

GAHC010011642023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/338/2023

HIFJUR RAHMAN LASKAR
S/O. JALAL UDDIN LASKAR, VILL. NARAINPUR PART-II, P.O. NORTH
NARAINPUR, P.S. ALGAPUR, DIST. HAILAKANDI, ASSAM, PIN-788801.

VERSUS

THE STATE OF ASSAM AND 14 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPTT., DISPUR, GUWAHATI-06.

2:THE DEPUTY COMMISSIONER

HAILAKANDI
P.O. AND DIST. HAILAKANDI
ASSAM
PIN-788151.

3:THE CHIEF EXECUTIVE OFFICER

HAILAKANDI ZILLA PARISHAD
P.O. AND DIST. HAILAKANDI
ASSAM
PIN-788151.

4:THE BLOCK DEVELOPMENT OFFICER CUM SECY. AND EXECUTIVE
OFFICER

ALGAPUR DEVELOPMENT BLOCK
P.O. KALIBARI BAZAR
DIST. HAILAKANDI
ASSAM
PIN-788150.

5:THE PRESIDENT

ALGAPUR ANCHALIK PANCHAYAT
ALGAPUR DEVELOPMENT BLOCK
P.O. KALIBARI BAZAR
DIST. HAILAKANDI
ASSAM
PIN-788150.

6:THE SECRETARY

NORTH NARAINPUR GAON PANCHAYAT
P.O. NORTH NARAINPUR
DIST. HAILAKANDI
ASSAM
PIN-788801.

7:DIPON KUMAR DAS

S/O. PULIN CHANDRA DAS
MEMBER OF GROUP NO.1
NORTH NARAINPUR GAON PANCHAYAT
VILL. NARAINPUR PART-I
P.O. NORTH NARAINPUR
P.S. ALGAPUR
DIST. HAILAKANDI
ASSAM
PIN-788801.

8:SAFIA BEGOM MAZUMDER
W/O. ALA UDDIN MAZUMDER
MEMBER OF GROUP NO.2
NORTH NARAINPUR GAON PANCHAYAT
VILL. NARAINPUR PART-I
P.O. NORTH NARAINPUR
P.S. ALGAPUR
DIST. HAILAKANDI
ASSAM
PIN-788801.

9:REXONA BEGUM LASKAR
W/O. MASUK AHMED LASKAR
MEMBER OF GROUP NO.3
NORTH NARAINPUR GAON PANCHAYAT
VILL. NARAINPUR PART-VII
P.O. NORTH NARAINPUR
P.S. ALGAPUR

DIST. HAILAKANDI
ASSAM
PIN-788801.

10:FAIZUR RAHMAN LASKAR
S/O. LT. MAKBUL ALI LASKAR MEMBER OF GROUP NO.4
NORTH NARAINPUR GAON PANCHAYAT
VILL. NARAINPUR PART-II
P.O. NORTH NARAINPUR
P.S. ALGAPUR
DIST. HAILAKANDI
ASSAM
PIN-788801.

11:AYARUN NESSA LASKAR

W/O. ANAM UDDIN LASKAR MEMBER OF GROUP NO.5
NORTH NARAINPUR GAON PANCHAYAT
VILL. NARAINPUR PART-II
P.O. NORTH NARAINPUR
P.S. ALGAPUR
DIST. HAILAKANDI
ASSAM
PIN-788801.

12:SMT. GOURI DAS
W/O. KAILASH CHANDRA DAS
MEMBER OF GROUP NO.6
NORTH NARAINPUR GAON PANCHAYAT
VILL. NARAINPUR PART-III
P.O. NORTH NARAINPUR
P.S. ALGAPUR
DIST. HAILAKANDI
ASSAM
PIN-788801.

13:FARUK AHMED LASKAR
S/O. ABDUL MATLIB LASKAR MEMBER OF GROUP NO.7
NORTH NARAINPUR GAON PANCHAYAT
VILL. NARAINPUR PART-IV
P.O. NORTH NARAINPUR
P.S. ALGAPUR
DIST. HAILAKANDI
ASSAM
PIN-788801.

14:KUTI MOHAN DAS
S/O. RASHMANI DAS

MEMBER OF GROUP NO.8
NORTH NARAINPUR GAON PANCHAYAT
VILL. NARAINPUR PART-IV
P.O. NORTH NARAINPUR
P.S. ALGAPUR
DIST. HAILAKANDI
ASSAM
PIN-788801.

15:SARIMUL HOQUE BARBHUIYA
S/O. ABDUL LATIF BARBHUIYA
MEMBER OF GROUP NO.9
NORTH NARAINPUR GAON PANCHAYAT
VILL. NARAINPUR PART-II
P.O. NORTH NARAINPUR
P.S. ALGAPUR
DIST. HAILAKANDI
ASSAM
PIN-788801

Advocate for the Petitioner : MR. S B LASKAR

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

Date : 11-05-2023

The writ petition under Article 226 of the Constitution of India has been instituted by the petitioner assailing the Minutes of a special meeting held, at 02-30 p.m. on 12.01.2023, in the office of Algapur Anchalik Panchayat to discuss a motion of no confidence brought against the petitioner as the President of No. 1 North Narainpur Gaon Panchayat on the basis of a requisition notice submitted by 9 [nine] nos. of Ward Members on 02.06.2022 expressing want of confidence in the petitioner to continue as the President of No. 1 North Narainpur Gaon Panchayat and requesting the respondent no. 6 i.e. the Secretary, No. 1 North Narainpur Gaon Panchayat to convene a special meeting. The petitioner has also sought for a direction in the nature of mandamus to the respondent authorities to reinstate the petitioner as the President of No. 1 North Narainpur Gaon Panchayat and to allow him to

exercise all the powers and to perform all the functions and duties of the President of North Narainpur Gaon Panchayat.

2. At the inception, it is apt to mention that there are several rounds of previous litigations as regards the matter of no confidence motion subsequent to submission of the requisition notice dated 02.06.2022 and it appears necessary to have a narration on the sequence of events that took place on and from 02.06.2022 up to 12.01.2023.

3. In the General Panchayat Election held in the year 2018, the petitioner contested for the post of President of No. 1 North Narainpur Gaon Panchayat. In the General Panchayat Election so held, the petitioner got elected to the post of President of No. 1 North Narainpur Gaon Panchayat [hereinafter also referred as 'the Gaon Panchayat', at places, for convenience] as per the provisions of Section 6[1][b] of the Assam Panchayat Act, 1994, as amended. In the said General Panchayat Election, the respondent nos. 7 – 15 also got themselves elected as Ward Members of the Gaon Panchayat. Apart from the respondent nos. 7 – 15, there is another Ward Member who also got elected as a Ward Member from one of the 10 [ten] Wards under the Gaon Panchayat. No. 1 North Narainpur Gaon Panchayat consists of 10 nos. of Ward Members. After the Election, the respondent no. 15 got elected as the Vice-President of the Gaon Panchayat in terms of the provisions of Section 6[3] of the Assam Panchayat Act, 1994, as amended.

3.1. On 02.06.2022, 9 [nine] nos. of Ward Members of the Gaon Panchayat submitted a requisition notice addressing the same to the Secretary of the Gaon Panchayat, that is, the respondent no. 6 expressing want of confidence in the President of the Gaon Panchayat i.e. the petitioner and sought for convening of a special meeting to discuss the motion of no confidence. By the requisition notice dated 02.06.2022, 9 [nine] nos. of Ward Members also requested the respondent no. 6 to notify the time, date and venue of the special meeting to be convened. On receipt of the requisition notice dated 02.06.2022, the respondent no. 6 stated to have brought the said requisition notice to the knowledge of the petitioner on 04.06.2022. According to the petitioner, he had put his comments on the file asking the

Secretary of the Gaon Panchayat to wait so that he could discuss the matter and take necessary steps as per the provisions of the Assam Panchayat Act, 1994. It transpires that the Secretary of the Gaon Panchayat had thereafter, referred the requisition notice containing the matter of no confidence motion to the President, Algapur Anchalik Panchayat on 16.06.2022. On receipt of the letter dated 16.06.2022 from the Secretary of the Gaon Panchayat, the President of Algapur Anchalik Panchayat issued a notice to the stakeholders convening a special meeting to discuss the motion of no confidence against the petitioner on 22.06.2022.

3.2. Assailing such convening of the special meeting by the President of Algapur Anchalik Panchayat on 22.06.2022 to discuss the motion of no confidence against him, the petitioner instituted a writ petition, W.P.[C] no. 4178/2022 inter alia on the ground that there was violation of the provisions contained in Section 15[1] of the Assam Panchayat Act, 1994 while convening the special meeting. When the writ petition, W.P.[C] no. 4178/2022 came up for consideration on 24.06.2022, the learned Standing Counsel, P&RD Department had, on instruction, submitted before the Court that the special meeting convened on 22.06.2022 could not be held due to the then prevailing flood situation in the district of Hailakandi and the Court was further informed that until the flood situation would not improve in the district of Hailakandi, there was no possibility of holding any special meeting. Taking note of the above fact situation, the Court had found nothing surviving for adjudication in the writ petition at that point of time and with the consent of the learned counsel for all the sides, the writ petition, W.P.[C] no. 4178/2022 was disposed of by an order dated 24.06.2022 at the motion stage by providing that if and when the deferred meeting would be proposed to be held for discussing the motion of no confidence brought against the petitioner, the same would be done in strict adherence to the mandate contained in Section 15[1] as well as other related provisions of the Assam Panchayat Act, 1994.

3.3. After disposal of the writ petition, W.P.[C] no. 4178/2022 by the order dated 24.06.2022, the petitioner submitted a Representation before the Deputy Commissioner, Hailakandi on 05.07.2022 raising a number of grievances as regards illegalities in convening the special meeting against the petitioner. While the Representation dated 05.07.2022 of the

petitioner remained pending, a number of Ward Members of the Gaon Panchayat approached this Court by instituting a writ petition, W.P.[C] no. 5080/2022 with the grievance that the special meeting required to be convened in terms of the order dated 24.06.2022 was not convened. When the writ petition, W.P.[C] no. 5080/2022 was listed for motion on 12.09.2022, the learned State Counsel appearing for the Deputy Commissioner, Hailakandi produced a written instruction dated 03.09.2022 from the Deputy Commissioner, Hailakandi mentioning that necessary steps to be taken for convening the special meeting were under consideration. In view of such instruction, the Court posted the writ petition at a later date for further consideration. Thereafter on 23.09.2022, the Deputy Commissioner, Hailakandi by a notice of even date convened a special meeting on 29.09.2022 to discuss the motion of no confidence brought against the petitioner. The said notice dated 23.09.2022 came to be immediately challenged by the petitioner in the writ petition, W.P.[C] no. 6515/2022. When the writ petition, W.P.[C] no. 6515/2022 was listed on 28.09.2022 for consideration, the issuance of notice dated 23.09.2022 convening the special meeting on 29.09.2022 was brought to the notice of the Court. Taking note of the fact that the special meeting had already been convened and scheduled on 29.09.2022, the Court expressing the opinion that no interference was required in the case at that stage, disposed of the writ petition, by order dated 28.09.2022, making it clear that if a resolution was adopted against the petitioner in the special meeting to be held on 29.09.2022, it would be open for the petitioner to assail the same on any of the grounds available to him under the law including the ground of non-compliance of the provisions contained in Section 15[1] of the Assam Panchayat Act, 1994.

3.4. Thereafter, the special meeting, as convened by the notice dated 23.09.2022, was held as scheduled to discuss the motion of no confidence. In the said special meeting, the motion was passed against the petitioner by the requisite majority and the resolution to that effect was adopted. The Deputy Commissioner, Hailakandi upon perusal of the minutes of the special meeting held on 29.09.2022, passed an order on 30.09.2022 observing that the motion was duly passed through secret ballots and in view of the same, the Vice-President of the Gaon Panchayat was directed to act as the President In-Charge of the Gaon Panchayat with immediate effect empowering him to exercise all the powers and to perform all the functions and duties of the President, as provided under Section 13[1] of the Assam

Panchayat Act, 1994. Making assailment to the minutes of the proceedings of the special meeting held on 29.09.2022 and the order dated 30.09.2022 passed by the Deputy Commissioner, Hailakandi, the petitioner instituted a writ petition, W.P.[C] no. 6687/2022 on 07.10.2022. By an order dated 04.11.2022, the Court had, as an interim measure, stayed the minutes of the special meeting dated 29.09.2022 by which the petitioner was removed from the post of President of the Gaon Panchayat until further orders. The writ petition, W.P.[C] no. 6687/2022 came to up for final consideration on 11.11.2022 after the exchange of pleadings between the petitioner and the private respondents was complete. After hearing the learned counsel for the parties and upon perusal of the materials on record, the Court reached at a finding that there was aberration to the provision of Section 15[1] of the Assam Panchayat Act, 1994 as the Secretary of the Gaon Panchayat after bringing the matter of submission of the requisition notice dated 02.06.2022 to the knowledge of the petitioner, referred the matter to the jurisdictional Anchalik Panchayat on 16.06.2022 without waiting for expiry of 15 [fifteen] days. Taking note of the fact that such reference was made to the jurisdictional Anchalik Panchayat in violation of Section 15 of the Assam Panchayat Act, 1994. It was held that all the further proceedings subsequent thereto were in violation of Section 15 of the Assam Panchayat Act, 1994. By its judgment and order dated 11.11.2022, passed in the writ petition, W.P.[C] no. 6687/2022, the resolution adopted in the special meeting held on 29.09.2022 and the order dated 30.09.2022 passed by the Deputy Commissioner, Hailakandi were set aside, re-instating the petitioner to the post of the President of the Gaon Panchayat with immediate effect.

3.5. The Court had further observed that in view of the proceedings of the writ petition, W.P.[C] no. 6687/2022 the petitioner had due knowledge about the requisition notice dated 02.06.2022 with effect from 11.11.2022 i.e. the date of judgment and order rendered in the writ petition, W.P.[C] no. 6687/2022 for the purpose of the provisions contained in Section 15[1] of the Assam Panchayat Act, 1994 and the petitioner was put at liberty to act in terms of the provisions of Section 15[1] of the Assam Panchayat Act, 1994 with the observation that if the petitioner failed to do so, the consequences as mandated in Section 15[1] of the Assam Panchayat Act, 1994 would follow. The Court, further taking note of the allegations as regards misappropriation by the petitioner as President of the Gaon Panchayat, had directed that the

fund of the Gaon Panchayat could only be put to use in terms of Section 24[4] of the Assam Panchayat Act, 1994 r/w Rule 5 of the Assam Panchayat [Financial Rules], 2002 which mandates that the Secretary of the Gaon Panchayat has to administer such fund.

4. I have heard Mr. S.B. Laskar, learned counsel for the petitioner; Mr. S. Dutta, learned Standing Counsel, Panchayat & Rural Development Department for the respondent nos. 1, 3, 4 & 6; Mr. M. Barman, learned Junior Government Advocate, Assam for the respondent no. 2; and Mr. D. Das, learned senior counsel assisted by Mr. P.K. Deka, learned counsel for the respondent nos. 7 – 15.

5. Mr. Laskar, learned counsel for the petitioner has submitted that subsequent to the judgment and order dated 11.11.2022, the Secretary of the Gaon Panchayat i.e. the respondent no. 6 had placed the requisition notice dated 02.06.2022 before the petitioner on 21.11.2022 through an office file in deference to an order dated 19.11.2022 of the Deputy Commissioner, Hailakandi. The petitioner immediately gave his proposal on 21.11.2022 to convene the special meeting on 26.11.2022 to discuss the motion of no confidence. The petitioner had requested the Secretary to arrange all the necessary arrangements accordingly including the arrangement for videography and to take help of the administration and police for a free and fair voting process through secret ballots. Acting on the approval and endorsement dated 21.11.2022 of the petitioner, the Secretary had accordingly issued notices to each of the stockholders on 21.11.2022. Making mention of the judgment and order dated 11.11.2022 passed by this Court, the Secretary of the Gaon Panchayat had convened the special meeting at 11-00 a.m. on 26.11.2022 at the office of the Gaon Panchayat specifying the agenda of the special meeting.

5.1. It is the case of the petitioner that the notices were duly served on all the stockholders including the Ward Members of the Gaon Panchayat, who submitted the requisition notice dated 02.06.2022 through WhatsApp messages. The Ward Members of the Gaon Panchayat including the respondent no. 15, came to the venue of the special meeting on 26.11.2022. Though the respondent no. 15 was obligated as the Vice-President of the Gaon Panchayat to preside over the special meeting convened for discussing the motion of no confidence against

the President of the Gaon Panchayat i.e. the petitioner, the respondent no. 15 started arguments with the petitioner regarding inclusion of agendas wrongly in the notice dated 21.11.2022. When the Secretary of the Gaon Panchayat i.e. the respondent no. 6 requested the respondent no. 15 to preside over the special meeting, the respondent no. 15 refused to do so. Instead of presiding over the special meeting, the respondent no. 15 left the venue of the special meeting along with 8 [eight] other Ward Members i.e. the respondent no. 7 to 14 without putting their signatures and by refusing to mark their attendance in the proceedings book maintained for the special meeting. Instead, the Vice-President and the other Ward Members held a press-conference inside the office of the Gaon Panchayat by raising various allegations against the petitioner.

5.2. It is the contention of the learned counsel for the petitioner that as the special meeting convened on 26.11.2022 was preceded by the notice dated 21.11.2022 and as such, the special meeting which was abandoned by the Ward Members by walking out of it without any valid reason, has to be held as duly convened and since no resolution was passed on the motion of no confidence against the petitioner, the motion has to be held as lost. He has further contended that in such view of the matter, the subsequent steps for convening another special meeting on 12.01.2023 by a notice dated 09.01.2023 is to be held as invalid and non-est in the eye of law. It is his further contention that in any view of the matter, the special meeting, scheduled and held on 12.01.2023, was clear infraction of the provisions contained in Section 17[3] of the Assam Panchayat Act, 1994. In support of his submissions, he has referred to the decision of the Division Bench of this Court rendered in a writ appeal, W.A. no. 189/2021 [Hafizur Rahman vs. the State of Assam and 15 others], decided on 17.12.2021. It is also his contention that the President of the Anchalik Panchayat had no jurisdiction to convene the special meeting dated 12.01.2023 in violation of the provisions contained in Section 15 of the Assam Panchayat Act, 1994. With such submissions, Mr. Laskar has submitted that the proceedings of the special meeting held on 12.01.2023 is not sustainable in law and the same is required to be set aside and the petitioner is entitled to be reinstated in the post of the President, North Narainpur Gaon Panchayat by making the interim order dated 23.01.2023 absolute by treating the motion to be a motion lost in the special meeting held on 26.11.2022.

6. Mr. Das, learned senior counsel for the respondent nos. 7 – 15 has referred to the provisions of Section 15[1] and Section 17 of the Assam Panchayat Act, 1994 to submit that by the judgment and order dated 11.11.2022, this Court had, in no uncertain terms, directed the petitioner to comply with the provisions of Section 15[1] of the Assam Panchayat Act, 1994 and in the event of failure to do so, the consequence contained in the said statutory provision would follow. Thus, the petitioner was obligated to comply with the statutory prescriptions contained in Section 15[1] of the Assam Panchayat Act, 1994 as the President of the Gaon Panchayat. He has submitted that a notice issued convening a special meeting, apart from specifying the date, place and time of such special meeting, the business to be transacted in such special meeting should be clearly set forth. The onus is on the President as well as on the Secretary of the Gaon Panchayat to do so. If a notice convening special meeting does not fulfill such requirements, then it cannot be termed as a valid notice in law. He has submitted that it is incumbent upon the petitioner as the Secretary of the Gaon Panchayat to see that the business to be transacted in the special meeting so convened, is specifically reflected therein and in the event of any irregularity, the Secretary of the Gaon Panchayat is to be specifically instructed to do so.

6.1. Mr. Das has submitted that if with the above statutory provision in mind the agendas incorporated in the notice dated 21.11.2022 are perused, it would demonstrate that the business to be transacted in the special meeting so convened on 26.11.2022 was, in specific terms, not in connection with the motion of no confidence, though it had made reference of the judgment and order dated 11.11.2022 of this Court. It is his contention that the notice dated 21.11.2022 is either a handiwork of the petitioner in connivance of and collusion with the Secretary of the Gaon Panchayat or the act of mischief solely attributable to the Secretary of the Gaon Panchayat. If the notice dated 21.11.2022 was an act of mischief on the part of the Secretary of the Gaon Panchayat alone, then the democratic process cannot be allowed to be sabotaged by an authority like the Secretary of the Gaon Panchayat who had otherwise no role with the passing or not passing of the motion. When the matter is looked at with the above perspective then it is clear that the Ward Members of the Gaon Panchayat were within their rights not to take part in the proceedings of the special meeting purportedly convened

on 26.11.2022 with improper agendas. It is his submission that after having received the notice dated 21.11.2022 without any specific agenda as regards the motion of no confidence, the Ward Members had rightly refused to participate in such proceedings and had rightly refused to sign the proceedings book also in protest. By no stretch of imagination, it can be held that the motion of no confidence was lost because to hold so, such motion was to be deliberated upon in a properly convened and concluded special meeting and the motion had to be lost on merits.

6.3. In so far as the second limb of contention of the petitioner is concerned, it is fairly submitted by him that in view of the decision rendered by the Division Bench as regards clear three days gap, the inevitable consequence is to hold a special meeting afresh to discuss the motion of no confidence brought against the petitioner in the capacity of the President of the Gaon Panchayat.

7. Mr. Dutta, learned Standing Counsel, P&RD Department has submitted that the notice dated 21.11.2022 whereby the special meeting was convened on 26.11.2022 was not in proper format as there was no specific agenda to the effect that in the said special meeting so convened, there would be a discussion on the motion of no confidence brought against the petitioner by the requisition notice dated 02.06.2022. He has further submitted that as the prescription of three clear days notice contained in Section 17[3] of the Assam Panchayat Act, 1994 was not followed in the notice dated 09.01.2023, though the motion was found to be passed with 8 [eight] nos. of Ward Members supporting the motion, the inevitable consequence would be interference at the stage of the notice dated 09.01.2023 itself and to re-convene the special meeting in compliance of the provisions contained in Section 17[3] of the Assam Panchayat Act, 1994 following the ratio laid down in Hafizur Rahman [supra].

8. I have given due consideration to the submissions advanced by the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings. I have also perused the records produced by the learned Standing Counsel, P&RD Department as regards proceedings of the two special meetings, held on 26.11.2022

and 12.01.2023 respectively.

9. It is apposite to refer to the provisions of Section 15 as well as Section 18 of the Assam Panchayat Act, 1994 at first. Section 15 of the Panchayat Act, 1994 has provided for the matter of no confidence against the President and the Vice-President of the Gaon Panchayat. It is provided, inter alia, in sub-section [1] of Section 15 that every President of a Gaon Panchayat shall be deemed to have vacated his office forthwith when a resolution expressing want of confidence in him is passed by two third majority of the total number of members of the Gaon Panchayat. It has also provided for the procedure for convening a special meeting. As per Section 15[1], a special meeting is to be convened by the Secretary of the Gaon Panchayat with the approval of the President of the Gaon Panchayat. In case such a special meeting is not convened within a period of 15 [fifteen] days from the date of receipt of the notice, the Secretary of the Gaon Panchayat is required to refer the matter within 3 [three] days therefrom to the President of the concerned Anchalik Panchayat, who has, in turn, to convene the special meeting within 7 [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 7 [seven] days' time, the concerned Gaon Panchayat Secretary shall have to inform the matter to the Deputy Commissioner/Sub-Divisional Officer [Civil], as the case may be, within 3 [three] days after the expiry of the stipulated 7 [seven] days' time and in such a situation, the concerned Deputy Commissioner/Sub-Divisional Officer [Civil] shall have to convene the special meeting within 7 [seven] days from the date of receipt of the information with intimation to the Zilla Parishad and the Anchalik Panchayat and preside over the special meeting so convened. It has further provided that the Deputy Commissioner/Sub-Divisional Officer [Civil], as the case may be, in case of his inability to preside over the special meeting, may depute one Gazetted Officer under him not below the rank of Class-I Gazetted Officer to preside over such special meeting. The requisition for such a special meeting 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 [Section 15(2)]. Sub-section [5] of Section 18 of the Panchayat Act, 1994 has made it mandatory that the voting in

a special meeting, where a no confidence motion is discussed, has to be decided by the secret ballot.

10. As has been mentioned above, this Court interfered with the proceedings of the special meeting convened and held on 29.09.2022. It was found that the Secretary of the Gaon Panchayat had forwarded the matter to the Anchalik Panchayat without waiting for the period of 15 days to expire from the date of placing the requisition notice dated 22.06.2022 before the petitioner as the President of the Gaon Panchayat seeking his approval to convene the special meeting. In the special meeting held on 29.09.2022, a resolution on no confidence motion was passed against the petitioner by two-third majority of the total number of Ward Members of the Gaon Panchayat. While interfering with the said resolution, the Court had observed that the petitioner had knowledge about the requisition notice dated 02.06.2022 on and from 11.11.2022 and should proceed from that stage to convene the special meeting in strict compliance of the provisions contained in the Assam Panchayat Act, 1994, more specifically Section 15[1] of the Assam Panchayat Act, 1994.

11. After the judgment and order dated 11.11.2022, the Secretary of the Gaon Panchayat appeared to have placed the requisition notice dated 02.06.2022 before the petitioner through an office file on 21.11.2022 seeking his approval and for fixation of the date, time and place of the special meeting. The records have revealed that the petitioner had purportedly made a note in the office file granting his approval to convene the special meeting on 26.11.2022 with the further direction to the Secretary of the Gaon Panchayat to take necessary arrangement for videography of the proceedings and to take the help of the Administration and police to restrict entry of outsiders inside the venue of the special meeting for the purpose of ensuring free and fair process of election. The said endorsement dated 21.11.2022 of the petitioner as the President of the Gaon Panchayat, in the office file was immediately followed by the notices of the same date, that is, 21.11.2022 under the signature of the Secretary of the Gaon Panchayat whereby the special meeting was convened at 11-00 a.m. on 26.11.2022 at the office of the Gaon Panchayat, with the following agendas :- [i] discussion regarding various development works of the Panchayat; [ii] discussing regarding various complaints and demands of the Members of the Gaon

Panchayat; and [iii] others.

12. A bare look at the agendas of the special meeting, convened on 26.11.2022, is demonstrative of the fact that there is no specific agenda as regards the motion of no confidence brought against the petitioner as the President of the Gaon Panchayat. While directing to convene the special meeting by the judgment and order dated 11.11.2022, the Court directed compliance of the prescription contained in Section 15[1] of the Assam Panchayat Act, 1994 on the part of the petitioner. As it is the case of a special meeting to discuss the motion of no confidence contained in Section 15 of the Assam Panchayat Act, 1994, the provisions contained in Section 17 of the Assam Panchayat Act, 1994 is also to be read along with it.

13. Sub-section [1] of Section 17 of the Assam Panchayat Act, 1994 has provided that a Gaon Panchayat shall meet for the transaction of business at least once in two months at the office of the Gaon Panchayat and at such time as the President may determine. Sub-section [2] of Section 17 has inter alia provided that the President shall, upon a written request of not less than one-third of the total number of members and on a date within fifteen days from the receipt of such request, call a special meeting. Sub-section [3] of Section 17 has specifically laid down that three clear days notice of special meeting specifying the place, time and date of such special meeting and the business to be transacted therein shall be given by the Secretary of the Gaon Panchayat and fix the notice on the notice-board of the Gaon Panchayat office.

14. None of the first two agendas in the notice dated 21.11.2022 had mentioned about the motion of no confidence. The third agenda, 'others' was too vague an agenda wherefrom it can be inferred that the discussion to be transacted in the special meeting convened on 26.11.2022 would include the motion of no confidence. Though a contention is advanced from the side of the petitioner that there was mention of the judgment and order dated 11.11.2022 in the special meeting dated 21.11.2022, that cannot be a plea on the part of the petitioner as the judgment and order dated 11.11.2022 had directed the petitioner to ensure compliance of the statutory prescription contained in Section 15[1] of the Assam Panchayat

Act, 1994. Though it is projected on behalf of the petitioner that he had, in a bona fide manner, made approval in office file to convene the special meeting on 26.11.2022, it is found that he failed to make sure to incorporate the specific business to be transacted in the special meeting so convened. The petitioner had, however, failed to ensure that the special meeting was convened only for the purpose of discussing the motion of no confidence brought against him by the requisition notice dated 02.06.2022. The act of mischief had occurred on 21.11.2022 itself. There are two possible conceivable consequences. If the notice dated 21.11.2022 was an act of collusion and connivance between the petitioner and the Secretary of the Gaon Panchayat, then the act of mischief would be attributable to both of them. Even if the act of mischief is attributable to the Secretary of the Gaon Panchayat then also the sanctity of a special meeting cannot be allowed to be sabotaged by an insignificant authority like the Secretary of the Gaon Panchayat who had no role in the process of removal of the President from the Gaon Panchayat by secret voting. In such backdrop, the act of walk out on the part of the Ward Members who had arrived at the venue of the special meeting on 26.11.2022 to take part in the proceeding of the special meeting without the specific agenda of discussion on the motion of no confidence, cannot be held to be improper. As no discussion on the motion of no confidence was held and no process of voting took place on 26.11.2022, it cannot be held that the motion of no confidence was defeated on merits and the natural consequence is to proceed further from that stage onward. Thus, for the aforesaid reasons, this Court does not find any merit in the first limb of submission of the petitioner and the same is not acceptable.

15. It is submitted at the bar that the private respondents herein subsequent to 26.11.2022, had preferred a writ petition, W.P.[C] no. 7966/2022, with the projection that the special meeting in terms of the direction contained in the judgment and order dated 11.11.2022 had not been convened. When the writ petition, W.P.[C] no. 7966/2022 came up for consideration on 09.12.2022, this Court while issuing notices to the respondents, had observed that the pendency of the writ petition should not be a bar for the respondent authorities to take into consideration the effect of the judgment and order dated 11.11.2022 passed in W.P.[C] no. 6687/2022 and act accordingly. Immediately after the order dated 09.12.2022, the Deputy Commissioner, Hailakandi by a letter dated 20.12.2022, addressed to

the Secretary of the Gaon Panchayat, directed him to take necessary action for the purpose of convening the special meeting as per the provisions of Section 15[1] of the Assam Panchayat Act, 1994. In response to the letter dated 20.12.2022 of the Deputy Commissioner, Hailakandi, the Secretary of the Gaon Panchayat replied vide letter dated 31.12.2022 whereby it was informed that he made efforts to put up the office file before the petitioner for approval to convene the special meeting to discuss the motion of no confidence. On 06.01.2023, the Secretary of the Gaon Panchayat forwarded the matter to the President of Algapur Anchalik Panchayat stating that a period of 15 days from 21.12.2022 to 04.01.2023 had expired without getting approval from the petitioner to convene the special meeting in terms of Section 15[1] of the Assam Panchayat Act, 1994. On receipt of the letter dated 06.01.2023 from the Secretary of the Gaon Panchayat, the Executive Officer of the Algapur Anchalik Panchayat issued notices to the stakeholders on 09.01.2023 intimating that the special meeting had been convened at 02-30 p.m. 12.01.2023 in the office of the Algapur Anchalik Panchayat. The special meeting so convened, was held as scheduled on 12.01.2023 wherein the 9 [nine] nos. of Ward Members took part. In the special meeting, held on 12.01.2023 and presided by the President of Algapur Anchalik Panchayat, the process of secret voting was resorted to and after counting of votes, it was found that 8 [eight] votes were cast in favour of the motion and 1 [one] vote was cast against the motion. The counting of votes followed by a resolution dated 12.01.2023 to the effect that the motion of no confidence was passed against the petitioner. The proceedings of the special meeting dated 12.01.2023 was thereafter forwarded by the Secretary & Executive Officer of Algapur Anchalik Panchayat to the Gaon Panchayat on 17.01.2023. Aggrieved thereby, the petitioner who did not take part in the special meeting held on 12.01.2023, has preferred the instant writ petition.

16. In so far as the submission in respect of the second ground urged by the petitioner, it is found that the notice issued by the Secretary & Executive Officer of the Algapur Anchalik Panchayat on 09.01.2023 had mentioned that the special meeting would be convened on 12.01.2023. Thus from the notice dated 09.01.2023, it has clearly emerged that there was just two clear days in between the date of the notice [29.09.2022] and the date of the special meeting thereby convened [12.01.2023].

17. The Hon'ble Division Bench in Hafizur Rahman [supra] has observed that Section 17[3] of the Assam Panchayat Act, 1994 has clearly stipulated that in case of any special meeting [which is a meeting for no confidence motion], three days clear notice has to be given. It has been further observed that when such three clear days' notice for a special meeting is not found to be given, it has to be held that such notice is in violation of Section 17[3] of the Assam Panchayat Act, 1994. The decision of the learned Single Judge rendered in a writ petition, W.P[C] no. 181/2021 [Jahanara Ahmed vs. The State of Assam and 13 others], decided on 08.03.2022, has also observed in similar manner. In both the decisions, it has been observed that though the motion of no confidence stated to have been passed against the President of the Gaon Panchayat by the requisite two-third majority in a special meeting, there was infraction of the statutory prescription contained in Section 17[3] of the Assam Panchayat Act, 1994 and the same cannot be given effect to.

18. In view of the fact situation obtaining the case in hand, mentioned above; the statutory prescription of requiring three clear days notice for a special meeting to discuss a motion of no confidence; contained in Section 17[3] and the principles emerging from the decisions cited above, this Court is of the considered view that the resolution passed with regard to the motion of no confidence against the petitioner in the special meeting, held on 12.01.2023, was preceded by infraction of the statutory prescription contained in Section 17[3] of the Assam Panchayat Act, 1994 and hence, is found to be unsustainable in law. Consequently, the same is liable to be set aside. It is accordingly set aside.

19. From the sequence of events narrated above, the genesis of the instant writ proceedings was the requisition notice dated 02.06.2022. The proceedings as regards the motion of no confidence is clearly a protracted one. On the first occasion, the motion of no confidence was passed by requisite two-third majority of the total number of Ward Members of the Gaon Panchayat but it was interfered with on that occasion due to an act of referring the matter by the Secretary of the Gaon Panchayat before expiry of the 15 days period from placing the matter before the President of the Gaon Panchayat seeking approval. It is also noticeable that on 26.11.2022, the private respondents who staged walkout in the absence of specific agenda in the notice dated 21.11.2022, was prima facie of the requisite strength for

voting in favour of the motion to remove the petitioner from the office of the President of the Gaon Panchayat. When the special meeting was held on 12.01.2023, on that occasion also, the motion was passed against the petitioner by majority of two-third of the total number of Ward Members of the Gaon Panchayat with eight Ward Members voting in favour of the motion through secret ballots.

20. This court cannot be oblivious of the fact that the requisition notice dated 02.06.2022 expressing want of confidence in the petitioner was submitted by 9 [nine] nos. of Ward Members of the Gaon Panchayat, which strength is more than two-third majority of the total number of Ward Members of the Gaon Panchayat. It cannot also be oblivious of the fact that on all two occasions, more than two-third majority of total numbers of Ward Members voted in favour of the no confidence motion. As on all the occasions, the process subsequent to requisition notice expressing want of confidence had failed finally either on technical grounds or due to procedural irregularities, this Court, thus, is of the considered view that it would be failing in its duty in exercising its power under Article 226 of the Constitution of India if this Court does not direct to hold a special meeting to decide the no confidence motion brought against the petitioner.

21. The concept of tenure of an elected office-bearer of any Panchayati Raj Institution, governed by democratic principles, is controlled by a limitation of no confidence and the fixed tenure provided in the governing statute, that is, the Assam Panchayat Act, 1994 can get shortened due to removal from loss of confidence in such elected officebearer, as provided for in the statute. This truncation in the tenure in view of removal of an elected office-bearer is based on the democratic principle that the elected office-bearer against whom such motion is passed, has ceased to enjoy the support and confidence of the requisite majority of members, as fixed by the governing statute. From the provisions of Section 15[1] of the Assam Panchayat Act, 1994, it is clearly discernible that a President of a Gaon Panchayat can continue in that capacity so long as he enjoys the confidence of two-third of the total number of Ward Members of the Gaon Panchayat. As soon as he loses the confidence of a majority of two-third of the total number of Ward Members of the Gaon Panchayat and a motion of no confidence is passed against him by such majority of two-third of the total members of the

Gaon Panchayat, such a President of a Gaon Panchayat shall be deemed to have vacated his office forthwith.

22. A Full Bench of this Court in Forhana Begum Laskar vs. State of Assam and others, reported in 2009 [6] GLR 429, has held that if a no confidence motion is not lost attracting the bar against initiation of a fresh proceeding with the same objective within 6 [six] months thereafter, the process subsists and is capable of being furthered from the stage of interference. In Laxmi Singh and others vs. Rekha Singh and others, reported in [2020] 6 SCC 812, a three-judge Bench of the Hon'ble Supreme Court of India had interfered with a no confidence motion against the president of a Gaon Panchayat on the ground that the process of secret voting was not resorted to as per the provisions contained in Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961. It has observed that the ends of justice would be met if the motion was put into re-vote at a meeting to be convened again. A Division Bench of this Court in Karun Kanti Malakar and others vs. Nosir Ahmed Mazumdar and others, reported 2010 [3] GLT 415, had issued direction to convene special meeting within 15 days for bringing the motion of no confidence as the motion still survived. Similar kind of direction was given in Rita Rani Dushad vs. State of Assam, reported in 2016 [4] GLT 905, and Mocklishur Rahman vs. the State of Assam, reported in 2017 [4] GLT 933.

23. In the peculiar fact situation obtaining in the case, more particularly, taking into consideration that on three occasions, the special meetings were not properly held and on two of the three occasions, a resolution was passed against the petitioner by more than requisite two-third majority of the total number of Ward Members of a Gaon Panchayat, but interfered with later on, this Court is of the view that a direction is called for in the case in hand because the motion of no confidence is not lost and still survives. It is, therefore, directed that a special meeting to discuss the motion of no confidence against the petitioner shall be held at 11-00 a.m. on 26.05.2023 under the chairmanship of the President of Algapur Anchalik Panchayat [the respondent no. 5]. In order to ensure a free and fair voting process by way of secret ballots, the Deputy Commissioner, Hailakandi shall depute one Gazetted Officer under him not below Class-I Gazetted Officer for supervision. The Secretary and the Executive Officer of Algapur Anchalik Panchayat shall ensure that the entire

proceedings of the special meeting is videographed and there shall be no outsiders other than the petitioner, the Ward Members of the Gaon Panchayat, the President and Secretary of the Algapur Anchalik Panchayat and the deputed Gazetted Officer and other required Government officials. The petitioner as the President of the Gaon Panchayat and the respondent nos. 7 – 15 as the Ward Members of the Gaon Panchayat are directed to participate in the special meeting. If there is any other Ward Member of the Gaon Panchayat who is not a party in the present proceedings, the respondent no. 4 shall ensure service of notice in respect of the special meeting upon him.

24. As the proceedings of the special meeting dated 12.01.2023 has been interfered with, as a corollary, the petitioner will continue in the post of the President of North Narainpur Gaon Panchayat. At the same time, it is observed that until the special meeting to discuss the motion of no confidence against the petitioner is held and decided on 26.05.2023, the petitioner will continue to function as the President, North Narainpur Gaon Panchayat discharging its day to day functions but he shall not take any major decision on financial matters.

25. With the observations made and the directions given above, the writ petition is allowed to the extent indicated above. The interim order stands merged with this order. There shall, however, be no order as to cost.

26. A copy of this order be furnished to Mr. Dutta, learned Standing Counsel, P&RD Department and Ms. Barman, learned Junior Government Advocate, Assam for the purpose of taking necessary steps for compliance from their ends.

JUDGE

Comparing Assistant