
(2005) 08 GAU CK 0011
In the Gauhati High Court
Case No : Writ Petition (C) No. 3003 of 2005

Rezna Begum Barbhuiya

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

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

Citation : (2008) GLT 43 Supp

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : H.R.A. Choudhury, A. Begum, L. Rahman and N.S. Laskar, for the Appellant; R. Chakraborty and S.K. Medhi, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The legality and/or validity of the notice dated 28/3/2005 issued by the Block Development Officer, Katlicherra Development Block cum Ex-officio Secretary of the Katlicherra Anchalik Panchayat (hereafter referred to as the Anchalik Panchayat) and the proceedings of the meeting held on 2.4.2005 adopting a resolution of "no confidence" against the Petitioner is under challenge.

2. I have heard Mr. HRA Choudhury , Sr. Advocate for the Petitioner, Ms. R. Chakraborty, learned State Counsel for the official Respondents and Mr. S.K. Medhi, Advocate for the Respondent No. 10.

3. The facts in brief are that the Petitioner was duly elected as the President of the No. 2 Sahabad Gaon Panchayat (hereafter referred to as the Gaon Panchayat). The Respondent No. 10 is the Vice President of the said Gaon Panchayat. On 27.1.2005, seven members of the Gaon Panchayat addressed a communication to the Petitioner levelling charges against her and requested her to convene a meeting to discuss the issue of no confidence against her. A no action was taken thereon, the signatories issued a reminder on 7.2.2005 to the Secretary of Gaon Panchayat asking him to take necessary steps to convene the

meeting within three days of the receipt thereof or to forward the communication to the Block Development Officer, Katlicherra Development Block, (hereafter referred to as the BDO) in accordance with the provisions of the Assam Panchayat Act, 1994, (hereafter referred to as the Act).

4. The Secretary of the Gaon Panchayat referred the matter to the President of the Anchalik Panchayat with a copy to the concerned BDO for taking necessary action. As there was no response from their end, he on 7.3.2005 addressed a communication to the Deputy Commissioner, Hailakandi, to do the needful. As the matter lay unattended, the requisitionists being aggrieved approached this Court with WP (C) 2 139/05 complaining against the inaction of the prescribed authorities u/s 15 of the Act. This Court by order dated 16.3.2005 disposed of the petition with the following directions:

Upon hearing the learned Counsels for the parties and on perusal of the materials on record, I am of the considered opinion that ends of justice would be met if the writ petition is disposed of with a direction to the Respondent No. 2 to look into the grievance raised by the Petitioners in this writ petition and to act in compliance of the requirements of the provisions of Section 15 of the Assam Panchayat Act, 1994.

The Petitioners may obtain the certified copy of this order and produce the same before the Respondent No. 2 along with a copy of the writ petition with its enclosures for his necessary follow up action. The Respondent No. 2 shall take a final decision in the matter within a period of one month strictly in accordance with the provisions of Section 15 of the Assam Panchayat Act, 1994 and necessary communication shall be made to the Petitioners.

5. Thereafter by the impugned notice dated 28.3.2005 issued by the Ex-officio Secretary of the Anchalik Panchayat a meeting was convened on 2.4.2005 to discuss the issue of no confidence against the Petitioner. Accordingly the meeting was held on that date and the no confidence motion was carried against the Petitioner. The Petitioner is before this Court being aggrieved.

6. It has been, inter alia, contended in the petition that the requisition notice dated 27.1.2005 had not been placed before the Petitioner as required u/s 15(2) of the Act and that the matter was referred to the Anchalik Panchayat before the expiry of the prescribed period. According to her, no notice or information of the meeting of 2.4.2005 was conveyed to her. The Petitioner has maintained that in the facts and circumstances of the case, the BDO, Katlicherra Development Block cum Ex-officio Secretary of the Anchalik Panchayat had no authority in law to convene the meeting and, therefore, the notice dated 28.3.2005 is unsustainable. It has been asserted that in terms of the directions of this Court contained in the order dated 16.3.2005 as well, the BDO cum Ex-officio Secretary of the Anchalik Panchayat could not have been delegated the power by the Deputy Commissioner, Hailakandi, to convene the meeting. The whole process, therefore, has been assailed to be in contravention of the above

provision of the Act as well as the directions of this Court.

7. The statements made in the petition have been resisted only by Respondent No. 10 by filing an affidavit. While contending that the meeting of 2.4.2005 was held in compliance of the directions of this Court as above, it has been asserted that as the no confidence motion has been passed by the required majority of members, the Petitioner stood ousted from the President of the Gaon Panchayat by operation of law. The answering Respondent categorically denied the allegation that the notice of the meeting was not served on the Petitioner or that she was unaware of the requisition submitted by the seven members of the Panchayat to convene a meeting to discuss the issue of no confidence against her.

8. Mr. Choudhury has principally argued that this Court by order dated 16.3.2005 having directed the Deputy Commissioner, Hailakandi, to hold the meeting in compliance of the provision of Section 15 of the Act, the said authority had no power to delegate its functions to the BDO cum Ex-officio Secretary of the Anchalik Panchayat to convene the meeting and, therefore, the impugned notice dated 28.3.2005 being without any sanction of law is liable to be quashed. According to him, Section 15(1) of the Act having prescribed the authorities to hold the meeting within the time frame mandated therein, the Deputy Commissioner, Hailakandi, acted in contravention thereof in abdicating his duty of convening the meeting to the BDO cum Ex-officio Secretary of the Anchalik Panchayat. This having vitiated the impugned process by an incurable illegality, the learned Sr. Counsel contended that the impugned notice dated 28.2005 and the proceedings of the meeting held on 2.4.2005 are non est in law.

9. Mr. Medhi in reply has submitted that the meeting having been held in compliance of the directions of this Court and the no confidence motion having been carried against the Petitioner by the required majority, the plea taken on behalf of the Petitioner is untenable. The spirit and purport of the directions of this Court being to hold the meeting to examine the issue of no confidence, the mere fact that the notice to convene the meeting was issued by the BDO cum Ex-officio Secretary of the Anchalik Panchayat is inconsequential and does not in any manner adversely affect the process. Drawing the attention of this Court to the proviso to Section 15(1) of the Act, the learned Counsel submitted that in terms thereof, the BDO, Katlicherra being a Class-I Gazetted Officer, he had the authority to preside over the meeting and on that consideration also the impugned process cannot be faulted with. The Petitioner having lost the confidence of the majority of the members of the Panchayat, according to Mr. Medhi, this Court would not interfere either with the impugned notice or the proceedings of the meeting held on 2.4.2005. In support of his submissions, the learned Counsel has placed reliance on a decision passed by this Court in Jahanara Begum v. State of Assam and Ors. WP (C) 8399/03.

10. Ms. Chakraborty, learned State Counsel has produced the official records pertaining to the process.

11. I have carefully considered the rival contentions. That on 27.1.2005, a requisition was addressed to the President of the Gaon Panchayat to convene the meeting to discuss the issue of no confidence against her and that it was followed by a reminder on 7.2.2005 addressed to the Secretary of the Gaon Panchayat is not in dispute. The records further reveal that the matter was referred to the Anchalik Panchayat and eventually to the Deputy Commissioner, Hailakandi. The first round ended with a writ petition before this Court culminating in the order dated 16.3.2005, the operative portion whereof has been extracted hereinabove. It is clear therefrom that this Court directed the Deputy Commissioner, Hailakandi, to act in compliance of the requirements of Section 15 of the Act. The said authority was directed to take a final decision in the matter within a period of one month adhering to the above provision of the Act.

12. A plain reading of the above order makes it abundantly clear that it is the Deputy Commissioner, Hailakandi, the Respondent No. 2, herein alone who was entrusted by this Court with the duty to deal with the issue by acting in compliance of the mandate of Section 15 of the Act in conducting the exercise. It, therefore, leaves no manner of doubt that the Deputy Commissioner, Hailakandi, was required to act in terms of Section 15 of the Act. The records produced by the learned State Counsel reveals that after the remand, the Deputy Commissioner, Hailakandi, by his communication dated 24.3.2005 directed the BDO, Katlicherra, cum Ex-officio Secretary of the Anchalik Panchayat, to convene the meeting within seven days and to submit a report thereon. The impugned notice dated 24.3.2005 was issued pursuant thereto by the BDO convening the meeting on 2.4.2005 to discuss the issue of no confidence against the Petitioner. The notice clearly mentions that the same was in compliance of the directions of the Deputy Commissioner, Hailakandi, as contained in his communication dated 28.3.2005. The meeting accordingly was held on 2.4.2005 in which the no confidence motion against the Petitioner was carried against her.

13. The meeting, therefore, was not held by the Deputy Commissioner, Hailakandi, as directed by this Court but convened by the BDO, Katlicherra Development Block and was presided over by him as well.

14. Section 15 of the Act prescribes the procedure for conducting a meeting inter alia to discuss the issue of no confidence against the President of a Panchayat. Thereunder a requisition for a special meeting has to be signed by two third of the total members of the Gaon Panchayat. The meeting has to be specially convened by the Secretary of the Gaon Panchayat with the approval of the President of the Gaon Panchayat. If no such meeting is convened within a period of fifteen days from the date of receipt of notice, the Secretary of the Gaon Panchayat has to within three days refer the matter to the President of the Anchalik Panchayat who in turn has to convene the meeting within seven days from the date of receipt of the information and preside over such meeting. In case the President of the Anchalik Panchayat does not take action as above

within the specified period of seven days, the concerned Gaon Panchayat Secretary has to inform the matter to the Deputy Commissioner/Sub-Divisional Officer (Civil) as the case may be within three days of the expiry of the stipulated period and the concerned Deputy Commissioner/Sub-Divisional Officer (Civil) should convene the meeting within seven days from the date of receipt of the information with intimation to the Zila Parishad and the Anchalik Panchayat and preside over the meeting. The proviso extends a relaxation to the Deputy Commissioner/Sub-Divisional Officer (C) to the extent that in case the said authority is unable to preside over the meeting, it may depute one Gazetted Officer not below the rank of Class-I Gazetted Officer to do so.

15. The above legislative directive, therefore, requires the Deputy Commissioner/Sub-Divisional Officer (C) to convene the meeting and to preside over the same and that too within the time frame prescribed. It is only if the Deputy Commissioner/Sub-Divisional Officer (C) is unable to preside over the meeting that he may depute one Gazetted Officer of the status mentioned in the proviso to preside over the same. No percept empowering the jurisdictional Deputy Commissioner to delegate this function to any other authority is discernible in the above statutory provision.

16. This Court while directing the Deputy Commissioner, Hailakandi, to act in terms of Section 15 of the Act categorically required the said authority to act strictly in terms thereof. In other words, as per the demand of Section 15(1) of the Act as well as the directions of this Court, the Deputy Commissioner, Hailakandi, was imperatively required to convene the meeting himself and to preside over the same, which apparently has not been done. The communication dated 24.3.2005 does not indicate that the Block Development Officer, Katlicherra Development Block, was permitted only to preside over the meeting to be held on 2.4.2005 as the Deputy Commissioner, Hailakandi, was on that date unable to preside over the same. The communication dated 24.3.2005 on the other hand demonstrates that the Deputy Commissioner, Hailakandi, delegated his power and authority to the BDO, Katlicherra to convene the meeting, preside over the same and submit a report in connection therewith. This is my view, was impermissible both in the teeth of Section 15 of the Act as well as the clear and explicit directions of this Court contained in the order dated 16.3.2005. In the above view of the matter, Mr. Medhi's contention to the contrary cannot be accepted.

17. The decision in *Jahanara Begum* (supra), was rendered in a distinctly different setting of facts where though the time frame was not strictly adhered to, the President of the Gaon Panchayat against whom a no confidence, motion was brought herself convened the meeting. The decision does not lay down a principle of law that a deviation from the procedure prescribed by Section 15 would not render the process invalid under any circumstance. It is, therefore, of no assistance for the Petitioner in the facts of the present case.

18. The impugned notice dated 24.3.2005 and the proceedings of the meeting

held on 2.4.2005 being in contravention of the mandatory provision of Section 15 of the Act and the directions of this Court are, therefore, quashed. The petition stands allowed. No costs.