered post with A/D.

Additionally, service by dasti as well as through registered email, if available, is also permitted.

Steps be taken within three days.

Learned counsel for the petitioner also shall furnish copies of the petition to the remaining respondents by way of dasti/personal service, which are certified to be true copies and file an affidavit.

4. The petitioner has prayed for an interim order seeking suspension of the resolution of the no confidence motion moved on 06.05.2021 pursuant to

the notice dated 04.05.2021 by which the petitioner was removed from the office of the President of 39 No. Madhya Betbari Gaon Panchayat and the

letter dated 27.05.2021 issued by the respondent No.4 conveying the approval of the proceedings of the no confidence moved against the petitioner.

5. The petitioner submits that the aforesaid no confidence motion as well as the notice issued were illegal and not consistent with the provisions of the

Assam Panchayat Act, 1994.

6. According to the petitioner, for the purpose of moving of no confidence motion against the President of a Gaon Panchayat, the same has to be

undertaken in tune with Section 15 of the aforesaid Act, which requires that a meeting for no confidence motion can be convened by the Secretary of

the Gaon Panchayat with the approval of the President of the Gaon Panchayat. If such meeting is not convened by the President within a period of 15

days from the date of receipt of notice, the Secretary of the Gaon Panchayat shall thereafter within 3 days refer the matter to the President of the

concerned Anchalik Panchayat, who shall convene the meeting within 7 days from the date of receipt of information from the Secretary of the Gaon

Panchayat.

7. It is the case of the petitioner that the Secretary of the aforesaid 39 No. Madhya Betbari Gaon Panchayat never forwarded the copy of the

requisition made by 10 members of the Panchayat for convening a special meeting of no confidence against the President vide their petition dated

12.04.2021 to the petitioner. It has been submitted that even assuming that the said petition dated 12.04.2021 was submitted to the petitioner on

12.04.2021, the petitioner was entitled to convene the meeting within 15 days i.e. by 28.04.2021 [by not counting 12.04.2021 in terms of decision of

this Court in Mocklishur Rahman Laskar Vs. State of Assam, (2017) 4 GLT 933] as the statutory period of 15 days would expire only on 28.04.2021.

However, without waiting for the aforesaid statutory period of 15 days, the Secretary referred the matter to the President of the Pakabetbari Anchalik

Panchayat on 27.04.2021. According to the petitioner, the President of the said Anchalik Panchayat ought not have taken note of the said requisition

till lapse of 15 days, but it was accepted on the 14th day. Further, even assuming

that the President of the Anchalik Panchayat was properly moved, since this was a special meeting, it could have convened the meeting by giving a clear 3(three) daysâ?? notice, as provided under Section 17(3) of the Act, which had not been also followed.

8. This Court is, prima facie, satisfied that the provisions of the Section 15 had not been followed scrupulously, as it required, as the matter pertains to removal of a President of a Gaon Panchayat. However, since it involves ascertainment of factual aspects, this Court would like to ascertain from a competent authority the correctness of the claim of the petitioner. Accordingly, the Deputy Commissioner, Barpeta, is directed to ascertain the following:

(a) Whether the said requisition was submitted by 10 members of the 39 No. Madhya Betbari Gaon Panchayat for convening a special meeting for no confidence motion against the petitioner on 12.04.2021 as claimed by the petitioner?

(b) Whether the President of the Pakabetbari Anchalik Panchayat was informed/moved by the Secretary of the Gaon Panchayat of the said requisition for no confidence motion against the petitioner as claimed by the petitioner on 27.04.2021?

(c) Whether the no confidence motion was held on 06.05.2021 pursuant to the aforesaid notice dated 12.04.2021 and information furnished to the President of the aforesaid Anchalik Panchayat by the Secretary of the aforesaid Gaon Panchayat on 27.04.2021 as claimed by the petitioner?

9. The Deputy Commissioner, Barpeta will verify the same within one week and will thereafter immediately notify the same. If on verification, the answers to all the above three queries are found to be in the positive, the impugned no confidence motion held on 06.05.2021 and impugned order dated 27.05.2021 issued by the Barpeta Zilla Parishad (the respondent No.4) shall remain stayed.

10. It is made clear that the Deputy Commissioner, Barpeta is to merely verify these three factual aspects referred to above and will not examine any other aspects as this Court is already in seisin of the matter and this direction has been issued to the Deputy Commissioner, Barpeta for ascertaining these facts only and not for any other purpose.

11. This verification record of the Deputy Commissioner must be also produced/

furnished to the Court on the next date.

Ms. M. Bhattacharjee, learned State Counsel may communicate the order of this Court to the Respondent No.3 for doing the needful.

12. List accordingly on 23.06.2021.