

(2009) 06 GAU CK 0032
In the Gauhati High Court

Forhana Begum Laskar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Assam Panchayat Act, 1994 — Section 15, 15(1), 15(2), 15(3), 15(5)

Citation : (2009) 6 GLR 429 : (2009) 3 GLT 575

Hon'ble Judges : Jasti Chelameswar, C.J;Iqbal Ahmed Ansari, J;Amitava Roy, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Amitava Roy, J.—The subject matter of this appeal is the process relating to a meeting under the Assam Panchayat Act, 1994 (as amended) in which a no confidence motion against the appellant, the President of the Nitainagar Gaon Panchayat, District Hailakandi (hereafter referred to as the Gaon Panchayat/ Panchayat) had been passed on 12.3.209. By the common judgment and order dated 30.3.2009 passed in WP(C) 1008/2009 and WP(C) 1086/2009 preferred by the writ appellant herein, the challenge to the legality and/or validity of the said exercise has been negated in essence on the ground that the alleged departures from the prescriptions of procedure laid down in Section 15 of the Act which are essentially directory in nature do not per se vitiate the same.

2. At the admission of the appeal, a reference to the decision of a Division Bench of this Court rendered in Mumtaz Rana Laskar Vs. State of Assam and Others, , to this effect having been made, by the order dated 15.5.2009, this appeal has been placed before this Bench inter alia to consider the correctness of the view expressed therein.

3. We have heard Dr. B. Ahmed, Learned Counsel for the appellant, Ms. B. Goel, learned State Counsel, for the official respondents and Mr. P.K. Deka, Learned Counsel for the respondents 7 to 14.

4. The factual background in short deserves recital. At all relevant times, the writ

appellant was the elected President of the Panchayat located within the territorial limits of the Hailakandi Anchalik Panchayat ("the Anchalik Panchayat") in the District of Hailakandi. There are 10 directly elected members of the Panchayat and the office of the Vice President thereof following the resignation of its incumbent is for the time being vacant.

5. On 19.2.2009, eight of such members submitted a written requisition with the Secretary of the Panchayat for convening a meeting to discuss the issue of "no confidence" against the President i.e., the writ appellant. The Secretary of the Gaon Panchayat, as required u/s 15 of the Act issued a notice dated 4.3.2009 convening a meeting to that effect on 6.3.2009. As scheduled, the meeting started on 11 A.M. on 6.3.2009 in presence of all the members of the Gaon Panchayat in its office premises. In course of the proceedings, however, the meeting was cancelled by the secretary of the Gaon Panchayat on the instructions of the President and the secretary of the Anchalik Panchayat and to that effect, he (Secretary of the Gaon Panchayat) also issued a notice on the same date, i.e., 6.3.2009. In course of the day, the secretary cum Executive Officer, Hailakandi Anchalik Panchayat issued another notice addressed to the President of the Gaon Panchayat, its Secretary and Members informing them that as directed by the President of the Hailakandi Anchalik Panchayat, a meeting to discuss the "no-confidence motion" against the appellant had been convened on 12.3.2009 at 11 A.M. Perceiving that the cancellation of the meeting originally convened on 6.3.2009, at the intervention of the President and the secretary of the Hailakandi Anchalik Panchayat, and the proposal to hold another on the same issue on 12.3.2009 by the Anchalik Panchayat was in transgression of the letter and spirit of Section 15 of the Act, the writ appellant instituted WP(C) 1008/2008 seeking annulment of these two notices. By order dated 9.3.2009 passed therein, this Court while issuing a notice of motion recorded the following operative directions:

Considering the matter in its entirety and in the interest of justice, while the election of Nitainagar Gaon Panchayat, schedule to be held, on 12.3.2009, on the subject of "No Confident Motion" against the petitioner, may be allowed as scheduled, the result of the "No Confidence Motion" shall not, without leave of this Court, be acted upon until 18.3.2009, when the prayer for interim directions, made in this writ petition, will be taken up for consideration.

6. Thus the meeting as scheduled was held on 12.3.2009 in which according to the writ appellant only some deliberations took place without any voting to decide the motion. The writ appellant has asserted that in the proceedings conducted under the Presidentship of the President of the Hailakandi Anchalik Panchayat in total violation of Sections 15 and 18(5) of the Act, resolutions were passed adopting the motion against her. The same were thereafter forwarded to the Deputy Commissioner, Hailakandi, on the very same date by the Secretary and Executive Officer of the Anchalik Panchayat.

7. The writ appellant thus approached tins court again with WP(C) 1086/2009

assailing the proceedings of the meeting held on 12.3.2009 and the resolutions adopted therein. A writ of mandamus and/or appropriate direction was also sought for to allow her to continue as the President of the Gaon Panchayat.

8. The respondents in both the proceedings though served with the notice thereof did not offer their pleadings and, therefore, the sequence of events as set out in the writ petitions and narrated hereinabove have remained unrefuted. By the impugned judgment and order, to reiterate, the appellant's assailments have been rejected by the learned Single Judge.

9. Dr. Ahmed with reference to Section 15 of the Act has persuasively urged that the meeting of the Panchayat having been validly convened to discuss the "no confidence motion" against the appellant by the notice dated 4.3.2009 of its secretary the cancellation thereof at the instance of the Anchalik Panchayat before the expiry of 15 days from the requisition notice dated 19.2.2009 is palpably illegal. Consequently the convention of another meeting at the behest of the Anchalik Panchayat being wholly illegal and unauthorised, having regard to the mandate of Section 15 of the Act, the proceedings of the meeting held on 12.3.2009 are non est in law and, therefore, the resolutions adopted therein are obviously ineffective, null and void, he urged. Without prejudice to the above, the Learned Counsel further argued that as the impugned meeting of 12.3.2009 discussed and deliberated upon the issue of "no confidence motion", the same essentially had to be decided by secret ballot as obligated by Section 18(5) of the Act and the said procedure not having been followed, the proceedings thereof and the resolutions adopted therein on this count as well are liable to be adjudged invalid and non existent. Dr. Ahmed urged in conclusion that as Section 15(1) of the Act envisages a single composite process to deliberate upon and decide on the issue of "no confidence" against the President or the "Vice-President of a Gaon Panchayat, invalidation thereof at any stage for an infringement of the present nature would signify that the motion is lost and, therefore, in terms of the second proviso to this provision, no such motion is allowable in the next six months. To reinforce his arguments, the Learned Counsel placed reliance on the decision in *Aleya Khatun and Others Vs. State of Assam and Others*, , *Basanti Das v. State of Assam and Ors.* 2004 (Supp) GLT 717 , *Mumtaz Rana Laskar Vs. State of Assam and Others*, .

10. With reference to the official records, the learned State Counsel in reply has fairly admitted that the intervention of the Anchalik Panchayat with the process initiated by the notice dated 4.3.2009 of the secretary of the Panchayat was unwarranted in the attendant facts and circumstances of the case. She concurred that the meeting convened by the secretary of the Gaon Panchayat to discuss the issue of no confidence motion on 6.3.2009 was in conformity of the mandate of Section 15 of the Act. She also did not refute the assertion of non-observance of the mandate of secret ballot as contained in Section 18(5) of the Act in the case in hand. Ms. Goel, however, placing reliance on the second proviso to Section 15(5) of the Act, has urged that as the meeting of 12.3.2009 in fact had been

held as permitted by this Court, annulment thereof on the grounds pleaded by the appellant would not imply that the "no confidence motion" brought against the appellant has been lost and thus the second proviso to Section 15(1) of the Act is not attracted. The learned State Counsel maintained that in the event of the impugned notice dated 6.3.2009 and the proceedings of the meeting of 12.3.2009 being adjudged illegal, the process would stand restored at the stage of the initial requisition notice to be validly furthered from thereat in terms of the edicts of Section 15(1) of the Act.

11. The Learned Counsel for the private respondents did not supplement the above.

12. We have extended our thoughtful consideration to the competing arguments advanced. The basic facts are not in dispute. The requisition for the meeting to express no-confidence against the appellant, who at the relevant time was the President of the Panchayat by the eight members thereof, had been submitted with its secretary on 19.2.2009. The said authority of the Panchayat on 4.3.2009 issued a notice to its members intimating them that a meeting had been convened to be held on 6.3.2009 to discuss about the issue of no-confidence against the President. While the meeting had assembled and was in progress on 6.3.2009, it was cancelled by a notice dated of the same date by the secretary of the Panchayat on the directions of the President and Secretary of the Anchalik Panchayat. It was, thereafter that by a notice also of the same date, issued by the Secretary-cum-Executive Officer of the Anchalik Panchayat that a meeting on the same issue was convened on 12.3.2009 in the office chamber of the President of the Anchalik Panchayat. The notice in clear terms divulges that the said meeting had been called on the direction of the said authority i.e., the President of the Anchalik Panchayat. It was at that stage that the appellant approached this Court with WP(C) No. 1008/2009 questioning the validity of the notice dated 6.3.2009 and by order dated 9.3.2009, this Court, though permitted the meeting to be held as scheduled, directed that "the result of the no-confidence motion" would not without its leave be acted upon till 18.3.2009. The meeting was, accordingly, held on 12.3.2009, in which the no-confidence motion was carried against the appellant being backed by all the requisitionists, eight in number. Situated thus, the appellant approached this Court again with WP(C) No. 1086/2009 impugning the proceedings of the said meeting and the resolutions adopted therein.

13. Section 15 of the Act, which deals with the aspect of no-confidence motion against the President and the Vice-President of a Gaon Panchayat encompasses within its framework, the procedure for convening and administering the same and the consequences of such motion being passed against them. Sub-Section (1) and (2) thereof relevant for the purpose of the instant appeal, are therefore, extracted hereinbelow for instant reference:

(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 the President of the Achalik 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 (C) 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 such meeting:

Provided further that when a no-confidence motion is lost, no such motion shall be allowed in the next six months.

(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.

14. As mandated by the Sub-section (2), the requisition for a special meeting to discuss the issue of no-confidence against the President or the Vice President has to be obligatorily made by not less than one third of the total number of members of the Panchayat and the same signed by them has to be delivered by the President or Vice-President as the case may be with due information to the Deputy Commissioner of the concerned District. Incidentally, Sub-section 3 also provides for removal of the President or Vice President of the Gaon Panchayat, however, for misconduct or negligence or incapacity to perform his/her duty or it persistently remiss in the discharge thereof or if guilty of any disgraceful conduct. Sub-section 5 visualises an eventuality where a motion of no-confidence is contemplated and/or brought against both the President and the Vice-President of the Gaon Panchayat. For the issues seeking adjudication in the

present appeal, reference in details to the remaining Sub-sections of Section 15 would be inessential.

15. On a requisition being made as is envisaged in Sub-section (2), the secretary of the Gaon Panchayat with the approval of the President thereof, would convene a meeting, which would be presided over by the President, if the motion is against the Vice President and by the Vice President, if it is so against the President. In case, such a meeting is not convened within a period of 15 days from the date of receipt of the notice, the secretary of the Gaon Panchayat would within three days refer the matter to the President of the concerned Anchalik Panchayat, who would 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. Sub-section 1 of Section 15 further predicates that in case the President of the Anchalik Panchayat does not take the action so required within the specified period of seven days, the secretary of the concerned Gaon Panchayat shall inform the matter to the jurisdictional Deputy Commissioner/Sub-Divisional Officer (Civil) as the case may, within three days after the expiry of the stipulated seven days and the concerned Deputy Commissioner/Sub-Divisional Officer (C) shall convene the meeting within seven days from the date of the receipt of the information with the intimation to the Zilla Parishad and the Anchalik Panchayat and preside over the meeting so convened. Liberty has been accorded to the concerned Deputy Commissioner/Sub-Divisional Officer (C) as the case may be, in case of his inability to preside over such meeting to depute one Gazetted Officer under him not below the rank of Class-I Gazetted Officer to preside over the same.

16. The 2nd proviso to Sub-section (1) enjoins that when a no confidence motion is lost, no such motion shall be allowed in the next six months. It is the ordainment of Section 15(1) that a President or Vice President shall be deemed to have vacated his Office forthwith when a 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. It is in the background of this statutorily designed scheme outlining the procedure to process a requisition expressing no-confidence against the President and the Vice-President of the Gaon Panchayat that the rival contentions would have to be evaluated.

17. Noticeably, the parties are not at issue on the validity of the notice dated 4.3.2009 issued by the secretary of the Gaon Panchayat convening the meeting thereof on 6.3.2009 to discuss the issue of no-confidence brought against the appellant by the eight members thereof. Whether or not the word "convene" is synonymous to "hold", in the present case, the date of the requisition being 19.2.2009, the meeting actually held on 6.3.2009 was on the 15th day therefrom and, therefore, was inconformity with the prescription of Section 15(1) to the said effect. The parties, as such, have not laboured to urge otherwise by endeavouring to forge a distinction between the words "convene" and "hold" qua a meeting. We leave the issue at that.

18. It is obviously borne out by the records that the meeting convened on 6.3.2009 was cancelled on the intervention of the Anchalik Panchayat on that day and instead a notice was issued by its secretary calling another meeting on the same issue on 12.3.2009. Apart from the fact that the records placed before this Court do not disclose any reason whatsoever for such interference with the process already underway, the legislatively ordained layout of the exercise apparently did not permit the interception thereof at that stage by the Anchalik Panchayat. The intervention of the Anchalik Panchayat with the mooting of the Gaon Panchayat in progress on 6.3.2009, canceling the same and re-summoning the meeting to be held on 12.3.2009, in the estimate of this Court is in flagrant transgression of the statutorily mandated scheme of envisaged stages in the process and has to be repudiated as an unauthorized intrusion therein by it (Anchalik Panchayat). As a matter of fact, having regard to the progress of events, the Anchalik Panchayat prematurely and unauthorisedly assumed to itself a role neither contemplated nor sanctioned at that stage and neutered the authority then validity in seisin of the process. Such an usurpation in the teeth of the manifest legislative paradigm is grossly unauthorized/having the potential of rendering the same otiose. In the considered opinion of this Court, therefore, the meeting dated 12.3.2009 was not validly convened in conformity with the letter and spirit of Section 15(1). Axiomatically, the proceedings thereof and the resolution of no-confidence adopted against the appellant therein, are liable to be declared inoperative, null and void.

19. The meeting dated 12.3.2009 though, convened by the Anchalik Panchayat essentially discussed the issue of no-confidence against the President of the Gaon Panchayat and, therefore, quorum for and the procedure thereof, were to be assuredly in terms of Section 18 of the Act. Sub-section (5) of Section 18 mandates that the voting in any meeting of the Gaon Panchayat, if required shall be by raising of hands, except in the meeting where no-confidence motion is discussed where the matter will be decided by secret ballot. Admittedly, in the instant case, secret ballot was not resorted to in the meeting of 12.3.2009 to decide the issue of no-confidence against the appellant. On that count, as well, the proceedings of the meeting in this regard being in contravention of an express legal provision, are liable to be adjudged non est in law. On these two counts of visible illegalities, the convention of the meeting dated 12.3.2009, the proceedings thereof and the resolution(s) of no-confidence against the appellant are hereby annulled.

20. Does, this determination essentially signifies that the no-confidence motion brought against the appellant is lost as is conceived of in the 2nd proviso to Section 15(1)?

21. The word "loss" as has been defined in Black's Law Dictionary is:

Loss: Loss is a generic and relative term. It signifies the act of losing or the thing lost; it is not a word of limited, hard and fast meaning and has been held synonymous with, or equivalent to, "damages", "damages", "deprivation",

"detriment", "injury". It may mean act of losing, or the thing lost.

22 The word "lost" appearing in the 2nd proviso to Section 15(1), in deference to the fundamental principles of statutory interpretation, has to be essentially comprehended in the text and the context in which it appears. When so construed and interpreted, it, to start with, seems to signify a rejection of a no-confidence motion on merits following due deliberations in a meeting convened and held in accordance with the procedure prescribed in Section 15(1). It cannot be conceived of as an inevitable consequence of any infringement of the prescribed procedural rigour either by a breach of the time frame or unwarranted interference of any authority at any stage of the process or reasons akin thereto. Though, such outrages depending on the nature and extent of the consequential vitiation may render the process illegal, the same per se, would not imply the loss of the no-confidence motion as is contemplated in the 2nd proviso to Section 15(1) of the Act. A demonstrably conscious act or omission on the part of those supporting the motion resulting in the rejection of the motion on merits or testifying the abandonment of the pursuit would be essential to conclude such a consequence. The bar against the permissibility of initiation of such a motion within next six months after it is lost in the first venture, in our opinion is decisively redolent of this view. The quintessence of the proviso, according to us, is to sanction a temporary reprieve to the President or the Vice-President of the Gaon Panchayat, in case the no-confidence motion brought against him/her stands defeated on merit so as to relieve him/her of a fresh ordeal of suffering the same exercise in quick successions. The legislative intendment as discernible is thus that a no-confidence motion brought against the President or the Vice-President of the Gaon Panchayat is lost within the meaning of 2nd proviso to Section 15(1) of the Act, if either it is rejected on due deliberations in a meeting duly convened as enjoined therein or if the motion fails for cause or causes other than procedural defects or irregularities in convening the meeting be it for the violation of the time frame or uncalled for or unauthorized intervention of any authority not contemplated in the scheme statutorily delineated for adherence. Whereas, such an infringement of the time schedule prescribed for the successive stages, or interferences of authorities not envisaged depending on the extent and the nature of the impairment caused thereby, may render an ongoing process vitiated thereby, the inescapable consequence thereof need not necessarily be that the motion would be lost as comprehended in the 2nd proviso to Section 15(1) of the Act. Such a consequence is also neither discernible nor deductible from Section 15(1). We, thus, cannot lend our concurrence to the plea that each and every non-compliance of the procedural essentials for prosecuting the process of no-confidence motion would, inexorably imply that it (motion of no-confidence) would be lost. In the facts and circumstances of the case, having regard to the nature of the contraventions, we are of the unhesitant opinion that though the proceedings of the meeting dated 12.3.2009 are invalid in view of the unauthorised intrusion of the Anchalik Panchayat in the process, it would not connote that the no-confidence motion thereby, had been lost so as to attract the

bar against initiation of a fresh pursuit with the same objective within six months thereafter. The process, in our view subsists and is capable of being furthered from the stage of the receipt of the requisition dated 19.2.2009 expressing the no-confidence against the appellant.

23. A single Bench of this Court in *Aleya Khatun and Ors. (supra)* and *Basanti Das, (supra)*, had held that the procedure and the time limits predicated by Section 15 of the Act are mandatory so much so that any deviation therefrom, even if minimum, would vitiate the process undertaken to pursue a motion of no confidence against the President or the Vice-President of a Gaon Panchayat under the Act. In *Basanti Das, (supra)*, it was further held that the word "convene" appearing in Section 15 of the Act could not be conceived differently from "holding" and that the requirement of convening a meeting essentially signifies the edict of actually holding the same.

24. In *Mumtaz Rana Laskar and Ors., (supra)*, a Division Bench of this Court was seized with the task of interpretation of the prescriptions of Section 15 vis-a-vis the procedure and time frame for conducting the process pertaining to a no-confidence motion brought against the President or Vice-President of Gaon Panchayat under the Act. This Court on an overall survey of several decisions of the Apex Court and the well accepted norms of interpretation of statutes propounded it to be impermissible to lay down any general rule for determining as to whether a provision is imperative or directory. It was observed that to ascertain the real intention of the Legislature, the court would have to consider, inter alia, the nature and design of the statute and the consequences, which would follow from construing it one way or the other, the impact of other provisions on the necessity of complying with the provisions, in question, the circumstances that the statute provides for a contingency of the non-compliance of such provisions, penalty if any, provided by the statute for such non-compliance and whether the object of the legislation would thereby be defeated or furthered. This Court noticed that in the facts and circumstances of that case, no prejudice had either been pleaded or explained consequent upon the delay on the part of the secretary of the Gaon Panchayat in making reference to the Anchalik Panchayat. It was held that a mere procedural irregularity in the matter of making the reference by the secretary of the Gaon Panchayat either to the President of the Anchalik Panchayat or to the Deputy Commissioner, as the case may be, would have no bearing whatsoever upon the resolution passed in the specially convened meeting expressing want of confidence in the President or the Vice-President of the Gaon Panchayat as the case may be and that the same by itself would not result in causing any prejudice to the person against whom the motion is carried out. It was observed that the democratic process envisaged in Section 15 of the Act cannot be put at the disposal of an insignificant authority who is required to convene the meeting in accordance with law and that any inaction on its part ought not to be allowed to result in frustration and subversion of the very scheme of the Act.

25. The view expressed in *Aleya Khatun and Ors.*, (supra) and *Basanti Das*, (supra) was thus disapproved.

26. Reading between the lines, it does not transpire to us that the above view rendered by the Division Bench can be construed to denote that the entire scheme of Section 15 in all its essential features has been enunciated to be directory and not mandatory. It rather seems to accentuate that each and every departure from the procedure and the time schedule contained therein, however, miniscule would not impair the exercise so as to decisively annihilate the same. In the contextual facts of the present appeal and the contraventions already noticed hereinabove, which we construe to be sufficient to answer the issues presently raised we do not consider it essential to embark on a rescrutiny of this proposition in the instant proceeding.

27. In the result, the appeal is allowed. The judgment in appeal is interfered with and, is accordingly, set aside. The appellant is directed to be reinstated in the office of the Nitainagar Gaon Panchayat forthwith. All concerned are, however, left at liberty to hereafter pursue the issue of no-confidence against the appellant from the stage of receipt of the aforementioned requisition, if so advised, however, in accordance with the procedure prescribed therefore u/s 15(1) of the Act. In the facts and circumstances of the case, the parties are left to bear their own costs.