
(2012) 09 GAU CK 0092
In the Gauhati High Court
Case No : Writ Appeal No. 33 of 2012

Piarun Nessa Tapadar, Member Group No. 3	APPELLANT
Vs	
Nizam Uddin Mazumdar and Others	RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Assam Panchayat Act, 1994 — Section 15, 15(1)
General Clauses Act, 1897 — Section 9

Citation : (2012) 09 GAU CK 0092

Hon'ble Judges : Subhasis Talapatra, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : HRA Choudhury and Mr. I. Hussain, for the Appellant; S.K. Medhi, Advocate and Mr. A.M. Borbhuiyan, for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.—The respondent No. 1 in this appeal filed the writ petition being W.P(C) No. 1687 of 2012 challenging the notice dated 28.02.2011 issued by the Secretary and the Executive Officer, Assam Anchalik Panchayat for convening the special meeting of Boalipar Gaon Panchayat on 04.03.2011 for discussing the no confidence motion against the President of the said Gaon Panchayat. Pursuant to the said notice dated 28.02.2011 the special meeting adopted the resolution of no confidence against the President of the said Gaon Panchayat. Some essential facts may be laid down to have the genesis of the controversy.

By the seven members of the said Gaon Panchayat (the appellant and respondent Nos. 7 to 12) submitted a requisition on 11.02.2011 to the Secretary of the said Gaon Panchayat stating that they had lost confidence in the President, the respondent No. 1 (the writ petitioner) for various reasons mentioned in the said requisition and making the request to the Secretary to convene the special meeting of the Gaon Panchayat to discuss the motion of no confidence against the respondent No. 1. It appears from the note at Annexure-1 to the writ petition that the Secretary placed the said requisition dated 11.02.2011 (Annexure A to

the affidavit-in-opposition by the respondent Nos. 4 and 5) to the respondent No. 1 on 12.02.2011, however the respondent No. 1 averred that the requisition was brought to his notice only on 26.02.2011(para-6 of the writ petition) and he had asked the Secretary to wait. The Secretary of the said Gaon Panchayat, the respondent No. 5 herein, on 26.02.2011 referred the said requisition dated 11.02.2011 to the President of Hailakandi Anchalik Panchayat stating that :

As per Section 15 of Assam Panchayat Act, 1994, I have put up the file to the President to fix up the date and time for convening the said meeting. But the President did not fix up the same and return the file wrote has wait. By this time the schedule period i.e. 15 (fifteen) days already been over on 25.02.2011.

The impugned notice dated 28.02.2011 was issued by the Secretary and Executive Officer of the Hailakandi Anchalik Panchayat fixing the date of the special meeting on 04.03.2011 for discussing and deciding the fate of the no confidence. Thereafter by secret ballots the motion of the no confidence had been passed. By the impugned judgment and order dated 13.12.2011 the learned Single Judge set aside the impugned notice dated 28.12.2011 and the resolution on no confidence as adopted on 04.03.2011 in the said special meeting. The writ appeal has been presented to question the said judgment and order dated 13.12.2011.

2. In para-19 learned Single Judge has observed as under:

19. Coming to the facts of the present case, as has been held earlier, the requisition dated 11-02- 2011 was received by the petitioner on 26-02-2011 on which date he had asked the Secretary to "wait". The period of 15 days thereafter could have been crucial for the petitioner considering the fact that four out of the ten members had been wavering in their stand as would appear from the agreement referred to in the resolution No.6 dated 04-03-2011. Therefore, the possibility of mischief cannot be ruled out. As such, I am of the considered view that for the reasons indicated in the earlier part of this judgment, there has been a substantial and significant departure from the procedure prescribed in Section 15(1) and (2) of the Act and the same has vitiated the impugned notice and resolution. In view of the aforesaid finding, it is considered not necessary to go into the petitioner's second limb of argument i.e., the extent of secrecy that is to be maintained in a vote deciding a no-confidence motion.

3. Mr. H.R. A Choudhury, learned senior counsel appearing for the appellant relied on a decision of this Court in Ranjit Singh Vrs. State of Assam and Ors., as reported in 2012 (2) GLT 106 to contend that from the reference dated 26.02.2011,(at Annexure-2 to the writ petition), it is apparent that the respondent No. 1 (the President of the said Gaon Panchayat) was reluctant to convene the meeting within 15 days. From his conduct the Secretary conceived that the respondent No. 1 would not convene the special meeting as requisitioned and he made the reference. Hence he did not commit any illegality or irregularity.

4. Gainfully the para 7 and 8 of Ranjit Singh(supra) is reproduced:

7. Reading both sub-sections (1) and (2) of Section 15 together it, therefore, transpires that the notice expressing want of confidence has to be given by at least 1/3rd of the total number of members of the Gaon Panchayat, requesting convening of a special meeting, which is required to be given to the person against whom such no confidence motion is brought. In the event, such notice is not delivered to the President or the Vice President, as the case may be, it would be sufficient compliance of the said provision, if the Secretary of the Gaon Panchayat places such notice before the President or the Vice President, as the case may be. The secretary of the Gaon Panchayat is also required to convene the meeting of the Gaon panchayat with due approval of its President and in case the meeting is not convened within 15 days, the Secretary of the Gaon Panchayat is to refer the matter to the President of the Anchalik Panchayat within 3 days thereafter. The President of the Gaon Panchayat, therefore, has to accord approval to the proposal submitted by the Secretary of the Gaon Panchayat to convene the meeting so that the meeting can be convened by the Secretary within the stipulated period of 15 days.

(8) In Sita Satnami (supra), it is held that the Secretary of the Gaon Panchayat shall assume jurisdiction under Sub-section (1) of Section 15 of the Act to refer the matter to the President of the Anchalik Panchayat only after expiry of 15 days from the date when the notice expressing want of confidence is delivered to the President or Vice President, as the case may be. The same view has also been taken by a Division Bench of this Court in Ali Ahmed Mazumdar (supra). A Full Bench of this Court in Forhana Begum Laskar(supra) after noticing a Division Bench judgment of this Court in Mumtaz Rana Laskar Vs. State of Assam and Others, , whereby and whereunder it was held that the provisions of Section 15 of the Act is not mandatory but directory, has opined that the view expressed by the Division Bench in the said case cannot be construed to denote that the entire scheme of Section 15 of the Act in all its essential features has been enunciated to be directory and not mandatory. It has further been opined that rather it seems to accentuate that each and every departure from the procedure and the time schedule contained therein, however, miniscule would not impair the exercise so as to decisively annihilate the same. The Full Bench, however, keeping in view the facts involving in that case did not consider it essential to embark on a re-scrutiny of the proposition.

5. On the other hand Mr. S. K. Medhi, Learned Counsel appearing for the respondent No. 1 quite succinctly submitted that when the reference dated 26.02.2011 was made by the Secretary, the respondent No. 5 herein, he had no authority to make such reference to the President of the Anchalik Panchayat for convening a special meeting for considering the no confidence motion. Section 15(1) of the Assam Panchayat Act, 1994 as referred stipulates as under:

15(1) No confidence motion against the President and Vice-President.-

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.

6. If it is assumed even that the notice of no confidence and requisition for a special meeting was received by the respondent No. 1 on 12.02.2011 as stated by the respondent No. 5, 15 days would expire only on 28.02.2011 on excluding the first in a series of days as per Section 9 of the General Clauses Act, 1897. In the case in hand, the reference was made by the respondent No. 5 prior to expiry of the period of 15 days from the date of receipt of the notice. Mr. Medhi relied on two decisions of this Court on interpretation of Section 15(1) of Assam Panchayat Act, 1994 in Forhana Begum Laskar Vs. State of Assam and Others, and Shri Ali Ahmed Mazumdar Vs. The State of Assam and Others, . A Larger Bench of this Court in Forhana Begum Laskar(supra) held in uncertain terms as under:

(26) Reading between the lines, it does not transpire to us that the above view rendered by the Division Bench can be construed to denote that the entire scheme of Section 15 in all its essential features has been enunciated to be directory and not mandatory. It rather seems to accentuate that each and every departure from the procedure and the time schedule contained therein, however, miniscule would not impair the exercise so as to decisively annihilate the same. In the contextual facts of the present appeal and the contraventions already noticed hereinabove, which we construe to be sufficient to answer the issues presently raised we do not consider it essential to embark on a re-scrutiny of this proposition in the instant proceeding.

7. The said interpretation has also been followed in Ali Ahmed Mazumdar(supra). It eclipsed the interpretation as provided in Ranjit Singh(supra). We find no reason to disagree with the finding of the learned Single Judge that the reference as made by the Secretary, the respondent No. 5, prior to expiry of the period of 15 days to the President, Anchalik Panchayat is liable to be held illegal and issued without authority. Hence the notice is bound to be held void and inoperative. As corollary thereof, the meeting as held on 04.03.2011 in pursuance to the said reference and the impugned notice dated 28.12.2011 cannot be held valid. We do not find any infirmity in the observations and

direction of the learned Single Judge. As consequences there of the appeal fails and accordingly the appeal stands dismissed, however, without any cost.