

GAHC010014422023



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

Case No. : WP(C)/368/2023

CHINTAMANI BOL
W/O LATE JAY KRISHNA BOL
RESIDENT OF VILLAGE AND PO SAIDARIA, PS RUPAHIHAT, DIST
NAGAON, ASSAM 782125

VERSUS

THE STATE OF ASSAM AND 12 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPT. DISPUR
GUWAHATI 781006

2:THE DEPUTY COMMISSIONER
NAGOAN
ASSAM 782001

3:THE NAGAON ZILLA PARISHAD
REPRESENTED BY THE CHIEF EXECUTIVE OFFICER
PO
PS AND DIST NAGAON
ASSAM 782001

4:THE PRESIDENT
RUPAHIHAT ANCHALIK PANCHAYAT
PO RUPAHI
PS RUPAHIHAT
DIST NAGAON
ASSAM 782125

5:THE EXECUTIVE OFFICER
RUPAHIHAT ANCHALIK PANCHAYAT

PO RUPAHI
PS RUPAHIHAT
DIST NAGAON
ASSAM 782125

6:THE SECRETARY
SAIDARIA GAON PANCHAYAT
PO SAIDARIA
PS RUPAHIHAT
DIST NAGAON
ASSAM 782125

7:SMTI SUKURJAN NESSA
MEMBER WARD NO. 2
W/O SURUJ ALI

VILLAGE AND PO SAIDARIA
PS RUPAHIHAT
DIST NAGAON
ASSAM 782125

8:ARIF INAMUL HUSSAIN
MEMBER
WARD NO. 5
S/O IDRIS ALI
VILLAGE PUTHIKHAITY
PS RUPAHIHAT
DIST NAGAON
ASSAM 782125

9:ABUL KALAM
MEMBER
WARD NO. 6
S/O LATE MUSLEM UDDIN
VILLAGE PUTHIKHAITY
PS RUPAHIHAT
DIST NAGAON
ASSAM 782125

10:MUBARAK HUSSAIN
MEMBER
WARD NO 7
S/O LATE AKBAR ALI

VILLAGE PUTHIKHAITY
PS RUPAHIHAT
DIST NAGAON
ASSAM 782125

11:MUSTAK AHMED KHAN
MEMBER
WARD NO. 8
S/O LATE YEASIN ALI

VILLAGE PUTHIKHAITY
PS RUPAHIHAT
DIST NAGAON
ASSAM 782125

12:SABANA YESMIN
MEMBER WARD NO. 9
W/O ABUL HASHIM
VILLAGE TELIACHAPORITUP PO AND PS RUPAHIHAT
DIST NAGAON
ASSAM 782125

13:RUKSANA AHMED
MEMBER WARD NO. 10
W/O SAIFUDDIN ISLAM
VILLAGE TELIACHAPORITUP PO AND PS RUPAHIHAT
DIST NAGAON
ASSAM 78212

Advocate for the Petitioner : MR. M K HUSSAIN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 12-09-2023

Heard Mr. T.J. Mahanta, learned Sr. counsel assisted by Mr. R. Ali, learned counsel for the writ petitioner. Also heard Mr. K. N. Choudhury, learned Sr. counsel assisted by Mr. S. Alom, learned counsel appearing for the respondent Nos. 7 to 13 on the strength of a caveat. Mr. S. Baruah, learned Govt. Advocate, Assam is present on behalf of respondent

No. 2 whereas Mr. S. Dutta, learned standing counsel, P&RD Department, Assam has appeared on behalf of respondent Nos. 1, 3, 5, 6 and 7. Mr. M.H. Choudhury, learned counsel is present on behalf of respondent No. 4.

2. By filing this writ petition the former President of the Saidaria Gaon Panchayat under Rupahihat Anchalik Panchayat of Nagaon Zilla Parishad has approached this Court assailing the resolution adopting the no-confidence motion brought against her in the specially convened meeting held on 09-01-2023, thus removing the petitioner from her office.

3. The facts of the case lie in a narrow campus. On 21-12-2022 08 (eight) members of the Gaon Panchayat had submitted a requisition before the Secretary of the Saidaria Gaon Pachayat, i.e. the respondent No. 6 with a request to convene a special meeting for discussing the no-confidence motion brought against the writ petitioner, who was the President of the Saidaria Gaon Panchayat. Since the writ petitioner had declined approval for convening the meeting, hence, after expiry of 15 days from the date of receipt of the requisition, the respondent No. 6 had forwarded the same to the President of the Anchalik Panchayat on 05-01-2023 for taking appropriate action in the matter under Section 15(5) of the Assam Panchayat Act, 1994 for convening the meeting to discuss the no-confidence motion. On 05-01-2023 itself the President of the Rupahihat Anchalik Panchayat, i.e. the respondent No. 4 had referred the matter to the respondent No. 5, i.e. the Executive Officer of the Rupahihat Anchalik Panchayat with a clear instruction to convene the meeting on 09-01-2023 in his office chamber and within office hours. Accordingly, notice dated 06-01-2023 was issued by the respondent No. 5 convening the meeting on 09-01-

2023. In the said meeting, held on 09-01-2023, which was presided over by the respondent No. 4, the no-confidence motion brought against the petitioner was adopted by casting of votes at the ratio of 7:0 votes in favour of the motion. Accordingly, the no-confidence motion succeeded and the petitioner stood removed from the office of the President of the Gaon Panchayat

4. The impugned resolution adopted in the meeting held on 09-01-2023 has been assailed primarily on three grounds. Firstly, the Secretary of the Gaon Panchayat had never placed the requisition dated 21-12-2022 submitted by the eight members of the Gaon Panchayat, seeking approval of the President of the Gaon Panchayat for convening the special meeting but he had directly sent the requisition to the Anahclik Panchayat. Secondly, it is the President of the Anchalik Panchayat who alone was competent to convene the special meeting but in this case, the meeting was convened by the Executive Officer of the Rupahihat Anchalik Panchayat, i.e. the respondent No. 5 although he did not have the authority or jurisdiction under the law to do so. Thirdly, three clear days notice as contemplated under Section 17(3) of the Assam Panchayat Act, 1994 was not adhered to in this case.

5. By referring to the decision of the Division Bench rendered in the case of **Ayesha Begum Mazerbhuiya Vs. State of Assam & Ors.** dated 28-11-2016 [**W.A. No. 341/2016**], Mr. Mahanta submits that it was the respondent No. 4, being the President of the Anchalik Panchayat, who was alone authorized to convene the meeting. Therefore, the respondent No. 5 did not have any authority under the law to convene the meeting on 09-01-2023. In support of his above argument, Mr. Mahanta has also placed reliance on

the decision rendered by the learned Single Judge in the case of **Anowara Begum Vs. State of Assam & Ors.** reported in **2016 (1) GLT 648.**

6. By placing reliance on an unreported decision of the Division Bench rendered in the case of **Hafizur Rahman Vs. State of Assam & 15 Ors.** dated 17-12-2021 [**W.A. No. 189/2021**], Mr. Mahanta has further argued that it has been held by the Court that the requirement of giving three clear days notice under Section 17(3) of the Assam Panchayat Act of 1994 was mandatory in nature. In the present case, since the notice convening the meeting on 09-01-2023 was issued on 06-01-2023, it is evident that three days notice had not been given in this case. As such, submits Mr. Mahanta the convention of the meeting stood vitiated due to violation of several statutory provisions and hence, he has prayed for setting aside the impugned resolution.

7. Mr. Choudhury, learned Sr. counsel for the private respondents, on the other hand, has argued that the first ground urged by the petitioner is totally untenable in the eyes of law since it is the pleaded case of the writ petitioner that she had declined approval for holding the special meeting on 27-12-2022 after the requisition was placed before her by the Secretary of the Gaon Panchayat. With regard to the other two grounds, Mr. Choudhury has argued that since it is a democratic process, once the President of the Gaon Panchayat loses the confidence of the majority members he/ she would not have any authority to continue in office. To that extent, submits Mr. Choudhury mere procedural irregularities cannot be sufficient ground to restore the candidate back in office once he/ she has lost the confidence of the majority of the members of the Gaon Panchayat. Mr. Choudhury has, however, fairly submitted that the decision rendered in the case of

Ayesha Begum Mazerbhuiya (Supra) would have a direct bearing in the outcome of the present proceeding.

8. Mr. S. Dutta, learned standing counsel, P&RD Department, Assam has produced the records. I have perused the same.

9. At the very outset, it must be pointed out herein that the materials on record, more particularly the statements made in paragraph 5 of the writ petition clearly goes to show that the respondent No. 6 had placed the requisition seeking approval of the writ petitioner on 27-12-2022 but she had declined approval on 27-12-2022. It was only thereafter that the Secretary of the Gaon Panchayat, i.e. the respondent No. 6 had forwarded the same to the President of the Anchalik Panchayat, i.e. the respondent No. 4. As such, it is not a case where the respondent No. 6 had acted on his own without first making an attempt to seek the approval of the writ petitioner. However, what is significant to note herein is that the President of the Anchalik Panchayat, i.e. the respondent No. 4 did not take any step to convene the meeting but had merely instructed the respondent No. 5 to do so. Accordingly, the meeting was convened by the respondent No. 5 on 09-01-2023.

10. In a similar fact situation in the case of **Ayesha Begum Mazerbhuiya (Supra)** a Division Bench of this Court has unequivocally held that the President of the Anchalik Panchayat, not having convened the meeting herself but having ordered arrangement of the special meeting through her endorsement made in the file, would not meet the requirement of Section 15(5) of the Assam Panchayat Act, 1994. Accordingly, the resolution adopted in the meeting specially convened against the President of the Gaon

Panchayat was set aside.

11. Similar view has also been taken by the learned Single Judge in the case of **Anowara Begum (Supra)** wherein, the meeting convened by the Executive Officer of the Anchalik Panchayat was held to be impermissible. The learned Single Judge has observed that permitting the Executive Officer to convene such meeting would go to emasculate the rigors of the provision of Section 15(5) of the Assam Panchayat Act, 1994. Having held as above, the resolution adopted in the meeting was quashed.

12. The decision of the Division Bench rendered in the case of **Ayesha Begum Mazerbhuiya (Supra)** as well as the coordinate Bench in the case of **Anowara Begum (Supra)** would lay down a binding precedence for this Court to follow. As such, having regard to the facts and circumstances of the case, I am of the opinion that the present case is covered by the aforesaid decision of this Court.

13. In the case of **Hafizur Rahman (Supra)**, the Division Bench has expressed a clear opinion that the requirement of giving three clear days notice under Section 17(3) of the Act of 1994 is absolute and any violation in respect thereof would be at the cost of invalidating the proceeding itself.

14. Having regard to the ratio laid down in the decisions relied upon by Mr. Mahanta and applying the same to the facts of the present case, this Court is of the unhesitant opinion that the procedure adopted by the authorities in convening the special meeting held on 09-01-2023 is in clear violation of the mandate of Section 15(5) read with Section 17(3) of the Assam Panchayat Act, 1994. The impugned resolution dated 09-01-2023 is,

therefore, set aside.

15. It is ordered that the petitioner shall forthwith be reinstated in the office. Necessary order in respect thereof would be issued by the concerned authority within 07 days from the date of receipt of a certified copy of this order.

Before parting with the record, it is made clear that the present order of the Court shall not come in the way of a fresh requisition being submitted by the members of the Gaon Panchayat in accordance with law, if so advised. If such a requisition is submitted afresh, the same shall be acted upon in accordance with law and be brought to its logical end by adhering to the provisions of the Assam Panchayat Act, 1994, as may be applicable to the case.

Writ petition stands allowed to the above extent.

Parties to bear their own cost.

Send back the records.

JUDGE

GS

Comparing Assistant