

(2016) 08 GAU CK 0023
In the Gauhati High Court
Case No : WP(C) No. 5136 of 2015.

Rejia Patir - Petitioner @HASH State of Assam and Others

Date of Decision : 23-08-2016

Acts Referred:

Assam Panchayat Act, 1994 — Section 43

Citation : (2016) 6 GauLJ 45 : (2017) 1 GauLR 576 : (2016) 4 GauLT 854

Hon'ble Judges : A.K. Goswami, J.

Bench : Single Bench

Advocate : Mr. M. Choudhury, Advocate, for the Petitioner; Mr. P.P Baruah and Mr. T.C. Chutia, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Mr. A.K. Goswami, J. - Heard Mr. M. Choudhury, learned counsel for the petitioner. Also heard Mr. P.P. Barua, learned counsel appearing for respondent Nos. 8 to 13 and Mr. T.C. Chutia, learned State counsel appearing for respondent Nos. 1, 2, 3, 4, 6 and 7. None appears for respondent No. 5 despite service of notice.

2. As agreed to by the learned counsel for the parties, the writ petition is taken up for disposal at the admission stage.

3. Challenge in this writ petition is adoption of a resolution of no confidence against the petitioner who was the President of Ghilamara Anchalik Panchayat in a special meeting held on 27.7.2015. Eight members of the Anchalik Panchayat submitted a requisition on the subject of no confidence against the petitioner addressed to the Deputy Commissioner, Lakhimpur with a copy to, amongst others, the Block Development Officer and Ex-Officio Secretary of Ghilamara Anchalik Panchayat.

4. It is submitted by Mr. Choudhury that the requisition was not addressed to the petitioner and the said requisition was not placed before the President and therefore, she was not aware of the motion for no confidence. He, however, submits that though it appears from the record that a note was purportedly

prepared and put up before her, the note was not actually put up. But assuming that it was so put up, the President (the petitioner) could have convened the meeting on or before 17.7.2015 i.e. within a period of 15 days from the date of knowledge which would be 2.7.2015 as the note was stated to be put up on that date. However, without waiting for expiry of 15 days as stipulated under Section 43 of the Assam Panchayat Act, 1994, for short the 1994 Act, the Secretary forwarded the requisition to the Zilla Parishad on 13.7.2015 and therefore, the very initiation of the proceeding of no confidence motion is bad in law.

5. The second submission of Mr. Choudhury is that after obtaining due approval from the President of the Zilla Parishad, the Chief Executive Officer issued a notice on 16.7.2015 convening a special meeting for the purpose of considering the no confidence motion on 24.7.2015. The meeting was accordingly held in the office chamber of the President of the Zilla Parishad and on that day only 5 members were present apart from the petitioner. Sensing that no confidence motion would not be carried out as minimum of 6 members are needed, it was contrived to postpone the meeting and the Chief Executive Officer lent his support to the requisitionists in purportedly adjourning the meeting that was to be held on 24.7.2016. It is submitted by Mr. Choudhury that the Chief Executive Officer has no role to play either in presiding over the meeting or in conducting the proceeding. It is submitted by Mr. Choudhury that the meeting having been held on 24.7.2015 and no confidence motion having not been adopted against the petitioner it would be deemed that the motion had been lost. But the Chief Executive Officer, again issued a notice dated 24.7.2015, proposing to convene the meeting on 27.7.2015 for consideration of the no confidence motion. No approval of the Zilla Parishad was also obtained while issuing the said notice dated 24.7.2015 and no authority being vested upon the Chief Executive Officer to issue notice for convening the special meeting to discuss the no confidence motion under the provisions of the 1994 Act, consequent holding of the meeting on 27.7.2016 as well as adoption of the resolution against the petitioner must be annulled as contrary to law. In support of his submission, Mr. Choudhury has relied on the following decisions - (i) *Ali Ahmed Mazumdar v. State of Assam & Ors.*, reported in 2011 6 GLR 175, *Sita Satnami v. State of Assam & Ors.*, reported in 2010 (3) GLT 291 and *Karun Kanti Malakar & Ors. v. Nosir Ahmed Mazumdar & Ors.*, reported in 2010 (3) GLT 415.

6. Mr. Barua does not dispute the facts articulated by Mr. Choudhury. He has, however, submitted that it is absolutely incorrect that meeting was held on 24.7.2016 as contended by the petitioner. The new Chief Executive Officer having joined on 21.7.2015, the Chief Executive Officer adjourned the meeting as there were other engagements and therefore, it cannot be said that the motion of no confidence must be deemed to have been lost in the meeting held on 24.7.2015.

7. Mr. Chutia has placed before the Court the records for perusal by the Court.

8. In *Sita Satnami* (supra), which was in the context of Section 15 of the 1994 Act relating to no confidence motion against the President of a Gaon Panchayat,

the requisition was placed before the President on 16.7.2009. However, before expiry of 15 days, the Secretary of the Gaon Panchayat referred the matter to the Anchalik Panchayat on 27.7.2009 and this Court held such action of the Secretary in referring the matter before expiry of 15 days to be without jurisdiction.

9. In *Ali Ahmed Mazumdar (supra)*, a Division Bench of this Court approved the decision rendered in *Sita Satnami (supra)*. It was held that requisition received by the Gaon Panchayat President cannot be construed to be due notice to the President and the period of 15 days as contemplated under Section 15 can be counted only from the date of bringing the notice/requisition to the personal knowledge of the President formally through office note and not otherwise.

10. In *Karun Kanti Mazumdar (supra)*, a Division Bench of this Court held that notice issued by the Deputy Commissioner to convene the meeting altering the date fixed by the President for the purpose of holding a no confidence motion is absolutely illegal and without jurisdiction.

11. The principle applicable in respect of Section 15 is squarely applicable in respect of Section 43, both of which are relating to no confidence motion.

12. Going by the stand of the respondents, in the instant case, the Secretary had put up a note with regard to the requisition notice dated 29.6.2015 on 2.7.2015 and therefore, on the pleaded case of the respondents the petitioner could be said to have notice on 2.7.2015. The Secretary of the Anchalik Panchayat gets the jurisdiction and authority to refer the matter to the President of the Zilla Parishad only in the event Anchalik Panchayat does not convene the meeting within 15 days from the date of receipt of notice with the approval of the President. Thus, Anchalik Panchayat could have convened the meeting by 17.7.2015. Admittedly, the Secretary referred the matter on 13.7.2015 well ahead of expiry of 15 days. On this count alone, the writ petition deserves to be allowed. However, it will also be appropriate to deal with the submission of Mr. Choudhury with regard to the other points canvassed.

14. A Register was produced by Mr. Chutia in connection with the minutes of the meeting of no confidence motion on 24.7.2015. It contains the signature of five members. Though the petitioner claims to have been present in the meeting, her signature is not found. No signature of the President of the meeting is also there. It is not clear at what point of time the Chief Executive Officer, who in any view of the matter, had nothing to do with the proceedings of the no confidence motion, decided to adjourn the meeting. From the Register as produced by Mr. Chutia, it will not be possible to predicate that the meeting to discuss the no confidence motion was aborted mid-stream in collaboration with the Chief Executive Officer as the requisite numbers of members were not present to carry out the resolution. Below the signature of the members or even above the signatures no minutes of the proceedings had been recorded and therefore, it will be too hazardous to hold that the meeting was held.

15. With regard to the third argument of Mr. Choudhury, suffice to say that the Chief Executive Officer, on his own motion without approval of the President of the Zilla Parishad, could not have convened the meeting and therefore, no sanctity can be attached to a meeting which is held on the aegis of an authority who has no jurisdiction to convene such meeting. Mere fact that the meeting was presided over by the President of the Zilla Parishad does not lend validation to an action illegally taken. When the foundation falls the superstructures crumbles and in the instant case, the process of initiation of no confidence motion was in violation of mandatory provisions of law and therefore, the no confidence motion adopted against the petitioner in the meeting held on 27.7.2015 cannot receive judicial imprimatur.

16. In view of the above discussions, the impugned resolution dated 27.7.2015 is set aside and quashed.

17. The writ petition is allowed.

18. It is, however, observed that setting aside and quashing of the resolution of no confidence dated 27.7.2015 shall not be construed to create a bar to bring a fresh no confidence motion against the petitioner, if so advised.