
(2012) 03 GAU CK 0087
In the Gauhati High Court

Jyotshna Begum

APPELLANT

Vs

State of Assam and others.

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Citation : (2012) 03 GAU CK 0087

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : By Advocate : Dr. B. Ahmed. Adv. Respondents :??By Advocate :Mr. H. Rahman, Govt. Adv.Mr. M.H. Raj Barbhuyan, Adv., Advocates appearing for Parties

Judgement

1. By way of this application filed under Article 226 of the Constitution of India, the petitioner seeks quashing of order dated 27092011 passed by the Additional Deputy Commissioner, Cachar approving the resolution of noconfidence adopted against the petitioner as President of No.121 Srikona Gaon Panchayat (Gaon Panchayat).

2. The case of the petitioner is that she is the elected President of the Gaon Panchayat. Requisition dated 22122010 was made by seven members of the Gaon Panchayat to the Secretary expressing noconfidence against the petitioner and requesting holding of special meeting of the Gaon Panchayat to discuss about the same. Though the Secretary notified 03012011 as the date for holding the special meeting, no such meeting was held. Secretary referred the matter to the President of Salchapra Anchalik Panchayat by letter dated 04012011. As the special meeting was still not held within the stipulated period, the Executive Officer of the Anchalik Panchayat referred the matter to the President, Cachar Zilla Parishad vide his letter dated 20012011.

3. Thereafter, the Zilla Parishad referred the matter to the Deputy Commissioner, Cachar vide his letter dated 25012011 stating that no special meeting to discuss the noconfidence motion against the petitioner was held.

4. After about four months, the Extra Assistant Commissioner and Executive Magistrate in the Office of the Deputy Commissioner, Cachar (respondent No.4) issued notice dated 25052011 informing that special meeting of the Gaon Panchayat would be held on 31052011 at 11:30AM in her office to discuss and decide about the noconfidence motion against the President as per requisition dated 22122010. Accordingly, special meeting was held on 31052011 wherein seven members expressed noconfidence against the President. Thereafter, the Additional Deputy Commissioner, Cachar passed order dated 31052011 approving the resolution of noconfidence adopted against the President.

5. Contending that there was gross violation of the procedural requirements and that his removal is devoid of any legal sanctity, the petitioner is before the Court challenging the legality and correctness of the order dated 27092011 and for declaring the proceedings of the meeting held on 03052011 to be illegal and void.

6. By order dated 28102011, this Court directed that status quo as regards office of President of the Gaon Panchayat should be maintained.

7. The respondents 6 to 12 have filed their counter affidavit. The said seven respondents are elected members of the Gaon Panchayat and are the requisitionists who had made the requisition dated 22122010. They have stated that the special meeting was convened as per the order of the Deputy Commissioner in terms of their requisition. The meeting was presided over by the respondent No.4. In that meeting, all the seven requisitionists expressed noconfidence against the President. Though the noconfidence motion was successfully adopted, the said officer kept the matter pending in her office, which compelled the petitioners to move this Court in W.P.(C) No.3641/2011. When notice was issued in that case, impugned order dated 27092011 was passed. The petitioner right from the beginning tried to avoid holding of special meeting and he was instrumental in getting the matter delayed at the level of the Deputy Commissioner. It is further stated that on 10102011 the charge of the office of President of the Gaon Panchayat was handed over to the Vice President i.e. the respondent No.6 and on and from the said date she is discharging duty as President of the Gaon Panchayat.

8. The State respondents have not filed any counter affidavit.

9. Heard Dr. B. Ahmed, learned Counsel for the petitioner. Also heard Mr. H. Rahman, learned Government Advocate, Assam as well as Mr. M.H. Rajbarbhuyan, learned Counsel appearing for the private respondents 6 to 12.

10. Dr. Ahmed, learned Counsel for the petitioner submits that the impugned order dated 27092011 is of no legal consequence in as much as there is no legal requirement for according approval to a resolution of noconfidence. He vehemently argued that the procedure prescribed u/s 15 of the Assam Panchayat Act, 1994 (the Act) was given a complete go by, including the time schedule mentioned therein. He further submits that there was no voting in the meeting

held on 31052011, not to speak of voting by secret ballot as is the requirement. He therefore submits that this Court should interfere in the matter and allow the petitioner to continue as the President of the Gaon Panchayat. In support of his submissions, Dr. Ahmed has referred to the following decisions of this Court :

1. 2004 (3) GLT 361; (Aleya Khatun and Ors. Vrs. State of Assam and Ors.),
2. 2004 (Supp.) GLT 717;(Basanti Das Vrs. State of Assam and Ors.)"
3. 2010 (3) GLT 415; (Karun Kanti Malakar and Ors Vrs. Nosir Ahmed Mazumdar and Ors); and
4. 2010 (5) GLT 103; (Nosir Ahmed Mazumder Vrs. State of Assam and Ors.).

11. Opposing the above submissions made on behalf of the petitioner, Mr. Rajbarbhuyan, learned Counsel for the private respondents submits that it is an admitted position that seven out of ten members of the Gaon Panchayat have lost confidence in the President. According to him, the petitioner had tried every trick in her bag to avoid the inevitable but ultimately failed. When seven out of ten members, which is more than two third of the total number of members of the Gaon Panchayat, have expressed noconfidence against the petitioner, she cannot continue to remain as President which would not only be against the letter and spirit of the Act but against all democratic norms as well. He has placed reliance on the following decisions:

1. 2006 (1) GLT 9;(Mumtaz Rana Laskar Vrs. State of Assam & Ors),
2. 2006 (1) GLT 46;(Mumtaz Rana Laskar & Ors. Vrs. State of Assam),
3. 2009 (3) GLT 451;(Forhana Begum Laskar Vrs. State of Assam and Ors.),
4. 2010 (4) GLT 593;(Dipali Deka Vrs. State of Assam)" and
5. 2010 (5) GLT 117;(Akabbar Ali Vrs. State of Assam).

12. Mr. Rahman, learned State Counsel supports the stand of the private respondents and submits that in the facts and circumstances of the case, the challenge to the order dated 27092011 was more of form than of substance. He has produced one file containing one proceeding book and some papers including ten pages of note sheet.

13. The submissions of the learned counsels have been considered.

14. Section 6 of the Act provides that the Gaon Panchayat shall consist of ten members, including the President, to be directly elected. Normally and as a general rule, procedure cannot override the substance. But in the case of removal of the President, he being directly elected as such, adherence to the prescribed procedure is insisted upon.

15. Section 15 of the Act deals with removal of the President. If a noconfidence motion against the President is passed by a majority of two third of the total

number of members of the Gaon Panchayat, he shall be deemed to have vacated his office forthwith. As per Section 15(2) of the Act, requisition for such a meeting should be signed by not less than one third of the total number of members of the Gaon Panchayat and should be delivered to the President or the Vice President as the case may be with information to the Deputy Commissioner. Such a meeting shall be specially convened by the Secretary of the Gaon Panchayat with the approval of the President. If the motion is against the President, such meeting shall be presided by the Vice President. If such meeting is not held within fifteen days, a procedure is laid down for the Secretary to follow. Such meeting can be held by giving three days notice as per Section 17(3) of the Act. Under section 18(5) of the Act, where in a meeting a noconfidence motion is discussed, the matter should be decided by secret ballot.

16. It is true that in the present case, procedure as prescribed u/s 15 of the Act including the time schedule provided therein was not adhered to. But for that the private respondents cannot be blamed. It is highly improbable that the private respondents 6 to 12, who had signed the requisition to hold the special meeting of the Gaon Panchayat to discuss noconfidence motion against the petitioner, would themselves not hold the meeting or not follow the prescribed procedure as such a course of action would defeat their very objective. The fact that the meeting was not held at all the three levels of Gaon Panchayat, Anchalik Panchayat and Zilla Parishad and the further fact that the matter was considerably delayed at the level of the Deputy Commissioner would suggest that such delay was engineered to enable the petitioner to continue as the President. The delay is not insignificant. The Zilla Parishad had sent the requisition to the Deputy Commissioner on 25/12/2010. The special meeting was held four months thereafter on 31/05/2011. Even thereafter, there was delay of more than three months when the Additional Deputy Commissioner finally passed the order dated 27/09/2011 after the respondents 6 to 12 filed the writ petition before this Court.

17. This Court has perused the proceeding book which surprisingly shows signature of eleven persons in the column 'members present' though the Gaon Panchayat has ten members. The officer who presided over the special meeting (respondent No.4) while noting that seven members had supported the noconfidence motion, however, expressed the view that the requisition dated 22/12/2010 was not addressed to the President but addressed to the Secretary and, therefore, invalid. Though seven members had supported the noconfidence motion, the concerned officer failed to adopt any resolution in this regard. On top of it, she observed that the noconfidence against the petitioner 'cannot be considered at this stage'. This was neither warranted nor justified. It only puts a cloud over the impartiality and conduct of the respondent No.4.

18. The respondent No.4 failed to conduct the meeting in a proper manner, particularly as secret ballot procedure was not followed and no resolution accepting the noconfidence motion was adopted. Moreover, there are eleven signatories as against ten members. This coupled with the delay in holding the

meeting vitiated the proceeding of the meeting held on 31052011.

19. This Court disapproves the conduct of the respondent No.4.

20. But at the same time, in a situation where seven out of ten members of the Gaon Panchayat have expressed lack of confidence in the President (petitioner), it would be against the provisions of the Act and democratic principles if the President is allowed to hold her office for procedural lapses which appear to have been engineered to ensure her continuance. In such circumstances, this Court is of the view that it would be in the interest of justice if a fresh meeting of the Gaon Panchayat is directed to be held to discuss and decide the noconfidence motion brought against the President (petitioner).

21. In view of the conclusion reached, reference to and deliberation on the case laws cited is considered not necessary.

22. In view of above, the Deputy Commissioner, Cachar is directed to convene a special meeting of the Gaon Panchayat either by himself or by an Officer deputed by him (other than respondent No.4) on or before 08072012 to discuss and decide the motion of noconfidence brought against the President(petitioner) of the Gaon Panchayat. Such meeting shall be presided by the Deputy Commissioner himself or by the deputed officer. The Deputy Commissioner shall ensure that the meeting is held in a proper manner by following the prescribed procedure and shall also make necessary security arrangement. It is made clear that what ever decision is arrived at in the said meeting, the same shall be given effect immediately as Section 15(1) of the Act does not provide for according of approval to resolution adopted in such meeting.

23. Statusquo order passed on 28102011 shall hold the field till the date of election or 08072012, which ever is earlier.

24. Writ petition stands allowed to the extent indicated above.

25. Record is returned back to the learned state Counsel.

26. No cost.