

(2023) 06 GAU CK 0085
In the Gauhati High Court
Case No : Writ Appeal No. 235 Of 2023

Shikha Rani Suklabaidhya And 8 Ors.

APPELLANT

Vs

State Of Assam And 7 Ors

RESPONDENT

Date of Decision : 26-06-2023

Acts Referred:

Assam Panchayat Act, 1994 — Section 15(1), 15(5)

Citation : (2023) 06 GAU CK 0085

Hon'ble Judges : Achintya Malla Bujor Barua, J; Susmita Phukan Khaund, J

Bench : Division Bench

Advocate : D Hussain

Final Decision : Disposed Of

Judgement

1. Heard Mr. D Hussain, learned counsel for the writ appellants. Also heard Mr. S Dutta, learned counsel for the respondents in the P & RD Department, Ms. U Das, learned counsel for the respondent no. 3 being the Deputy Commissioner, Karimganj and Mr. PK Roychoudhury, learned counsel for the respondent no. 8.

2. Nine members of the Maizgram Gaon Panchayat made a requisition dated 07.09.2021 for a meeting of no confidence against the President of the Gaon Panchayat, namely Hitendu Rudrapaul. Under Section 15 (1) of the Assam Panchayat Act, 1994 (in short, Act of 1994), the meeting of no confidence is required to be convened by the Secretary of the Gaon Panchayat with the approval of the President of the Gaon Panchayat within a period of fifteen days from the date of receipt of the notice. In the event the meeting could not be convened because of the approval not being given by the President, the Secretary of the Gaon Panchayat within a period of three days, after expiry of fifteen days from the receipt of the notice, is required to refer the matter to the President of the concerned Anchalik Panchayat, who thereupon 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.

3. In the instant case, when no approval of holding the no confidence meeting was granted by the President, the Secretary of the Gaon Panchayat on 15.09.2021 had informed the President of the North Karimganj Anchalik Panchayat requesting for a special meeting to be held. If under the provisions of Section 15 (1) of the Act of 1994 the Secretary can refer the matter to the President of the Anchalik Panchayat upon expiry of fifteen days from the date of receipt of the notice, which in the instant case is 07.09.2021, the expiry of fifteen days would have taken place on 24.09.2021 meaning thereby that before 24.09.2021 the Secretary could not have made a request to the President of the Anchalik Panchayat to convene the meeting of no confidence. But in the instant case the records reveal that on 15.09.2021 itself the Secretary of the Gaon Panchayat had made a request to the President of the North Karimganj Anchalik Panchayat to hold a special meeting and accordingly, the special meeting was held on 28.09.2021.

4. The very aspect that the Secretary of the Gaon Panchayat without waiting for expiry of the fifteen days had made a request to the President of the Anchalik Panchayat to requisition the no confidence meeting, was the ground for the President of Gaon Panchayat namely, Hitendu Rudrapaul to institute a writ petition assailing the resolution of the no confidence against the President passed on 28.09.2021 and the writ petition was numbered as WP(C)/5985/2021.

5. By the order dated 15.11.2021 the learned Single Judge required the copies of the writ petition to be served upon the respondents no. 1, 2, 4, 5 and 7 being the officials under the P&RD Department as well as the respondent no. 3 being the Deputy Commissioner of Karimganj district and accordingly, the matter was ordered to be listed on 29.11.2021 requiring the respondents in the P&RD Department to place the relevant records in original before the Court. On 29.11.2021, the matter was ordered to be listed on 02.12.2021. On 02.12.2021, the learned Single Judge had perused the records in original as produced by the P&RD Department and upon hearing the submissions of the learned counsel had ordered that the matter be listed after three weeks for necessary order. At that stage the writ petition was not listed any further and ultimately it was listed on 29.05.2023.

6. During the interregnum while WP(C)/5985/2021 was pending the Vice President of the Gaon Panchayat who was amongst the nine members who made the requisition had discharged the function of the President of the Gaon Panchayat inasmuch as under Section 15 (1) of the Act of 1994 there is a legal fiction that a President or a Vice President shall be deemed to have vacated the office forthwith when the resolution expressing want of confidence against him is passed. Such legal fiction under Section 15 (1) has to be understood to exist irrespective of whether the resolution of no confidence is otherwise tenable or unacceptable in law.

7. When the matter was listed on 29.05.2023, the same was heard and by the judgment and order dated 29.05.2023, the learned Single Judge arrived at its

conclusion that there was a violation of the requirement to wait for a period of fifteen days as provided under Section 15 (1) of the Act of 1994 inasmuch as the Secretary of the Gaon Panchayat had made a request to the President of the Anchalik Panchayat before the expiry of the fifteen days. In this respect, the law has been settled by the Division Bench of this Court in Ali Ahmed Mazumdar vs. State of Assam and ors. reported in 2011 (3) GLT 396 wherein it had been held that the period of fifteen days prescribed under Section 15 (1) for the Secretary to wait before a request can be made to the President of Anchalik Panchayat is a mandatory requirement of law meaning thereby that any non-compliance thereof would entail a procedural aberration in the process leading to the resolution of no confidence that may be passed against the President.

8. By following the proposition laid down in Ali Ahmed Mazumdar (supra) the learned Single Judge arrived at the factual satisfaction that the mandatory period of fifteen days was not followed by the Secretary before making a request to the President of the Anchaik Panchayat to convene a meeting of no confidence.

9. From such point of view, no infirmity can be noticed on the merit of the judgment and order dated 29.05.2023 of the learned Single Judge.

10. Being aggrieved, the members of the Gaon Panchayat who had initiated the requisition for the no confidence motion have instituted the present writ appeal and the only ground urged upon is that in the process adopted as indicated above no notices were issued to the members in WP(C)/5985/2021.

11. In a judicial proceeding any interference of an order which a person may be the beneficiary of cannot be initiated and concluded without issuing notice to the person who is the beneficiary. From such point of view, we notice a strong prima facie case in favour of the present writ appellants inasmuch as the removal of the President of the Gaon Panchayat of which they are the beneficiaries had been interfered by the judgment and order of the learned Single Judge dated 29.05.2023 in WP(C)/5985/2021 without issuing any notice to them.

12. Two options are available before us, i.e. to interfere with the judgment and order dated 29.05.2023 on the ground that the same was passed to the detriment of the present appellants without issuing any notice to them in the writ proceeding or to issue notice in the writ appeal and stay the judgment of the learned Single Judge dated 29.05.2023. We also take note that in the writ appeal which is being moved today, all the parties are present before the Court i.e. the members making the requisition, the President of the Gaon Panchayat who is sought to be removed as well as the departmental authorities concerned.

13. From such point of view, the second option of issuing notice and passing an interim order may be futile as because all the parties are already present before the Court. In respect of the first option to set aside the judgment of the learned Single Judge on the ground that no notice was served on the writ appellants who are the beneficiaries of the order of removal of the President, the same may be technically very sound inasmuch as no order of which a party is a beneficiary can

be taken away without issuing notice to such party, but the implication thereof would be again that the resolution of removal against the President of the Gaon Panchayat which was apparently done in clear violation of the provisions of Section 15 (1) of the Act of 1994 would now be restored back meaning thereby that the members who had made the requisition would be the beneficiaries of an order which was arrived at by there being a clear aberration of the procedural requirement of law.

14. Such a situation would again not be equitable in nature. To balance the equities between the parties, we required the learned counsel for the appellants to submit on merit as to how the procedure adopted in arriving the removal of the President of the Gaon Panchayat dated 28.09.2021 would be sustainable meaning thereby specifically on the aspect that it was done without following the mandatory procedure of waiting for a period of fifteen days before the Secretary can make a request to the President of the Anchalik Panchayat to convene a meeting of no confidence.

15. Mr. D Hussain, learned counsel for the writ appellants apart from raising the technical issue of the judgment of the learned Single Judge being passed without issuing any service of notice is unable to put forth any submission to justify that under certain circumstance the requisition by the Secretary to the President of the Anchalik Panchayat can also be made before expiry of the mandatory period of fifteen days.

16. From such point of view, we have arrived at a situation where even after hearing the members who had made the requisition, the procedural aberration that took place in making a request by the Secretary to the Gaon Panchayat to the President of Anchlik Panchayat to convene the meeting of no confidence before expiry of the period of fifteen days could not be justified in any manner.

17. In view of the above and particularly taking note of the manner in which the WP(C)/5985/2021 had proceeded and more particularly the inability of the writ appellants to justify the aberration of the procedural requirement, we find no merit in this writ appeal to merely interfere on the ground that the notices were not served on the members making the requisition. But however, as provided by the learned Single Judge in the judgment and order dated 29.05.2023 the members of the Gaon Panchayat shall be at liberty to take any such further steps for initiating a meeting of no confidence against the President of Gaon Panchayat, namely Hitendu Rudrapaul by following the procedure prescribed under Section 15 (1) of the Act of 1994. But however, as already noted, considering the intervening stages that had taken place while proceeding with WP(C)/5985/2021, we further provide that as the resolution of removal of the President of the Gaon Panchayat by the resolution dated 28.09.2021 was done in a manner not acceptable in law, we deem it that the requisition for making the no confidence by the members of the Gaon Panchayat was lost on 28.09.2021 meaning thereby that in the event the members intend to bring in any further requisition for a no confidence motion against the President the embargo of six

moths provided under Section 15 (5) of the Act of 1994 shall not be applicable in the present case.

With the above observation this writ appeal stands disposed of.