

(2023) 06 GAU CK 0012
In the Gauhati High Court
Case No : Writ Appeal No. 328 Of 2022

Mamtaj Begum

APPELLANT

Vs

State Of Assam And 16 Ors.

RESPONDENT

Date of Decision : 08-06-2023

Acts Referred:

Assam Panchayat Act, 1994 — Section 13(1), 15, 15(1), 17, 17(3), 18

Citation : (2023) 06 GAU CK 0012

Hon'ble Judges : Sandeep Mehta, CJ; Mitali Thakuria, J

Bench : Division Bench

Advocate : M. Sarma, M. K. Choudhury, K. Knowar, P. Handique, M. Bhattacharria, P. J. Saikia, M. Nirala, M. Kashyap

Final Decision : Dismissed

Judgement

M. Thakuria, J

1. Heard Mr. M. Sarma, learned counsel for the appellant. Also heard Mr. K. Konwar, learned Standing Counsel, P & RD, Assam, representing respondent No. 1; Ms. M. Bhattacharria, learned Government Advocate Assam, representing respondent Nos. 2 & 4; Mr. P. J. Saikia, learned Senior Counsel assisted by Ms. M. Nirola, learned counsel for the respondent No. 7; and Mr. M. Kashyap, learned counsel for the respondent Nos. 9 to 13.

2. This intra-court appeal has been preferred against the judgment and order, dated 24.03.2022, passed by the learned Single Judge in WP(C) No. 3563/2021 (Mamtaj Begum Vs. The State of Assam & Ors.).

3. The case of the appellant is that she preferred a writ petition, being WP(C)/3563/2021, assailing the proceeding in a special meeting, held on 19.02.2021, wherein, a motion of no confidence against the President of Dimaruguri Gaon Panchayat, i.e. the appellant, had allegedly been passed by 2/3 majority against her and all consequential actions taken thereupon. The appellant had also challenged the order dated 25.06.2021, passed by the

respondent No. 2, whereby, it has been notified that the Office of the President of Dimaruguri Gaon Panchayat has stood vacated and as a consequence, the Vice-President of Dimaruguri Gaon Panchayat has been allowed to exercise the power and perform and discharge all the functions and duties of the President of Dimaruguri Gaon Panchayat.

4. The primary grievance of the appellant in preferring the present appeal is based on the statutory time period as prescribed under Section 15 read with Section 17(3) of Assam Panchayat Act, 1994, with regards to conduct of a special meeting. The learned Single Judge, vide judgment and order dated 24.03.2022, held that by attending the special meeting on 19.02.2021, after duly receiving the notice dated 16.02.2021, from the Deputy Commissioner, the appellant cannot raise the plea regarding non-compliance of timeline prescribed under Section 17 of Assam Panchayat Act, 1994, by completely bypassing the mandate of Section 17(3) of the Act in the said impugned order. Thus, being aggrieved and dissatisfied with the impugned judgment and order, dated 24.03.2022, passed in WP(C)/3563/2021, the present appeal has been preferred by the appellant.

5. It is stated that the appellant though attended the special meeting, held on 19.02.2021, yet, during the course of meeting, the Ballot Box was never opened and thereby the secret votes cast in the said special meeting were counted on another date behind the back of appellant. As soon as the appellant came to know about the order dated 25.06.2021, passed by the respondent No. 2, she submitted a representation on 03.07.2021, reiterating her stand that the Ballot Box was never opened in the course of the special meeting in her presence. She further contended that the timelines prescribed in the provisions of the Assam Panchayat Act, 1994, were violated while passing the impugned order dated 25.06.2021.

6. On the other hand, the State respondents raised a plea before the learned Single Judge that the notice, dated 12.02.2021, under Section 15(1) of the Assam Panchayat Act, 1994, was duly issued to convene special meeting in connection with the No-Confidence Motion brought against the President of Dimoruguri Gaon Panchayat, i.e. the appellant. On 19.02.2021, in the special meeting, it was observed that a total of 7 (seven) members were in favour of the No-Confidence Motion, whereas 3 (three) members were against the No-Confidence Motion. Accordingly, Section 13(1) of the Assam Panchayat Act, 1994, was complied with while passing the impugned order dated 25.06.2021, which entitles the Vice-President of Gaon Panchayat to exercise all the powers and functions to discharge all the duties entrusted to a President during the absence of the President of the concerned Gaon Panchayat.

7. The points raised before the learned Single Judge was that "whether the timelines prescribed under Sections 15 & 17 of the Assam Panchayat Act, 1994, were complied with in conducting the No-Confidence Motion, held on 19.02.2021, and whether the right of appellant was waived off to raise a plea regarding non-

compliance of the prescribed condition under Sections 15 & 17 of the Assam Panchayat Act, 1994, only on the point that no allegation of commission of any irregularities was pleaded by her in her representation dated 26.02.2021?”

8. The learned Single Judge was pleased to dismiss the writ petition of the present appellant/writ petitioner with the opinion that the appellant had attended the special meeting on 19.02.2021, after receiving the notice, dated 16.02.2021, from the Deputy Commissioner, and it was open for her to raise the plea regarding non-compliance of condition of expiry of 15 (fifteen) days time period from the date of issuance of notice. After receiving the notice on 16.02.2021, the appellant attended the special meeting on 19.02.2021, which was specially convened to discuss motion of no confidence and she did not raise any plea of non-compliance of the provision under the Assam Panchayat Act, 1994, and thus, she voluntarily waived off her right to challenge her removal from President of Gaon Panchayat.

9. With the above observation, the learned Single Judge had dismissed the writ petition filed by the present appellant/writ petitioner vide judgment dated 24.03.2022 whereagainst, the present writ appeal has been preferred.

10. The learned counsel for the appellant, Mr. M. Sarma, has submitted that the learned Single Judge failed to appreciate the fact that Section 15(1) read with Section 17(3) of the Assam Panchayat Act, 1994, were required to be complied with before holding a special meeting for No-Confidence Motion. The learned Single Judge also failed to appreciate the provision under Section 17(3) of the Assam Panchayat Act, 1994, where it is mandate of three days clear notice before convening any special meeting by specifying the place, date and time of such meeting and without considering the mandatory provision of Sections 15 & 17(3) of the Assam Panchayat Act, 1994, the learned Single Judge had dismissed the writ petition of the present appellant.

11. A plea was raised before the learned Single Judge that the requisition dated 19.01.2021, expressing want of confidence in the appellant petitioner, was never brought to her knowledge at any point of time prior to 27.01.2021 and hence, the Secretary of the Gaon Panchayat cannot assume the authority and jurisdiction to send the matter to the President of the Anchalik Panchayat on 05.02.2021, which was purportedly within expiry of 15 days from 27.01.2021. Though the appellant participated in the said special meeting of motion of no confidence, but, it was not open for the appellant to raise any plea in the special meeting or at any subsequent date and she could not also raise the plea that she was not aware about the purpose of convening the special meeting on 19.02.2021, in pursuant to Notice dated 16.02.2021.

12. The learned counsel for the appellant further relied on a decision of Division Bench of this Court, passed in W.A. No. 189/2021, dated 17.12.2021, wherein, similar controversy was raised before the Division Bench of this Court and accordingly, it was held that there was a clear violation of Section 17(3) of the

Assam Panchayat Act, 1994, as there was no three days clear notice provided to the appellant before convening the special meeting of No-Confidence Motion.

13. In this context, Mr. K. Konwar, learned Standing Counsel, P & RD, has submitted that pursuant to the notice dated 16.02.2021, the appellant attended the special meeting, held on 19.02.2021, and the Ballot Box was also opened during the course of the special meeting and the appellant herself put her signatures in the minutes of the special meeting and thereafter, she submitted the representation before the respondent No. 2, wherein, there was no mention about the non-opening of Ballot Box during the course of special meeting. Further it is submitted by the learned Standing Counsel, P & RD, that there was due compliance of Sections 15, 17 & 18 of the Assam Panchayat Act, 1994. As the No-Confidence Motion was passed against the appellant by 2/3 majority, and accordingly, it is submitted that the learned Single Judge rightly dismissed the writ petition filed by the appellant/writ petitioner.

14. We have carefully considered the submissions advanced at bar and have gone through the impugned judgment and the material available in record.

15. Section 17(3) of the Assam Panchayat Act, 1994, reads as under:

"17. Meeting of the Gaon Panchayat:-

(3) Seven clear days notice of an ordinary meeting and three clear days notice of a special meeting specifying the place, date and time of such meeting and the business to be transacted therein shall be given by the Secretary of the Gaon Panchayat and fix the notice on the notice-board of the Gaon Panchayat office."

16. Thus, Section 17(3) of the Assam Panchayat Act, 1994, provides that seven clear days notice of an ordinary meeting and three clear days notice of a special meeting specifying the place, date and time of such meeting should be given by the Secretary of the Gaon Panchayat.

17. The learned Single Judge made a detailed discussion, in paragraph No. 12 of the judgment, about the date of submission of application, date of issuance of notice etc., which reads as under:

"12. There is no dispute to the fact on 19.01.2021 7 [seven] nos. of Ward Members of Dimaruguri Gaon Panchayat had submitted a requisition in writing before the Secretary of the said Gaon Panchayat with the request to convene a special meeting expressing want of confidence in the President of the Gaon Panchayat i.e. the petitioner and had requested to take necessary action in that regard. The petitioner had pleaded that it was only on 27.01.2021, the said requisition dated 19.01.2021 was brought to her knowledge. The records revealed that the petitioner had received the notice under the signature, but without mentioning the date of such receipt. Then in such situation, there arises two possibilities with regard to the date of receipt. It could be either 19.01.2021 or 27.01.2021. If the date of the notice i.e. 19.01.2021 is taken as the date of knowledge of the petitioner of the requisition then the 15 [fifteen] days' period

expired on 03.02.2021 and it was on 05.02.2021, the respondent no. 6 had forwarded the matter to the President of the Anchalik Panchayat stating that the President of the Gaon Panchayat did not accord her approval within the 15 [fifteen] days' time period. If such was the case, there was no infraction of the time period. If on the other hand, the date which has been contended by the petitioner the requisition was brought to her knowledge, that is, 27.01.2021 is taken into consideration, in that case there would be prima facie infraction of the provisions of Section 15[1] of the Panchayat Act, 1994. The question that arises then whether such infraction would invalidate the motion of no confidence."

18. However, it is seen that the President of the Anchalik Panchayat did not convene the special meeting and accordingly, the letter was issued through Secretary of the Gaon Panchayat on 12.02.2021 and thereafter, vide the Notice dated 16.02.2021, the special meeting was called for on 19.02.2021, wherein, the appellant remained present and she also appended her signatures in the minutes of the meeting. It is a fact that there may not have been the strictest compliance of the timeline as per provision of Section 17(3) of the Assam Panchayat Act, 1994, but it is seen that the special meeting of No-Confidence Motion was held in presence of the appellant and she was also aware about the cause of the meeting and accordingly, she put her signatures in the minutes of said meeting. Thus, it cannot be held that only due to non-compliance of the provision under Section 17(3) of the Assam Panchayat Act, 1994, any prejudice was caused to the appellant as she received the Notice on 16.02.2021 and accordingly, got the opportunity to attend the meeting, where the Ballot Box was also open in her presence as she herself put her signature in the minutes of the meeting.

19. In this context, the judgment of the Hon'ble Apex Court reported in (2018) 10 SCC 561 (Padmini Singha Vs. State of Assam & Ors.) can be cited, wherein, it has been held that "a mandatory provision of law requires strict compliance but there are situations where even if a provision is mandatory, non-compliance would not result in nullification of the act, such as when a certain requirement or condition is provided in a statute for the benefit or interest of a particular person, the same can be waived by him if no public interest is involved." Paragraph No. 13 of the said judgment reads as under:

"13. From the foregoing, it is quite vivid that the meeting was held to discuss the Motion of No-Confidence. The respondent no. 6 who was a beneficiary attended the meeting and voting had taken place. It is well settled in law that a mandatory provision of law requires strict compliance but there are situations where even if a provision is mandatory, non-compliance would not result in nullification of the act. There are certain exceptions. One such exception is, if a certain requirement or condition is provided in a statute for the benefit or interest of a particular person, the same can be waived by him if no public interest is involved. The ultimate result would be valid even if the requirement or condition is not performed. We are disposed to think that in the obtaining fact

situation, no public interest was affected. The BDO presided over the meeting and everyone knew that the meeting was called for passing a resolution either in favour of or against the No Confidence Motion. The respondent no. 6 knowing fully well participated in the meeting and the resolution was passed against her. After losing in the voting process, the assail was made to the procedure of calling the meeting. We are inclined to think, had the respondent no. 6 not participated in the meeting, the matter would have been absolutely different. Having participated, it has to be held that the respondent no. 6 had waived the condition precedent."

20. Thus, it is seen that the appellant attended the special meeting pursuant to Notice dated 16.02.2021 and she duly put her signature in the minutes of the meeting and only after the order was communicated to her, she made her representation before the authority concerned, wherein, she did not raise any issue of non-opening of Ballot Box, as alleged by her. It is also admitted fact that the appellant received the Notice on 16.02.2021, where the purpose of meeting was clearly mentioned and accordingly, she also attended the meeting on 19.02.2021, though it is alleged that she came to know about the want of confidence only on 27.01.2021.

21. In view of the discussions made above and also considering the view of the Hon'ble Apex Court expressed in the case of Padmini Singha (supra), we find no merit in the present appeal and accordingly, the same stands dismissed. The parties have to bear their own costs.