

GAHC010024342021



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

Writ Petition (Civil) no. 943/2021

Nazima Akter Siraji
W/o Abdul Latif,
Village - Kenduguri, Ward No.5,
P.O. Herapati, P.S. Sadar,
District - Nagaon, Assam, PIN-782002.
.....Petitioner

-Versus-

1) The State of Assam
Represented by the
Principal Secretary
To the Government of Assam,
Panchayat and Rural Development Department,
Dispur, Guwahati-781006.

2) The Deputy Commissioner, Nagaon,
District – Nagaon, PIN-782001.

3) The Chief Executive Officer
Nagaon Zilla Parishad, Nagaon,
District - Nagaon, PIN-782001.

4) The Executive Officer/
Block Development Officer,
Khagarijan Anchalik Panchayat ,
Khagarijan Nagaon,
PIN-782002, Assam.

5) The President,
Khagarijan Anchalik Panchayat,
Kharagjan Senchua,
Nagaon, PIN-782002, Assam.

6) The Secretary,
Kenduguri Gaon Panchayat,
Village - Kenduguri,
P.O. – Herapati, District – Nagaon,
Assam, PIN-782002.

7) Shafia Khatun,
W/o Iman Ali,
Village - Kenduguri, Ward No.1,
P.O. - Herapati, P.S. - Nagaon Sadar,
District – Nagaon, Assam, PIN-782002.

8) Afia Khatun,
W/o Abdul Jalil,
Village – Kenduguri, Ward No.2,
P.O. Herapati, P.S. Nagaon Sadar,
District- Nagaon, Assam, PIN-782002.

9) Jushnara Begum,
W/o Abu Taher,
Village - Kenduguri ,Ward No.3,
P.O. Herapati, P.S. Nagaon Sadar,
District- Nagaon, Assam, PIN-782002.

10) Abul Hashim,
S/o Abdul Karim,
Ward No.4,
Village – Kenduguri,
P.O. Herapati, P.S. Nagaon Sadar,
District – Nagaon, Assam, PIN-782002.

11)Anuwara Begum,
W/o Baharul Islam,
Village - Chota Rupahi,
Ward No.6,

P.O. Herapati, P.S. Nagaon Sadar,
District – Nagaon, Assam, PIN-782002.

12)Hafiza Khatun,
W/o Md. Mofizuddin,
Village - Chota Rupahi, Ward No.7,
P.O. Herapati, P.S. Nagaon Sadar,
District- Nagaon, Assam, PIN-782002.

13)Baharul Islam,
S/o Hazarat Ali,
Village - Chota Rupahi,
P.O. Herapati, P.S. Nagaon Sadar,
District – Nagaon, Assam, PIN-782002.

14)Mofiz Uddin,
S/o Abdul Motlib,
Village - Chota Rupahi, Ward No.9,
P.O. Herapati, P.S. Nagaon Sadar,
District – Nagaon, Assam, PIN-782002.

15)Firoja Khatun,
W/o Hussain Ali,
Village - Chota Rupahi, Ward No.10,
P.O. Herapati, P.S. Nagaon Sadar,
District – Nagaon, Assam, PIN-782002.

.....Respondents

Advocates :

For the Petitioner : Mr. R. Ali, Advocate

For the Respondent nos. 1, 3, 4, 5 & 6 : Mr. S. Dutta, SC, P&RD Department

For the Respondent no. 2 : Ms. M. Barman,
Junior Government Advocate, Assam

For the Respondent nos. 8, 9, 11 – 15 : Mr. B. Chakraborty, Advocate

Date of Hearing and Judgment & Order : 14.02.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

The writ petition under Article 226 of the Constitution of India has been instituted by the petitioner assailing the proceedings, initiated by a requisition notice submitted by 9 [nine] nos. of Ward Members of 101 no. Kenduguri Gaon Panchayat under Khagarijan Anchalik Panchayat and Nagaon Zilla Parishad on 20.07.2020, in its entirety, which proceedings had ultimately culminated in a special meeting, held on 07.08.2020, in the office of the Khagarijan Anchalik Panchayat, with the passing of a motion of no confidence against the petitioner. In the special meeting held on 07.08.2020, the alleged motion of no confidence initiated against the petitioner for the purpose of removing her from the post of President of 101 no. Kenduguri Gaon Panchayat was stated to have been passed with two-third majority since 9 [nine] nos. of Ward Members of Kenduguri Gaon Panchayat voted against the petitioner, that is, in favour of the motion by the process of secret ballots. The petitioner has also assailed an Office Order dated 21.10.2020 passed by the respondent no. 3 i.e. the Chief Executive Officer, Nagaon Zilla Parishad whereby the said authority had held that the petitioner had vacated the office of the President, Kenduguri Gaon Panchayat. By the Office Order dated 21.10.2022, the Vice-President, Kenduguri Gaon Panchayat [the respondent no. 10] was allowed to exercise all the powers, perform all the functions and discharge all the duties of the President, Kenduguri Gaon Panchayat in terms of the provisions contained in Section 13[2][d] of the Assam Panchayat Act, 1994.

2. The background facts which have led the petitioner to institute the writ petition can be, briefly, exposted as follows :-

2.1. In the General Panchayat Election held in the year 2018, the petitioner submitted her nomination for the post of President of 101 no. Kenduguri Gaon Panchayat. In the General Panchayat Election so held, the petitioner got elected to the post of President, 101 no. Kenduguri Gaon Panchayat [hereinafter also referred to as 'Kenduguri Gaon Panchayat', for short] as per the provisions of Section 6[1][b] of the Assam Panchayat Act, 1994. In the said General Panchayat Election, the respondent nos. 7 - 15 also got themselves elected as Ward Members of Kenduguri Gaon Panchayat. Apart from the directly elected President, Kenduguri Gaon Panchayat consists of 10 [ten] nos. of Ward Members. After the election, the respondent no. 10 got elected as the Vice-President of the Kenduguri Gaon Panchayat in the manner laid down in Section 6[3] of the Assam Panchayat Act, 1994. On 20.07.2020, 9 [nine] nos. of Ward Members of Kenduguri Gaon Panchayat submitted a requisition notice, addressed to the Secretary of Kenduguri Gaon Panchayat i.e. the respondent no. 6, expressing want of confidence in the President of Kenduguri Gaon Panchayat i.e. the petitioner and sought for convening of a special meeting to discuss the motion of no confidence.

2.2. In a special meeting convened on 07.08.2020 at the office of the Khagarijan Anchalik Panchayat, 9 [nine] nos. of Ward Members of Kenduguri Gaon Panchayat i.e. the respondent nos. 7 – 15 attended the special meeting so convened to discuss the motion of no confidence, brought by them against the President, Kenduguri Gaon Panchayat i.e. the petitioner by the requisition notice dated 20.07.2020. The special meeting was presided over by the President, Khagarijan Anchalik Panchayat i.e. the respondent no. 5. For the purpose of deciding on the motion of no confidence, the process of secret voting was resorted to with ballot papers. The Ward Members of Kenduguri Gaon Panchayat

cast their votes by way of secret ballots in the special meeting. On the ballot papers being counted, it was found that 9 [nine] nos. of Ward Members of Kenduguri Gaon Panchayat cast their votes in favour of the motion. Apart from the President, Kenduguri Gaon Panchayat, another Ward Member out of the 10 [ten] Ward Members of Kenduguri Gaon Panchayat was absent. On the basis of the result that 9 [nine] Ward Members voted in favour of the motion, meaning thereby, more than two-third majority of the total nos. of Ward Members of Kenduguri Gaon Panchayat expressed lack of confidence in the petitioner to continue in the capacity of the President, Kenduguri Gaon Panchayat, the Office Order dated 21.10.2020 came to be passed by the respondent no. 3 on the premise that as the motion against the petitioner was passed by two-third majority of the total nos. of Ward members, the petitioner deemed to have vacated the office of the President, Kenduguri Gaon Panchayat in terms of Section 15[1] of the Assam Panchayat Act, 1994. The Office Order dated 21.10.2020 had further mentioned that the respondent no. 10, who was the Vice President of Kenduguri Gaon Panchayat, would discharge all the powers, perform all the functions and discharge all the duties of the President of Kenduguri Gaon Panchayat, as provided under Section 13[2][d] of the Assam Panchayat Act, 1994 till the office of the President of Kenduguri Gaon Panchayat was filled up in the manner provided under Section 6[1][b] of the Assam Panchayat Act, 1994.

3. Heard Mr. R. Ali, learned counsel for the petitioner; Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department for the respondent nos. 1, 3, 4, 5 & 6; Ms. M. Barman, learned Junior Government Advocate, Assam for the respondent no. 2; and Mr. B. Chakraborty, learned counsel for the respondent nos. 8, 9 & 11 – 15. Despite service of notice upon

the respondent no. 7 and the respondent no. 10, as per order dated 13.09.2022 of the Lawazima Court, none has appeared for the said respondents.

4. Mr. Ali, learned counsel for the petitioner has submitted that the procedure prescribed by the Assam Panchayat Act, 1994, have not been followed at two stages, *firstly*, a period of 15 [fifteen] days, as required under Section 15[1] of the Assam Panchayat Act, 1994, did not expire when the respondent no. 6 referred the matter to the respondent no. 5 on 04.08.2020; and *secondly*, there was violation on the part of the respondent Khagarijan Anchalik Panchayat authorities of the provisions contained in Section 17[3] of the Assam Panchayat Act, 1994 while convening the special meeting to discuss the motion of no confidence on 07.08.2020 by the notice dated 05.08.2020. In support of his submissions, Mr. Ali has referred to a Division Bench judgment of this Court passed in a writ appeal, **W.A. no. 189/2021 [Hafizur Rahman vs. The State of Assam and 15 others]**, decided on 17.12.2021; and another Judgment 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. As there is clear infraction of Section 17[3] of the Assam Panchayat Act, 1994 in the case in hand, Mr. Ali, learned counsel for the petitioner has not stressed on the first limb of his submissions.

5. Mr. Dutta, learned Standing Counsel, Panchayat and Rural Development Department has produced certain records as regards the proceedings initiated by the requisition notice dated 20.07.2020, which stood culminated in the special meeting, held on 07.08.2020. He has submitted that the requisition notice dated 20.07.2020 was submitted under signatures and seals of 9 [nine] nos. of Ward Members of Kenduguri Gaon Panchayat and the same was received by the respondent no. 6 on 20.07.2020 itself. After receipt of the

requisition notice on 20.07.2020, the respondent no. 6 had forwarded the same to the petitioner through the office file on 20.07.2020. Mr. Dutta has further submitted that the petitioner had declined to convene a special meeting, by writing a note in the said office file on 22.07.2020 and brought a number of objections against the Ward Members of Kenduguri Gaon Panchayat. As the petitioner had herself declined to convene the special meeting in response to the requisition notice dated 20.07.2020, on 22.07.2020, there was no requirement on the part of the Secretary of Kenduguri Gaon Panchayat to wait for expiry of 15 days to expire, as provided under Section 15[1] of the Assam Panchayat Act, 1994. As regards non-compliance of the provision contained in Section 17[3] of the Assam Panchayat Act, 1994, Mr. Dutta has submitted that as in response to the notice dated 05.08.2020 issued by the respondent no. 4, 9 [nine] nos. of Ward Members had attended the special meeting and cast their votes in favour of the motion resulting in passing of the motion with more than two-third majority, the petitioner has no right to continue in the post of President as she had been removed by way of a valid democratic process.

6. Mr. Chakraborty, learned counsel appearing for the respondent nos. 8, 9 & 11 – 15 has adopted the submissions of Mr. Dutta, learned Standing Counsel, Panchayat and Rural Development Department. Mr. Chakraborty has further submitted that the entire scheme of Section 15 of the Assam Panchayat Act, 1994 cannot be said to be mandatory in nature and as such, no interference is called for in the case in hand. To buttress his submissions, he has referred to a decision of this Court in **Ektiar Hussain and others vs. State of Assam and others**, reported in 2017 [5] GLT 218.

7. I have given due consideration to the submissions of 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, Panchayat and Rural Development Department, in original. I have also gone through the decisions cited by the learned counsel for the parties and the provisions contained in Section 15 and Section 17 of the Assam Panchayat Act, 1994.

8. Before dilating on the aspects contended by the parties, it is apt to refer to the provisions of Section 15 of the Assam Panchayat Act, 1994, as amended. Section 15 of the Assam Panchayat Act, 1994 has provided for the matter of no confidence against the President and the Vice-President of a Gaon Panchayat. As per Section 6[1][b] of the Panchayat Act, the President of a Gaon Panchayat is elected directly by the voters of the territorial constituencies of the Gaon Panchayat area in the manner prescribed. It is provided, **inter alia**, in sub-section [1] of Section 15 that every President shall be deemed to have vacated his office forthwith when a resolution expressing want of confidence in him is passed by a majority of two-third of the total number of members of the Gaon Panchayat. As per Section 15[1] of the Assam Panchayat Act, 1994, a special meeting for that purpose, is to be convened by the Secretary of the Gaon Panchayat with the approval of the President of the Gaon Panchayat. The requisition notice for such a special meeting shall have to be signed by not less than one-third of the total members of the Gaon Panchayat and shall have to 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. In case such a meeting is not convened by the President within a period of 15 [fifteen] days from the date of receipt of the notice, the Secretary of the Gaon Panchayat shall within 3 [three] days thereafter, has to refer the matter to the President of the concerned Anchalik Panchayat, who shall, in turn, convene

the meeting within 7 [seven] days from the date of receipt of the information from the Secretary of the Gaon Panchayat and preside over such special meeting. It has been laid down in Section 17 [3] of the Assam Panchayat Act, 1994 that there shall have to be 3 [three] clear days' notice for a special meeting specifying the place, date and time of such meeting.

9. As has been noted above, the petitioner has contended infractions of the provisions of Section 15[1] and Section 17 [3] of the Assam Panchayat Act, 1994.

10. From the records placed before the Court by the learned Standing Counsel, Panchayat and Rural Development Department, it is noticed that the Secretary of Kenduguri Gaon Panchayat had put up the requisition notice dated 20.07.2022 before the petitioner with a note of even date in the office file. The petitioner by her note dated 22.07.2022 expressed objection to call for a special meeting. Thus, this Court has found sufficient force in the submission that there was no violation of time period prescribed under Section 15[1] of the Assam Panchayat Act, 1994 and the Secretary of the Gaon Panchayat need not have to wait till expiry of 15 [fifteen] days to refer the matter to the Anchalik Panchayat in view of showing disinclination to convene a special meeting. As the learned counsel for the petitioner has not pressed the point any further, it is not necessary to make any further dilation on the same.

11. The notice issued by the respondent no. 4 i.e. the Executive Officer, Khagarijan Anchalik Panchayat on 05.08.2020 has mentioned that the special meeting would be convened on 07.08.2020. From the notice dated 05.08.2020, it clearly transpires that there was just one day in between the date of the notice [05.08.2020] and the date of the special meeting thereby convened [07.08.2020]. 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 violation of Section 17[3] of the Assam Panchayat Act, 1994. The decision in **Jahanara Ahmed** [supra] has also observed in similar manner. In both the decisions, it has been observed that 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 any infraction of the statutory prescription contained in Section 17[3] of the Assam Panchayat Act, 1994 and the same cannot be given effect to.

12. In view of the fact situation obtaining in the case in hand, mentioned above, and in the light of 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 passed against the petitioner in the special meeting, held on 07.08.2020, 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.

13. It is noticed that the requisition notice dated 20.07.2020 was submitted by 9 [nine] nos. of Ward Members out of the total 10 [ten] nos. of Ward Members of Kenduguri Gaon Panchayat and in the special meeting held on 07.08.2020, 9 [nine] nos. of Ward Members attended and cast their votes by secret ballots against the petitioner. As the proceedings of the special meeting has been interfered with on the premise that there was non-compliance and

violation of the procedure prescribed in Section 17[3] of the Assam Panchayat Act, 1994, the motion of no confidence brought against the petitioner cannot be held to have been lost. Thus, having regard to the entire fact situation obtaining in the case in hand, this Court is of the considered view that the motion of no confidence brought against the petitioner, shall continue from the stage, at which it has been interfered with.

14. Taking a cue from the directions made by a Division Bench of this Court in **Karun Kanti Malakar and others, vs. Nosir Ahmed Mazumdar and others**; reported in 2010 [3] GLT 415, **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; this Court is of the view that a similar direction is called for in the case in hand also because the motion of no confidence is not lost and still survives in view of the fact that it was taken up for consideration in an illegally convened special meeting on 07.08.2020. It is, therefore, directed that the respondent no. 5, that is, the President, Khagarijan Anchalik Panchayat shall convene a special meeting within 15 days from today [14.02.2023] for considering the motion of no confidence brought against the petitioner herein by 9 [nine] nos. of Ward Members Kenduguri Gaon Panchayat by the requisition notice dated 20.07.2022. The respondent no. 5 while convening the special meeting, shall serve requisite notices by mentioning the time, date and venue of such special meeting in compliance of the provisions contained in Section 17[3] of Assam Panchayat Act, 1994, upon all the stakeholders including the petitioner and the Ward Members of Kenduguri Gaon Panchayat, to attend the special meeting. In order to ensure that the proceedings of such special meeting are carried out properly, the Deputy Commissioner, District – Nagaon shall depute one Gazetted Officer, not below the rank of Class-I Gazetted Officer, as an

observer for the purpose of the special meeting.

15. The matter of restoration or otherwise of the petitioner in the post of President, Kenduguri Gaon Panchayat will abide by the outcome of the special meeting to be convened in terms of the direction made above. The writ petition is allowed to the extent indicated, with the observations made and directions given above. There shall, however, be no order as to cost.

16. A copy of this order is to be furnished to Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department for the purpose of taking necessary steps for compliance from his end.

JUDGE

Comparing Assistant