

(2005) 03 GAU CK 0026
In the Gauhati High Court
Case No : Writ Petition (C) No. 6793 of 2004

Mumtaz Rana Laskar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 15-03-2005

Acts Referred:

Assam Panchayat Act, 1950 — Section 23(3)

Assam Panchayat Act, 1994 — Section 15, 15(1), 15(2), 17(1)

Citation : (2006) 1 GLT 9

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : R.P. Sarmah, A. Nath and K. Deka, for the Appellant; G.A. Assam, B.C. Das, S. Dutta and R.C. Paul, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Mr. R.P. Sarma, the learned senior Counsel for the Petitioner, Mr. B.C. Das, learned senior Counsel for the Respondent Nos. 3, 4 and 5, Mr. S. Dutta, learned Counsel assisted by Mr. R.C. Paul for the Respondent Nos. 6 to 11 and the learned Government Advocate for the Respondent Nos. 1 and 2.

2. The matter relates to holding of a meeting to consider the no confidence motion in respect of the President of the Matijuri Paikan Gaon Panchayat, hereinafter, referred as the Panchayat.

3. The facts, in brief, are that the Petitioner Smti Mumtaz Rana Laskar was the elected President of the said Panchayat which has a total strength of ten elected members. Eight members of the said Panchayat served a requisition notice on 3.8.04 to the Secretary of the Panchayat for convening a special meeting to consider the proposal of no confidence motion against the President. When the matter was before the Secretary, two of the members informed the Secretary intimating their withdrawal from requisition. The Secretary, thereafter put up the matter before the Petitioner and the Petitioner declined to convene the meeting.

The meeting was not convened within 15 days from the date of receipt of notice. The Secretary vide letter dated 26.8.04 referred the matter to the President of Hailakandi A.P. and accordingly the President of the Anchalik Panchayat convened a meeting of the Panchayat on 1.9.04. In the above meeting dated 1.9.04 a no confidence motion was passed and the Petitioner was removed from the post.

4. In this writ petition, the Petitioner has challenged the legality of the meeting held on 1.9.04 and prays for quashing of the resolution of no confidence adopted by the said meeting.

5. Mr. R.P. Sarma, the learned Counsel for the Petitioner has submitted that the reference made by the Secretary to the President of the Anchalik Panchayat was not in accordance with law and as such all the subsequent proceedings and the convening of the meeting was bad in law and the resolution passed in such meeting is illegal and inoperative.

6. Section 15(1) and (2) of the Assam Panchayat Act, 1994, for short, the Act reads as follows:

15. No confidence motion against the President and Vice-President-(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 Anchalik 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 month (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.

7. In view of the provisions contained in Clause (1) of Section 15, Mr. Sarma has submitted that the requisition was received by the Secretary on 3.8.04 and admittedly, the President of the Panchayat did not convene the meeting on or before 18.8.04. as required u/s 15(1) of the Act. Placing emphasis on the provisions that the Secretary of the Gaon Panchayat shall within three days refer the matter to the President of the Anchalik Panchayat, it is submitted that the Secretary (Respondent No. 5) was required. to refer the matter to the Anchalik Panchayat on or before 21.8.04, However, the matter was referred by the Secretary on 26.8.04 i.e., beyond the period of three days as provided and as such all the subsequent acts including convening of the meeting on 1.9.04 is bad in law.

8. The facts as stated above are not in dispute in this case, as a matter of fact, the Respondent Nos. 3, 4 and 5 in their affidavit-in-opposition in (Para-7) has specifically stated that the Secretary of the Gaon Panchayat vide letter dated 26.8.04 referred the matter to the President of the Hailakandi Anchalik Panchayat. In view of the admitted position, the Petitioner has placed reliance on a decision of this Court in the case of Smti Basanti Das v. State of Assam and Ors. in W.P.(C) No. 2663/2003 disposed of on 3.9.2003 wherein this Court held as follows:

The law makers, therefore, have provided a tight schedule to be adhered to by the authorities referred to in the above provision of the Act. Having regard to the adverse consequences that would follow, in case, the meeting is held and a resolution expressing, no confidence motion against the President or the Vice President is passed, it is difficult to subscribe to the view that any liability in such matters is permissible. Any departure at any stage would have the potential of dislocating the scheme of things envisaged by Section 15 of the Act. This would lead to chaos and uncertainty. It is, therefore, not possible to concur with the learned Senior Counsel for the private Respondents that a strict adherence to the requirements of Section 15 is not called for and that a substantial compliance thereof would be sufficient. The language used in peremptory in tenor and context and the rigor thereof cannot be raised in any view.

9. The learned Counsel for the Respondent Nos. 3, 4 and 5 on the other hand, has submitted that in the present case, the time limit shall not run from 3.8.04. It is stated that on 9.8.04, two of the eight signatories had withdrawn themselves from the requisition notice and as the total number of requisitionists came to be six on 9.8.04, the requisition notice should be deemed to be a fresh notice and the time limit should run from that date. Under the law the requisition is to be signed by the 1/3 rd members of the Panchayat. In the present case,

there are ten elected members and the President of the Gaon Panchayat. Hence even if it is withdrawn by two members the requisition notice remained a valid notice. This fact is not under dispute. We, therefore, hold that withdrawal of two members on 9.8.04 was irrelevant and immaterial as because the requisition notice by the other six members continued to be a valid notice and the time limit starts running from 3.8.04 itself. As such the submission of Mr. Das has no force.

10. The question that has come up for consideration before us is in respect of performance of official duty by the Secretary of the Gaon Panchayat. Clause 269 of Crawford's Interpretation of Laws reads as follows:

269. Time for Performance of Official Duties: As a general Rule, a statute which specifies a time for the performance of an official duty will be construed as directory so far as the time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure. But there are various exceptions. For instance, the language may be such that the performance of the act within or at the specified time, is imperative. As a result, if the statute contains prohibitive or negative words relating to the time within which the act is to be performed, it will be considered mandatory. Furthermore, a statute may even make time the essence of the official act. In such a case, the requirement as to the time of performance is also mandatory. Moreover, the consequences of failing to perform the official act within or at the designated time, may be considered, as indicative of the legislative intention. Even the nature of the act is entitled to consideration.

Furthermore, it may be asserted, as a general rule, that where a statute imposes upon a public officer the duty of performing some act relating to the interests of the public and fixes a time for the doing of such act, the requirement as to time is to be regarded as directory and not as a limitation of the exercise of the power, unless it contains negative words, denying the exercise of the power after the time named, or unless from the character of the act to be performed, the manner of its performance, or its effect upon public interests or private rights, it must be presumed that the legislature had in contemplation that the act had better not to be performed at all than be performed at any other time than that named.

11. In the case of the *The Remington Rand of India Ltd. Vs. The Workmen*, the question that came up before the Apex Court regarding time limit provided for publication of the award under the Industrial Disputes Act. The Apex Court on consideration of the real intention of the Legislature held as follows:

Keeping the above principles in mind, we cannot but hold that a provision as to time in Section 17(1) is merely directory and not mandatory. Section 17(1) makes it obligatory on the Government to publish the award. The limit of time has been fixed as showing that the publication of the award ought not to be held up. But the fixation of the period of 30 days mentioned therein does not mean that the publication beyond that time will render the award invalid. It is not

difficult to think of circumstances when the publication of the award within thirty days may not be possible. For instance, there may be a strike in the press or there may be any other good and sufficient cause by reason of which the publication could not be made within thirty days. If we were to hold that the award would therefore be rendered invalid, it would be attaching undue importance to the provision not in the mind of the legislature. It is well known that it very often takes a long period of time for the reference to be concluded and the award to be made. If the award becomes invalid merely on the ground of publication after thirty days, it might entail a fresh reference with needless harassment to the parties. The non-publication of the award within the period of thirty days does not entail any penalty and this is another consideration which has to be kept in mind.

12. At this stage, we may recapitulate the observations of the Apex Court in the case of *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, wherein the Apex Court held as follows:

Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.

In *Craies on Statute Law*, 8th Edn., at P. 262, it is stated thus:

...It is the duty of Courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed...that in each case you must look to the subject-matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act and upon a review of the case in that aspect decided whether the enactment is what is called imperative or only directory.

The principles as to whether a statute is mandatory or directory were considered by the Apex Court in the case of *P.T. Rajan Vs. T.P.M. Sahir and Others*, wherein the Apex Court observed as follows:

A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words "shall" or "may". Such a question must be posed and answered having regard to the purpose and object it seeks to achieve.

What is mandatory is the requirement of Sub-section (3) of Section 23 of the 1950 Act and not the ministerial action of actual publication of Form 16.

The construction of a statute will depend on the purport and object for which the

same had been used.

13. In the present case, we find that so far the time limit provided u/s 15 of the Act for convening the meeting is concerned, the Section specifically provides that in case of non compliance of the time limit what consequences will follow and how the matter should be proceeded with. If the meeting is not convened by the Secretary of the Panchayat with the approval of the President, the meeting is required to be convened by the Anchalik Panchayat and if the Anchalik Panchayat fails to convene the meeting within the time limit, the concerned Deputy Commissioner or Sub-Divisional Officer is required to convene the meeting.

14. We, thus, find that the real intention of the legislature was to convene hold the meeting. In W.P.(C) No. 2663/2003, this Court discussed about convening of the meeting by the authorities mentioned in Section 15 of the Act and the Section itself provides as to what will be the effect for non compliance within the statutory limit provided. So far the present case is concerned, the facts are altogether different. It is regarding non performance of official duty by the Secretary of the Panchayat, who is required to refer the matter within three days and if the meeting can not be convened by him within the statutory period of 15 days with the approval of the President at the first instance; the power is with the President of the Panchayat to give approval and the meeting can be convened only if the approval is given. When the approval is declined or not given, the Secretary is required to refer the matter to the Anchalik Panchayat within three days. In the present case the said period of three days was exceeded and the reference was made on the 8th day only. Section 15 nowhere provides that if the Secretary fails to refer the matter within three days, what will be the consequence. In the absence of any specific provision, we hold that the time limit provided for referring the matter by the Secretary to the Anchalik Panchayat is directory in nature and it can not be construed that in case the matter is not referred by the Secretary within three days, the entire democratic process will fail. The Assam Panchayat Act nowhere gives such power to the Secretary to wreck the entire edifice of the Panchayat and play havoc with the democratic right to remove or not to remove the elected office bearers of the Panchayat. If such unhindered power is given to the Secretary, without consequential effects, there may be cases, where the Secretary of the Panchayat in order to favour the President, opt to refer the matter to the Anchalik Panchayat after the expiry of the period of three days and thereby stall the entire democratic process and save the President of the Panchayat from facing the no confidence motion. The decision in W.P.(C) No. 2663/2003 is therefore distinguishable and in the facts and circumstances of the case, we hold that there is no rigidity as regards the time limit of three days given to the Secretary of the Panchayat to refer the matter to the Anchalik Panchayat. The provisions are directory in nature and in the instant case as the reference was made after eight days, we hold that subsequent proceeding undertaken by the Anchalik Panchayat does not suffer from any illegality or infirmity.

15. In the result, we find no merit in the writ petition and the writ petition stands dismissed.