

(2022) 11 GAU CK 0037

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6687 Of 2022

Hifjur Rahman Laskar

APPELLANT

Vs

State Of Assam And 14 Ors.

RESPONDENT

Date of Decision : 11-11-2022

Acts Referred:

Assam Panchayat(Financial) Rules, 2002 — Rule 5
Assam Panchayat Act, 1994 — Section 15, 15(1), 24(4)

Citation : (2022) 11 GAU CK 0037

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : S B Laskar

Final Decision : Disposed Of

Judgement

1. Heard Mr. S.B.Laskar, the learned counsel appearing on behalf of the petitioner and Mr. D.Das, the learned senior counsel assisted by Mr. P.K.Deka, the learned counsel appearing on behalf of the respondent Nos.7 to 15. I have also heard Mr. S. Dutta, the learned standing counsel for the Panchayat and Rural Development Department, who appears on behalf of the respondent Nos. 1 3, 4 and 6 and Mr. N. Goswami, the learned counsel appearing for the respondent No. 2.

2. Taking into account the order which this Court proposes to pass, the presence of the respondent No. 5 is not considered necessary for the purpose of disposal of the instant writ petition.

3. The case of the petitioner herein is that the petitioner was elected as the President of North Narayanpur Gaon Panchayat under Algapur Anchalik Panchayat of Hailakandi Zilla Parishad in the district of Hailakandi. It has been mentioned in the petition that on 02/06/2022 nine members of the Gaon Panchayat had submitted a letter to the Secretary of the Gaon Panchayat with a request to convene a meeting for no confidence motion against the petitioner. The Secretary of the Gaon Panchayat of the North Narayanpur Gaon Panchayat brought the

letter dated 02/06/2022 into the petitioner's knowledge on 14/6/2022. The petitioner accordingly had put his comments on the file note to wait so that he could discuss the matter and take necessary steps according to the Assam Panchayat Act, 1994 (for short the Panchayat Act). However, the Secretary of the Gaon Panchayat vide letter dated 16/06/2022 referred the matter of no confidence motion to the President of Algapur Anchalik Panchayat. Pursuant thereto, the Algapur Anchalik Panchayat had issued a notice by convening a meeting for no confidence motion against the petitioner on 22/06/2022. Challenging the said action a Writ Petition i.e. W.P.(C) No. 4178/2022 was filed. In the meantime, the meeting as convened by the Anchalik Panchayat got postponed due to emergent flood situation.

4. This Court vide an order dated 24/06/2022 had closed the Writ Petition with an observation that nothing survives for adjudication in the writ petition. It was however made clear by this Court vide the said order dated 24/06/2022 that if and when a deferred meeting is proposed to be held for discussing the no confidence motion brought against the petitioner, the same shall be done in strict adherence to the mandate of Section 15(1) as well as the other related provisions of the Panchayat Act. Subsequent thereto on 05/07/2022, the petitioner submitted a representation before the Deputy Commissioner, Hailakandi by raising his grievances in connection to the illegalities in convening the meeting of no confidence motion against the petitioner.

5. While the said representation was pending, a group of members of the North Naranyanpur Gaon Panchayat approached this Court by filing a Writ Petition which was registered and numbered as W.P.(C) No. 5080/2022 with the grievances of not convening the meeting for no confidence motion against the petitioner as per the Panchayat Act. When the said Writ Petition was listed for motion on 12/09/2022, the learned Government Advocate, Assam appearing for the Deputy Commissioner, Hailakandi had produced the copy of the written instruction dated 03/09/2022 and submitted that necessary steps for convening a special meeting was underway. Accordingly, this Court vide the order dated 12/09/2022 posted the writ petition to be listed for motion again after two weeks so as to enable the learned departmental counsel to obtain updated instructions.

6. Subsequent thereto the Deputy Commissioner, Hailakandi vide the notice dated 23/09/2022 convened a special meeting in connection with the no confidence motion against the petitioner on 29/09/2022. The said notice dated 23/09/2022 was challenged in W.P.(C) No. 6515/2022 by the petitioner. This Court vide an order dated 28/09/2022 disposed of the said writ petition by allowing the petitioner liberty to assail the resolution, if any, adopted against him on any of the available grounds including the ground of non-compliance of Section 15(1) of the Panchayat Act.

7. Thereupon on 29/09/2022 a special meeting of no confidence motion against the petitioner was held and a resolution of no confidence motion was passed against the petitioner. Thereupon the Deputy Commissioner, Hailakandi issued

the impugned order dated 30/09/2022 by allowing the Vice President of North Narayanpur Gaon Panchayat to act in charge of the President of the Gaon Panchayat with immediate effect. The resolution dated 29/09/2022 as well as the order dated 30/09/2022 passed by the Deputy Commissioner have been put to challenge before this Court by way of the instant writ petition.

8. When the instant writ petition was filed on 07/10/2022, this Court issued notice and gave liberty to the petitioner to mention the matter for early disposal after effecting service upon the respondents. An observation was also made to the effect that an attempt shall be made to dispose of the writ petition at the admission stage. The official respondents who were duly represented before this Court on 07/10/2022 were directed to file a response and produce the records. Thereupon the petitioner upon effecting the service upon the private respondents mentioned the matter before this Court and this Court vide an order dated 04/11/2022, taking into account that there is an aberration of the requirement of law and considering the prima facie case, stayed the impugned minutes of the special meeting of no confidence motion dated 29/9/2022 by which the petitioner was removed from the post of the President of the Gaon Panchayat until further orders.

9. The respondent Nos. 7 to 15 herein being affected by the order dated 04/11/2022 have filed their affidavit-in-opposition as well as also had filed an application seeking vacation/modification and/or alteration of the order dated 04/11/2022. The said application has been registered and numbered as I.A(C) No. 3255/2022. Today the said interlocutory application has come up for consideration before this Court. When the matter has been taken up for consideration of the application for vacation/modification and/or alteration of the order dated 04/11/2022, it appears to this Court that any decision on the said application would have to be made touching on the merits of the dispute and therefore taking into account the order passed on 07/10/2022 whereby it was observed that an attempt shall be made to dispose of the matter at the admission stage, this Court had therefore taken up the said writ petition for final disposal.

10. In the backdrop of the statements and allegations made in the writ petition the respondent Nos. 7 to 15 have filed an affidavit-in-opposition. It is the stand of the respondent Nos. 7 to 15 in their affidavit-in-opposition that on 02/06/2022 the said respondents had submitted a requisition notice before the respondent No. 6 to convene a meeting to discuss the no confidence motion against the petitioner. After receiving the said requisition notice dated 02/06/2022, the meeting was not held. However, on 16/06/2022, the said respondent No. 6 forwarded the said requisition notice dated 02/06/2022 to the respondent No. 5 for holding the said meeting by the Algapur Anchalik Panchayat. It was further mentioned that after receiving the said requisition notice, the Secretary of the Algapur Anchalik Panchayat published the notice on 20/06/2022 for holding a meeting on 22/06/2022 at 3 P.M. to discuss the no confidence motion against the

petitioner in view of the requisition notice dated 02/06/2022 issued by the respondent Nos. 7 to 15. Thereupon the petitioner being aggrieved had preferred a writ petition which was registered and numbered as W.P.(C) No. 4178/2022. This Court vide an order dated 22/06/2022 fixed the matter for further consideration on 24/06/2022 and in doing so, as an interim measure it was provided that the meeting convened on 22/06/2022 at 3 P.M. may go ahead but no effect shall be given to the resolution adopted in the meeting.

11. Taking into account the devastating flood, the said meeting was deferred and this aspect of the matter was duly informed to this Court on 24/06/2022 and this Court after taking into consideration the same passed an order on 24/06/2022 with the consent of all the parties that whenever the deferred meeting is proposed to be held for discussing the no confidence motion brought against the petitioner, the same shall be done in strict adherence to the mandate of Section 15(1) as well as other related provisions of the Panchayat Act. Thereupon as the said deferred meeting was not held, the respondent Nos. 7 to 15 filed a writ petition which was registered and numbered as W.P.(C) No.5080/2022. When the said writ petition was taken up for consideration on 12/09/2022, the counsel appearing on behalf of the Deputy Commissioner, Hailakandi submitted a written instruction to this Court whereby it was informed that necessary steps for convening the special meeting was underway and accordingly this Court granted further two weeks time for updated instructions. Accordingly the respondent No. 2 on 23/09/2022 issued notice for convening the meeting of no confidence motion on 29/09/2022 which was challenged by the writ petitioner by filing another writ petition i.e. W.P.(C) No.6515/2022. As already been observed hereinabove the Writ Petition No. 6515/2022 was closed by this Court vide an order dated 28/09/2022 holding inter alia that no interference was called for in the said case at that stage, however, liberty was given to the petitioner to assail the resolution, if any passed on 29/09/2022 as well as on any ground as available under law including the ground of non-compliance to Section 15(1) of the Panchayat Act. Subsequent thereto vide the resolution adopted on 29/09/2022, the no confidence motion was passed against the petitioner and on 30/09/2022 the Deputy Commissioner passed the impugned order.

12. It has also been brought to the notice of this Court by the senior counsel appearing for the private respondents that on 09/11/2022, taking into account that the resolution dated 29/09/2022 was passed, the W.P.(C) No. 5080/2022 filed by the respondent Nos. 7 to 15 had become infructuous and accordingly withdrawn.

13. In the backdrop of the above facts, let this Court take into consideration the relevant submission made by the learned counsel for the parties. The learned counsel for the petitioner submitted that Section 15(1) of the Panchayat Act categorically mandates that there should be service of notice of no confidence motion upon the President by the Secretary thereby giving him 15 clear days. He submitted that in the instant case, the said notice was forwarded to the

petitioner by the Secretary, who is the respondent No.6 on 14/06/2022, and immediately after 2 days the matter was referred to the Anchalik Panchayat which is in aberration to the provisions of Section 15 of the Panchayat Act. He even submitted that even assuming that on 02/06/2022, which was the date on which the notice was given, if the said date is taken as the date of service of the notice upon the petitioner then also there is no 15 clear days as mandated under Section 15 of the Panchayat Act. Therefore, he submits that as there has been the violation to Section 15(1) and thereby a valuable right of the petitioner has been taken away, the subsequent actions taken by the Anchalik Panchayat or even by the Deputy Commissioner to hold a deferred meeting is without jurisdiction.

14. Mr. S. Dutta, the learned standing counsel appearing on behalf of the P & RD Department submits that from the materials on record, it is apparent that there has been violation to Section 15(1) of the Panchayat Act taking into account that if the notice was served upon the petitioner who was the President on 14/6/2022, the Secretary, who is the respondent No.6 could not have referred the matter to the Anchalik Panchayat on 16/06/2022.

15. Mr. D. Das, the learned senior counsel had agreed to the submission to that effect that there has been an aberration to the provisions of Section 15(1) of the Panchayat Act on account of the fault of the respondent No. 6 as the respondent No. 6 ought to have immediately served the notice upon the petitioner on the date on which it was served upon the respondent No. 6. The service upon the petitioner is within the domain of the respondent No. 6 in respect to which the respondent Nos.7 to 15 had no control. However, he submitted that there has been certain gross financial irregularities as well the illegalities being committed by the petitioner as President and as such in public interest also the continuing of the petitioner as the President and managing the financial affairs of the Gaon Panchayat would be detrimental to the Gaon Panchayat in question. He drew the attention of this Court to a judgment delivered in the case of Noor Nahar Jiya Vs. State of Assam & Ors. reported in 2022 (1) GLT 557 wherein this Court taking into account that there was violation to the provisions of Section 15(1) of the Panchayat Act not effecting the 15 days clear notice had set aside the resolution as well as the consequential order passed in pursuance thereto. But taking into account as the petitioner has now knowledge about the said notice, it was observed that it would be deemed that the petitioner had notice from the date of the said judgment and thereupon to effect compliance in terms to Section 15(1) of the Panchayat Act. He therefore referred to paragraph 10 of the said judgment which for the sake of convenience is quoted herein below :

"10. In view of the said interference by this Court the Petitioner is reinstated to the position of President of No. 1 Jorshimalu Gaon Panchayat with immediate effect. Taking into consideration that the petitioner in view of the instant proceedings has due notice of the requisition dated 24/12/2020 as would also be apparent from paragraph 5 of the writ petition and a copy of the said notice also

being handed over to the learned counsel of the petitioner, Mr. P.Mahanta by Mr. A.Roy, learned Standing Counsel, P&RD Department today, it would be deemed that the petitioner has notice of the said requisition with effect from today for the purpose of Section 15(1) of the Act of 1994. Thereafter the Petitioner would be at liberty to act in terms with Section 15(1) of the Act of 1994 and if the petitioner does not act, the consequences in terms with the said section shall follow as mandated herein."

16. Upon hearing the learned counsel for the parties and upon perusal of the materials on record, it is apparent that there is an aberration to the provisions of Section 15(1) of the Panchayat Act inasmuch as the petitioner admittedly was served a copy of the said requisition notice given by the respondent Nos. 7 to 15 only on 14/06/2022 when the petitioner had requested the Secretary, i.e. the respondent No.6 that he would look into the matter and talk to his members. The Secretary in the instant case, without waiting for the same, on 16/06/2022 referred the matter to the Anchalik Panchayat. Taking note of the fact that the reference made to the Anchalik Panchayat was in violation of Section 15 of the Panchayat Act, all further proceedings pursuant thereto have also to be considered to be in violation of Section 15 of the Panchayat Act. Therefore, the subsequent meeting being called on 23/09/2022 by the Deputy Commissioner, Haillakandi, on 29/09/2022, the resolution so passed on 29/09/2022 and the order dated 30/09/2022 issued by the Additional Deputy Commissioner, Hailakandi are all in violation to Section 15 of the Panchayat Act.

17. Considering the above, this Court therefore sets aside the resolution dated 29/09/2022 as well as the order dated 30/09/2022 passed by the Deputy Commissioner, Hailakandi thereby directing the Vice President, who is the respondent No. 15 to take the charge of the President of the Gaon Panchayat in question.

18. In view of the said interference by this Court, the petitioner is reinstated to the position of the President of North Narayanpur Gaon Panchayat with immediate effect by virtue of this order. Taking into consideration that the petitioner in view of the instant proceedings has due knowledge about the requisition notice dated 02/06/2022 as would be apparent from paragraph No. 3 of the writ petition itself and in that regard had also filed a copy of the said requisition notice dated 02/06/2022 annexed as Annexure-1 to the writ petition, it would be deemed that the petitioner has knowledge about the said requisition notice w.e.f. today for the purpose of Section 15(1) of the Panchayat Act. Thereafter the petitioner would be at liberty to act in terms to Section 15(1) of the Panchayat Act and if the petitioner fails to do so, the consequences in terms to the said Section shall follow as mandated therein.

19. Before concluding, this Court would also like to observe that taking note of the allegations so made as regards misappropriation by the petitioner as President of the Gaon Panchayat, this Court deems it proper to direct that the Gaon Panchayat fund of North Narayanpur Gaon Panchayat can only be put to

use in terms to Section 24(4) of the Panchayat Act read with Rule 5 of the Assam Panchayat(Financial) Rules, 2002 whereby it has been mandated that the Secretary of the Gaon Panchayat has to administer the said Gaon Panchayat Fund.

20. With the above observations and direction, the instant writ petition stands disposed off.