
(2006) 01 GAU CK 0104
In the Gauhati High Court
Case No : Writ Appeal No. 566 of 2005

Habibur Rahman

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

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

Citation : (2006) GLT 218 Supp

Hon'ble Judges : B. Sudershan Reddy, C.J;B.P. Katakey, J

Bench : Division Bench

Advocate : B. Goswami, R.K. Bhuyan and R. Begum, for the Appellant; B.J. Talukdar, B. Goyal, B. Sinha, J.I. Borbhuyan, S. Shyam and A. Barua, for the Respondent

Judgement

B.P. Katakey, J.—This appeal is directed against the judgment and order dated 23.8.05 passed by the learned Single Judge in WP (C) No. 8284 of 2004, allowing the writ petition filed by the Respondent No. 6 herein, setting aside the proceeding of the meeting of Dimaruguri Gaon Panchayat, held on 25.10.04, adopting no confidence motion against him and also quashing the communication dated 28.10.04 issued by the Senior Block development Officer, Khagarijan Development Block directing the Respondent No. 6 to hand over the charge of the office of the President, on the ground of violation of the provisions of Section 15(1) and 15(2) of the Assam Panchayat Act, 1994 (for short 1994 Act).

2. The brief fact relevant for the purpose of the present appeal is that the Appellant herein along with seven members of Dimaruguri Gaon Panchayat issued a notice of no confidence against the Respondent No. 6/writ Petitioner, who was the President of the said Gaon Panchayat, u/s 15 of the 1994 Act, with intimation to the Deputy Commissioner of Nagaon District. On 10.9.04 the Secretary of the Gaon Panchayat put up a note before the Respondent No. 6/writ Petitioner seeking his approval to convene a meeting for consideration of the no confidence motion as required u/s 15(1) of the 1994 Act, enclosing therewith a

copy of the requisition submitted by eight members of the Gaon Panchayat, suggesting 18.9.04 as the date for holding such meeting. As no approval was accorded by the Respondent No. 6, the Secretary of the Gaon Panchayat vide communication dated 27.9.04 referred the matter to Khagarijan Anchalik Panchayat to take necessary action as the Respondent No. 6/writ Petitioner had not taken the required steps to convene the meeting as requested. The Executive Officer of the Anchalik Panchayat thereafter vide communication dated 30.9.04 informed the Secretary of the Gaon Panchayat that the meeting had been convened on 11.10.04 to discuss the issue of no confidence brought against the Respondent No. 6, which was communicated to the Respondent No. 6 by the Secretary of the Gaon Panchayat vide communication dated 4.10.04. On 11.10.04 the meeting of the Gaon Panchayat could not be held for want of quorum and, therefore, the Secretary of the Gaon Panchayat vide communication dated 14.10.04 intimated all concerned about the next date fixed for the said meeting as 25.10.04. Accordingly the said specially convened meeting for consideration of the no confidence motion brought against the Respondent No. 6/writ Petitioner was held on 25.10.04, wherein the resolution was adopted expressing want of confidence in Respondent No. 6/writ Petitioner by a majority of 2/3rd of the total number of members of the Gaon Panchayat. Since the charge of the Gaon Panchayat was not handed over by the Respondent No. 6/writ Petitioner in spite of his removal from the office of the President by adopting the no confidence motion, the Senior Block Development Officer, Khagarijan Development Block by communication dated 28.10.04 directed him to hand over the charge to the Vice President of the said Gaon Panchayat.

3. The Respondent No. 6/writ Petitioner has challenged the resolution adopted in the meeting dated 25.10.04 expressing no confidence on him on two grounds, namely, (i) violation of the provision of Section 15(1) of 1994 Act, as the time limit fixed under the said provisions of the Act for the purpose holding the specially convened meeting for consideration of no confidence motion has not been adhered to, though the said provision is mandatory in nature, (ii) violation of the provision of Section 15(2) of 1994 Act, as the requisition for holding the special meeting under Sub-section (1) of Section 15 of the Act has not been delivered to him, as required under the said provision. The learned single Judge set aside the proceeding of the meeting dated 25.10.04 adopting the resolution expressing want of confidence in Respondent No. 6/writ Petitioner, on both the grounds, i.e. violation of the mandatory provision contained in Sub-section (1) of Section 15 of the 1994 Act as well as on the ground that the requisition for a special meeting under Sub-section (1) of Section 15 of the Act was not delivered to him as required under Sub-section (2) of Section 15 of the said Act. Hence the present appeal by one of the requisitionist, who was arraigned as Respondent No. 10 in the writ petition.

4. We have heard Mr. B. Goswami, learned Counsel for the Appellant, Ms. B. Goyal, learned State counsel appearing on behalf of the Respondent Nos. 1, 2 and 3 and Mr. S. Shyam, learned Counsel appearing on behalf of the Respondent

No. 6/writ Petitioner. None appears for the Respondent Nos. 4 and 5 as well as for the proforma Respondent Nos. 7 to 16 at the time of hearing.

5. Challenging the legality and validity of the judgment and order under challenge, Mr. Goswami, learned Counsel for the Appellant has submitted that the learned Single Judge quashed the proceeding of the specially convened meeting dated 25.10.04, wherein the resolution expressing want of confidence in Respondent No. 6/writ Petitioner was adopted by 2/3rd number of members of the Gaon Panchayat, on two grounds, namely, not adhering to the time schedule stipulated in Sub-section (1) of Section 15 of the 1994 Act, by holding the same as mandatory provision and also on the ground that the requisition for holding such special meeting u/s 15(1) of the said 1994 Act was not delivered to the Respondent No. 6/writ Petitioner as required u/s 15(2) of the said Act. Advancing the argument on the question as to whether the provision contained in Sub-section (1) of Section 15 of the 1994 Act, relating to adherence of the time limit fixed in the said provision and whether the said provision is mandatory in nature, the learned Counsel for the Appellant has submitted that the said question is no longer res-integra, as it has already been held by a Division Bench of the this Court in Writ Appeal No. 280/05, Mumtaz Rana Laskar Vs. State of Assam and Others, vide judgment and order dated 13.12.05 that the said provision is not mandatory in nature and, therefore, non adherence of the time schedule given in the said provision shall not render the resolution adopted by the Gaon Panchayat, while considering a no confidence motion, invalid. The learned Counsel, therefore, submits that the first ground on which the resolution adopted expressing want of confidence in Respondent No. 6/writ Petitioner, was set aside by the learned Single Judge, does not survive, in view of the aforesaid decision of the Division Bench.

6. Mr. B. Goswami, learned Counsel for the Appellant, regarding the second ground on which the resolution dated 25.10.04 adopted by the Gaon Panchayat was set aside by the learned Single Judge, has submitted that Sub-section (2) of Section 15 of the 1994 Act requires delivery of the requisition for a special meeting u/s 15(1) of 1994 Act to the President or the Vice president, as the case may be, against whom no confidence motion is brought, by not less than 1/3rd of the total number of the members of the Gaon Panchayat, with information to the Deputy Commissioner of the District concerned. According to the learned Counsel what is required under the said provision is to deliver the notice of no confidence to the Respondent No. 6/writ Petitioner brought by not less than 1/3rd of the total number of members. The learned Counsel submits that the requirement under the said provision shall be substantially complied with if a copy of such notice of no confidence motion is delivered to the President and/or Vice President, as the case may be, by the Secretary of the Gaon Panchayat. The learned Counsel has submitted that it is evident from the judgment passed by the learned Single Judge that the Secretary of the Gaon Panchayat forwarded a note dated 10.9.04 with an endorsement beneath the note that copy of such requisition was forwarded to the Respondent No. 6/writ Petitioner and the Deputy

Commissioner of the District was also informed about the said notice of no confidence, as required under Sub-section (2) of Section 15 of the said Act. Therefore, it is submitted that the provision of Section 15(2) of the 1994 Act has been substantially complied with. The learned Counsel has further submitted that the learned Single Judge, in view of the aforesaid facts, ought not to have held that the notice of no confidence was not delivered to the Respondent No. 6/writ Petitioner. According to the learned Counsel, the learned Single Judge has doubted the delivery of the said notice solely on the ground that the original of the said notice is not available on record, non availability of which on record may not be a ground to come to that finding, as the person on whom such original notice is delivered may not place the same on record as it is the notice expressing no confidence in him. It has further been submitted by the learned Counsel that issuance of the intimation to the Deputy Commissioner about the requisition for a special meeting u/s 15(1) and the existence of the same on record coupled with the existence of the note dated 10.9.04 from the Secretary of the Gaon Panchayat on record, can be the basis for presuming that such notice was delivered to the Respondent No. 6/writ Petitioner, unless the same is rebutted and in the instant case the Petitioner has failed to prove that such notice was not delivered to him. The learned Counsel, therefore, submits that the judgment passed by the learned Single Judge is required to be interfered with.

7. Ms. B. Goyal, learned State counsel appearing on behalf of the Respondent Nos. 1, 2 and 3 has submitted that it is evident from the records of the Gaon Panchayat that on 10.9.04 the Secretary of the Gaon Panchayat informed the Respondent No. 6/writ Petitioner that eight members of the Gaon Panchayat submitted an application expressing no confidence in him and seeking his approval for holding of special meeting, for consideration of the said no confidence motion, on 18.9.04. According to the learned State counsel, it is evident from the said note dated 10.9.04 that copy of the said application was forwarded to the President i.e. Respondent No. 6/writ Petitioner herein for his information and necessary action. Ms. Goyal, learned State counsel, therefore, submits that it is not that the said application was not delivered to the Respondent No. 6/writ Petitioner, as is the case of the writ Petitioner/Respondent No. 6. The further submission of the learned State counsel is that as the record reveals existence of the said notice expressing no confidence and requisitioning the said meeting, submitted by eight members of the Gaon Panchayat before the Deputy Commissioner, it can safely be presumed that such notice was delivered to the Respondent No. 6/writ Petitioner, in terms of the note dated 10.9.04 issued by the Secretary of the Gaon Panchayat and hence the provision of Section 15(2) has been complied with. The further submission of the learned State counsel is that though the Respondent No. 6/writ Petitioner attempted to rebut the said presumption of delivery of notice of no confidence to him, by stating that non delivery of such notice is evident from the queries made by him asking the Secretary of the Gaon Panchayat seeking certain clarifications, the said plea cannot be accepted in view of the fact that record does not reveal

existence of any such communication issued by the Respondent No. 6/writ Petitioner to the Secretary of the Gaon Panchayat seeking any clarification. The learned State counsel has therefore, submitted that there is no violation of the provision of Section 15(2) of the 1994 Act and the resolution expressing want of confidence in the Respondent No. 6/writ Petitioner was rightly adopted by following the procedure enumerated in the said Act. Regarding the question as to whether the provision contained in Section 15(1) of the 1994 Act is mandatory or directory in nature, the learned State counsel has submitted that another Division Bench of this court has already held that the time schedule mentioned in the said provision for the purpose of convening the special meeting for consideration of no confidence motion is directory in nature and, therefore, the judgment passed by the learned Single Judge in that respect is also required to be interfered with.

8. Mr. S. Shyam, learned Counsel for the Respondent No. 6/writ Petitioner, supporting the judgment, has submitted that the learned Single Judge has rightly quashed the proceeding of the meeting dated 25.10.04 as the resolution expressing no confidence was adopted in violation of the provision contained in 1994 Act. Conceding that non adherence of the time schedule mentioned in Sub-section (1) of Section 15 of the Act will not render the resolution expressing no confidence invalid and/or illegal, in view of the judgment dated 13.12.05 passed by a Division Bench of this court in Writ Appeal No. 280/05, Mumtaz Rana Laskar Vs. State of Assam and Others, the learned Counsel, however, submits that the resolution expressing no confidence was passed in the meeting dated 25.10.04 without first delivering the requisition of the said meeting u/s 15(1) to the Respondent No. 6/writ Petitioner, as required under Sub-section (2) of Section 15 of the Act and therefore, the proceeding of the said meeting dated 25.10.04 was rightly quashed by the learned Single Judge. The learned Counsel has submitted that the notice of the said requisition was not delivered to the Respondent No. 6/writ Petitioner is evident from the queries made by him to the Secretary of the Gaon Panchayat asking him to give the particulars of the allegations levelled against him and also names of the members who have issued such notice expressing no confidence, in reply to the note dated 10.9.04 issued by the Secretary of the Gaon Panchayat to him, as had that notice been delivered to the Respondent No. 6/writ Petitioner there would not have been any occasion to seek such particulars from the Secretary. The learned Counsel for the Respondent No. 6/writ Petitioner, therefore, submits that as the provision of Sub-section (2) of Section 15 of the 1994 Act has been violated, the resolution adopting no confidence in its meeting dated 15.10.04 cannot be held to be legal and valid.

9. We have considered the submissions of the learned Counsel for the parties and also perused the pleadings as well as the records produced by the learned State Counsel before this Court.

10. A Division Bench of this court, presided over by the Hon'ble Chief Justice, vide judgment and order dated 13.12.05 passed in Writ Appeal No. 280/05,

Mumtaz Rana Laskar Vs. State of Assam and Others, , upon consideration of the provision of Section 15 of the 1994 Act has held that the provision contained in Sub-section (1) of Section 15 of the said Act is not mandatory but directory and 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, shall 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 Panchayat, as the case may be, and that itself would not result in causing any prejudice to the person against whom the motion is carried out. It is not the case of the Respondent No. 6/writ Petitioner that the said decision requires re-consideration and on the other hand, the learned Counsel for the said Respondent has submitted that the issue relating to non adherence of the time schedule stipulated in Sub-section (1) of Section 15 of the 1994 Act has already been decided in the said Writ Appeal and, therefore, the decision of the learned Single Judge in so far as the violation of the provisions contained in Sub-section (1) of Section 15 the Act cannot be held to be legal and valid. Hence, the finding recorded by the learned Single Judge and the decision based on such finding that the provision of Section 15(1) of the Act is mandatory and non adherence of the time schedule mentioned therein shall make the no confidence motion adopted against the President illegal, is set aside, in view of the aforesaid judgment of the Division Bench of this Court in the aforesaid Writ Appeal.

11. The learned Single Judge has quashed the proceeding of the meeting dated 25.10.04 adopting the resolution expressing want of confidence in Respondent No. 6/writ Petitioner, also on the ground that the provision contained in Sub-section (2) of Section 15 of the 1994 Act was not complied with, as the records do not reveal delivery of the requisition for for a special meeting u/s 15(1) of the Act, to the Respondent No. 6/writ Petitioner.

12. Upon perusal of the records produced before this Court it reveals that the learned Deputy Commissioner, Nagaon District was intimated on 8.9.04 by eight members of the Gaon Panchayat, which consists of twelve members, about no confidence motion brought against the Respondent No. 6/writ Petitioner, who is the President of Dimarugari Gaon Panchayat. The records also reveal that a note was submitted by the Secretary of the Gaon Panchayat to the President of the said Gaon Panchayat (Respondent No. 6/writ Petitioner herein) intimating him that an application has been submitted by eight members expressing want of confidence in him and requesting him to accord approval for holding the said meeting on 18.9.04, enclosing therewith the copy of the said application expressing no confidence. It is also evident from the records that as no approval was accorded by the Respondent No. 6/writ Petitioner for holding the meeting, the Secretary of the Gaon Panchayat informed the Anchalik Panchayat, who initially fixed 11.10.04 as the date for holding the special meeting, but the same was refixed on 25.10.04, as no business could be transacted on 11.10.04 for want of quorum. In the said meeting, in spite of the notice issued, the

Respondent No. 6/writ Petitioner has chosen not to participate. The resolution expressing want of confidence in Respondent No. 6/writ Petitioner was adopted in the said special meeting dated 25.10.04 by 2/3rd number of total members of the said Gaon Panchayat.

13. For better appreciation of the contention of the Respondent No. 6/writ Petitioner that the provision of Sub-section (2) of Section 15 of the Act has been violated, the said provision is reproduced below:

(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. From reading of the aforesaid provision, it appears that requisition for special meeting under Sub-section (1) of Section 15 has to be signed by one third of the total number of members of the Gaon Panchayat which is to be delivered to the President or Vice President, as the case may be, of the concerned Gaon Panchayat, against whom no confidence motion is brought and the Deputy Commissioner of the concerned district is also to be informed about such requisition.

15. In the instant case, as discussed above, records reveal existence of the information given to the Deputy Commissioner about the said requisition and also forwarding a copy of the said requisition to the President (Respondent No. 6/writ Petitioner) by the Secretary of the Gaon Panchayat, against whom the no confidence motion was brought.

16. The object of the provision contained in Sub-section (2) of Section 15 of the Act is to inform the President or Vice President, as the case may be, about the requisition of a special meeting u/s 15(1) of the Act. Therefore, as soon as the President or Vice President, as the case may be, against whom the no confidence motion is brought, is delivered with a copy of such requisition for special meeting u/s 15(1) of the Act, the provision contained in Sub-section (2) of Section 15 is complied with. The said requirement would be substantially complied with if the Secretary of the Gaon Panchayat delivers a copy of such requisition to the President or Vice President, as the case may be, against whom no confidence motion has been brought. The provision contained in Section 15(2) of the Act does not require that members of the Gaon Panchayat, who submitted the requisition for such a special meeting u/s 15(1) of the Act, themselves have to deliver such requisition to the President or the Vice President, as the case may be. Therefore, if such requisition or copy thereof is delivered or caused to be delivered to the President or Vice President, as the case may be, against whom no confidence motion is brought, the same will amount to substantial compliance of the provision contained in Section 15(2) of the Act.

17. Tested from a different angle, it also appears that it is riot the requirement of

Section 15(2) of the Act that the requisition for holding the special meeting to bring no confidence motion against the President or the Vice President, as the case may be, has to be delivered to such persons by the requisitionist, personally and in original, as the said interpretation may in a given case leads to a situation where such person against whom no confidence motion is brought may not place the original requisition on record and at the same time try to get the protection of Section 15(2) of the Act by pleading that requisition in original has not been delivered to him and by the requisitionists. In that case the very object and purpose of Section 15(2) of the Act would be defeated.

18. Another requirement of Section 15(2) of the Act is that the Deputy Commissioner of the concerned District has also to be informed about the requisition for such a special meeting of the Gaon Panchayat for discussion of no confidence motion brought against the President or Vice President, as the case may be. The requirement of intimating the Deputy Commissioner about the requisition of special meeting by the required numbers of members of Gaon Panchayat u/s 15(1) of the Act, gives a safe guard to the persons requisitioning such meeting. Therefore, in the instant case, even if the record does not contain the original notice of requisition, issuance and delivery of such requisition can safely be presumed from the fact that the information about such requisition was furnished to the Deputy Commissioner of the district concerned, coupled with submission of the note dated 10.9.04 by the Secretary of the Gaon Panchayat to the Respondent No. 6/writ Petitioner enclosing therewith a copy of the requisition.

19. In the instant case, though the records does not contain the original notice of requisition submitted by eight members of the Gaon Panchayat, it reveals the existence of the information submitted to the Deputy Commissioner, Nagaon dated 8.9.04. As discussed above, it also reveals that the Secretary of the Gaon Panchayat informed the Respondent No. 6/writ Petitioner on 10.9.04 about such requisition bringing the no confidence motion against him by eight members enclosing therewith a copy of such requisition. The contention of the Respondent No. 6/writ Petitioner that the same was not delivered to him also cannot be accepted as the record does not reveal existence of any communication issued by the Respondent No. 6/writ Petitioner to the Secretary of the Gaon Panchayat asking for any details of allegations as well as the names of the members bringing such no confidence, as pleaded by the Respondent No. 6/writ Petitioner in his writ petition. There is no allegation of malafide against the Secretary of the Gaon Panchayat either in the writ petition or in the appellate stage alleging that the said document was either not placed on record by the said Secretary of the Gaon Panchayat or destroyed by him either with a view to cause harm to the Respondent No. 6/writ Petitioner or to support the no confidence motion brought by the requisition.

20. From the narration of the aforesaid facts, it is therefore, evident that at least a copy of the said resolution was furnished to the Respondent No. 6/writ Petitioner against whom the no confidence motion was brought, with due

intimation to the Deputy Commissioner, Nagaon District. Therefore, the provision of Sub-section (2) of Section 15 was duly complied with. The finding recorded by the learned Single Judge that the requisition cannot be held to be delivered to the Respondent No. 6/writ Petitioner, in view of the non availability of original requisition on record, even though the intimation to the Deputy Commissioner, Nagaon District was available on record, cannot be held to be legal and valid, more so, when the learned Single Judge has recorded the finding that plea of the Respondent No. 6/writ Petitioner that he made certain queries is not substantiated by record.

21. In view of the aforesaid discussion, we are constrained to hold that the learned Single Judge has erred in law in recording the finding that the provision contained in Sub-section (2) of Section 15 of the Act has not been complied with before adopting the resolution expressing want of confidence in Respondent No. 6/writ Petitioner, in the meeting of the Gaon Panchayat dated, 25.10.04 and also in setting aside the communication dated 28.10.04 issued by the Senior Block Development Officer asking the Respondent No. 6/writ Petitioner to hand over the charge. We, therefore, hold that resolution adopting the want of confidence in the Respondent No. 6/writ Petitioner was validly adopted by Dimaruguri Gaon Panchayat in its meeting dated 25.10.04 and from that date the Respondent No. 6/writ Petitioner is deemed to have vacated the office of the President of the said Gaon Panchayat, by virtue of the provision contained in Sub-section (1) of Section 15 of the 1994 Act.

22. The writ petition filed by the Respondent No. 6/writ Petitioner is accordingly dismissed and the writ appeal filed by the Appellant, is allowed. No cost.