

GAHC010087882020



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

Writ Petition (Civil) no. 2608/2020

Smt. Mina Deb
W/o Pradip Das
Village – Borosingha T.E.
P.O. Larsing T.E.
P.S. Udharband, District – Cachar,
Assam, PIN-788030
.....Petitioner

-Versus-

- 1) The State of Assam
Represented by the Principal Secretary to the Govt of Assam, Department
of Panchayat & Rural Development,
Dispur, Guwahati- 06
- 2) The Deputy Commissioner
Cachar, P.O- P.S and District - Karimganj, Assam
- 3) The Secretary cum Block Development Officer
Udharbond Anchalik Panchayat, District - Cachar, Assam
- 4) The Secretary
Larsing Gaon Panchayat, District - Cachar, Assam
- 5) Alfijun Nessa Laskar
Vice President Larsing Gaon Panchayat,
P.O- Larsing, District - Cachar, Assam
- 6) Ajit Boraik
Group Member No. 8, Larsing Gaon Panchayat,
P.O- Larsing, District - Cachar, Assam
- 7) Rotonmoni Mal
Group Member No. 6, Larsing Gaon Panchayat,
P.O- Larsing, District - Cachar, Assam
- 8) Prasanta Rajbongshi

- Group Member No. 5, Larsing Gaon Panchayat,
P.O- Larsing, District - Cachar, Assam
- 9) Namita Munda
Group Member No.7, Larsing Gaon Panchayat,
P.O- Larsing, District - Cachar, Assam
- 10) Sambala Rajbongshi
Group Member No. 4, Larsing Gaon Panchayat,
P.O- Larsing, District - Cachar, Assam
- 11) Najrul Hussain Barbhuiya
Group Member No. 1, Larsing Gaon Panchayat,
P.O- Larsing, District - Cachar, Assam

.....Respondents

Advocates :

- Petitioner : Mr. M.H. Laskar, Advocate
- Respondent nos. 1, 3 & 4 : Mr. N.K. Dev Nath,
Standing Counsel, P&RD Department
- Respondent no. 2 : Mr. M. Chetia, Junior Government Advocate
- Respondent nos. 5 – 11 : Mr. J.U.N.M. Laskar, Advocate

Date of Hearing and Judgment & Order : 23.02.2023

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

The petitioner has instituted the writ petition under Article 226 of the Constitution of India to challenge a resolution adopted in a special meeting convened on 01.06.2020 to discuss a motion of no confidence brought against her for her removal from the office of the President of 101 no. Larsing Gaon Panchayat.

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

3. In the General Panchayat Election held in the year 2018, the petitioner submitted her nomination for the post of President of 101 no. Larsing Gaon Panchayat, District – Cachar. In the General Panchayat Election so held, the petitioner got elected to the post of President of

101 no. Larsing Gaon Panchayat [hereinafter also referred to as 'Larsing Gaon Panchayat', for short] as per provision of Section 6[1][b] of the Assam Panchayat Act, 1994. In the said General Panchayat Election, the respondent nos. 5 – 11 also got themselves elected as Ward Members of Larsing Gaon Panchayat. Apart from the directly elected President, Larsing Gaon Panchayat is consisted of 10 [ten] nos. of Ward Members. After the election, the respondent no. 5 got elected as the Vice-President, Larsing Gaon Panchayat in the manner laid down in Section 6[3] of the Assam Panchayat Act, 1994.

3.1. On 18.05.2020, 7 [seven] nos. of Ward Members, Larsing Gaon Panchayat submitted a requisition notice, addressed to the Secretary of Larsing Gaon Panchayat i.e. the respondent no. 4, expressing want of confidence in the President, Larsing Gaon Panchayat i.e. the petitioner and sought for convening of a special meeting to discuss the motion of no confidence.

3.2. On 29.05.2020, the Secretary of Larsing Gaon Panchayat issued notices *inter alia* to the petitioner as the President of Larsing Gaon Panchayat as well as to the Vice-President and other Ward Members of Larsing Gaon Panchayat to attend a special meeting convened at 12-00 p.m. on 01.06.2020 at the venue – Birsamunda Community Hall to discuss a motion of no confidence brought against the petitioner by 7 [seven] nos. of Ward Members of Larsing Gaon Panchayat. The special meeting so scheduled, was accordingly held at the time, date and venue indicated in the notice dated 29.05.2020. From the proceedings of the special meeting, it is noticed that the Vice-President of Larsing Gaon Panchayat presided over the special meeting. 9 [nine] Ward Members of Larsing Gaon Panchayat attended the special meeting by subscribing their signatures on the attendance sheet. In the special meeting, it was decided to adopt the process of secret voting to decide the fate of the motion. The ballot papers were accordingly distributed to the Ward Members including the Vice-President, Larsing Gaon Panchayat. The Ward Members exercised their options in the ballot papers. On counting, 7 [seven] nos. of votes were found to have cast in favour of the motion and 2 [two] nos. of votes were against the motion. It was thereafter, declared that the petitioner had lost the motion of no confidence to continue in the office of the President, Larsing Gaon Panchayat.

4. I have heard Mr. M.H. Laskar, learned counsel for the petitioner; Mr. N.K. Dev Nath,

learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1, 3 & 4; Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent no. 2; and Mr. J.U.N.M. Laskar, learned counsel for the respondent nos. 5 – 11.

5. The pleaded case of the petitioner is that she was never served with a copy of the requisition notice dated 18.05.2020. Mr. M.H. Laskar, learned counsel for the petitioner has contended that the requisition notice dated 18.05.2020 was never brought to the petitioner's knowledge and by keeping the petitioner in dark, the Secretary, Larsing Gaon Panchayat issued the impugned notice dated 29.05.2020, whereby the special meeting was convened on 01.06.2020. Having come to learn about the issuance of the notice dated 29.05.2020 only on 30.05.2020, the petitioner attended the special meeting and protested for not bringing the requisition notice to her knowledge wherein certain false allegations were made against her. During the course of the special meeting, the petitioner stated to have objected for holding the special meeting as it was in violation of the provisions of the Assam Panchayat Act, 1994.

6. Mr. Dev Nath, learned Standing Counsel, P&RD Department has produced the relevant records in original. He has submitted that the requisition notice dated 18.05.2020 was duly put up before the petitioner through the official channel on 19.05.2020. When the petitioner had made endorsement 'seen' on 19.05.2020 without according any approval to convene the special meeting, the office file was again put up before the President on 22.05.2020. It was only on 29.05.2020, the petitioner had accorded approval to convene the special meeting at 12-00 p.m. on 01.06.2020. The notice dated 29.05.2020 was issued to the stakeholders by the Secretary, Larsing Gaon Panchayat on 29.05.2020 immediately after the approval was accorded by the petitioner in the office file on 29.05.2020. The notice dated 29.05.2020 was also duly received by the petitioner and since the petitioner had attended the special meeting held on 01.06.2020, she had waived the right to raise any objection as regards violation of any provisions of the Assam Panchayat Act, 1994.

7. Mr. J.U.N.M. Laskar, learned counsel appearing for the respondent nos. 5 – 11 has adopted the submissions of Mr. Dev Nath, learned Standing Counsel, P&RD Department. Mr. Laskar has submitted that since in the special meeting, the motion of no confidence was decided by the process of secret ballots and the decision on the motion was against the petitioner by the requisite majority, the writ petition lacks merit and is liable to be dismissed.

8. 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, P&RD Department, in original.

9. At this juncture, 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, the date and the time of such special meeting. Section 18[5] has provided that voting, in any meeting of Gaon Panchayat, if required shall be by raising of hands, except in the meeting where no confidence motion is discussed where the matter will be secret ballot.

10. From the record placed before the Court by the learned Standing Counsel, P&RD

Department, it is noticed that the Secretary of Larsing Gaon Panchayat had put up the requisition notice dated 19.05.2020 through Office File no. LGP.12/PRI[NC]/2020-21 informing the petitioner that the requisition notice was received from the Ward Members on 18.05.2020 expressing lack of confidence in the petitioner. When the office file was so put up, the petitioner had made endorsement thereon as 'seen' on 19.05.2020. Another note was put up by the Secretary, Larsing Gaon Panchayat in the same office file on 22.05.2020. As per the said office note, the Secretary, Larsing Gaon Panchayat had intimated the petitioner to the effect that as the petitioner was already aware about the requisition notice as per the endorsement made on 19.05.2020, the petitioner was required to convene a special meeting of the Gaon Panchayat in terms of the provisions of Section 15[1] of the Assam Panchayat Act, 1994. By the said office note, the Secretary, Larsing Gaon Panchayat requested the petitioner to fix the time, the date and the venue for the special meeting. From the records, it has emerged that the petitioner had, on 29.05.2020, approved convening of the special meeting. By according approval, the petitioner mentioned that the special meeting be held at 12-00 o'clock on 01.06.2020 at the venue : Birsamunda Community Hall. In view of such materials on record, the contention of the petitioner that the requisition notice dated 18.05.2020 was never brought to her knowledge cannot be countenanced and as such, the submission advanced on that point is not accepted.

11. From the records, it has further emerged that the notice dated 29.05.2020 issued under the hand of the Secretary of the Gaon Panchayat in terms of the approval accorded by the petitioner in the office file, were sent to the President, the Vice-President and the Ward Members of Larsing Gaon Panchayat apart from the other stakeholders. The President, the Vice-President and the other 9 [nine] nos. of Ward Members had received the notice dated 29.05.2020 by subscribing their signatures acknowledging the receipt. The petitioner had subscribed her signature on 30.05.2020 acknowledging the receipt of the notice dated 29.05.2020. Thus, it is not open for the petitioner to contend that the notice dated 29.05.2020 was never served upon her.

12. It is case of the petitioner herself that the petitioner attended the special meeting convened on 01.06.2020. According to the petitioner, the petitioner by attending the special meeting, had raised objection regarding not bringing the requisition notice to her knowledge

and for bringing false allegations against her. In view of the discussion made above on the basis of the materials on record, the petitioner could not have raised objection regarding non-service of the requisition notice as she had received the notice dated 29.05.2020 under her own signature.

13. In this connection, it will also be apposite to refer to a 3-Judges decision of the Hon'ble Supreme Court of India in **Padmini Singha vs. State of Assam and others**, reported in **[2018] 10 SCC 561**. The respondent no. 6 therein was the President of Masughat Gaon Panchayat against whom a no confidence motion was brought by 7 [seven] members of the Gaon Panchayat by submitting a requisition noticed dated 30.01.2014. When no action was found have been taken by the respondent no. 6 on the requisition notice to convene a special meeting, the matter was forwarded by the Secretary of the Gaon Panchayat to the President of the concerned Anchalik Panchayat. A special meeting was ultimately convened on 31.03.2014 in the office of the Anchalik Panchayat and the said meeting was presided by the Block Development Officer [BDO]. The meeting was attended by the respondent no. 6 and the motion of no confidence was passed against the respondent no. 6. On the grounds that the BDO was not authorized by the Deputy Commissioner to preside over the special meeting and it is the Deputy Commissioner who can only convene such a special meeting, a writ petition was preferred. As the respondent had attended the special meeting where the voting took place, the Hon'ble Supreme Court has observed that as the respondent no. 6 was well aware that the special meeting was convened to discuss the motion of no confidence, it was not open for the respondent no. 6 to urge that there was non-compliance of a mandatory provision of law. The decision in **Padmini Singha** [supra] has been rendered in reference to the well settled proposition of law that a mandatory provision of law requires strict compliance but there are situations where even if a provision is mandatory, non-compliance would not result in nullification of the act. There are certain exceptions and one such exception is, if a certain requirement or condition is provided in a statute for the benefit or interest of a particular person, the same can be waived by him if no public interest is involved. The ultimate result would still be valid even if the requirement or condition is not performed. It has been held in **Padmini Singha** [supra] that in the obtaining fact situation therein, no public interest was affected. Since the President of the Gaon Panchayat knowing

fully well about the reason for convening the special meeting, participated in the special meeting, it was not open for the President thereafter, to assail the same after losing in the voting process. Having participated in the meeting, it had to be held that the President of the Gaon Panchayat had waived the condition precedent.

14. In the backdrop of the fact situation obtaining in the case in hand, more particularly, the fact that the petitioner had attended the special meeting convened and held on 01.06.2020 after having received the notice dated 29.05.2020, it is not open for the petitioner to raise a plea either regarding non-compliance of the procedure prescribed in Section 15 of the Assam Panchayat Act, 1994 or regarding not bringing the requisition notice to her knowledge. By attending the special meeting, convened on 01.06.2020 at the petitioner's own instruction and approval, the petitioner is seemed to have waived all the conditions precedents required to be adhered to as per Section 15[1] of the Assam Panchayat Act, 1994. As 7 [seven] nos. of Ward Members had expressed and voted in favour of the motion, the motion of no confidence against the petitioner was passed by more than two-third majority of the total nos. of members of the Gaon Panchayat.

15. In view of the discussion made above and for the reasons assigned herein, the instant writ petition is devoid of merits as the petitioner has lost the confidence of by more than two-third majority of the total number of Ward Members of Larsing Gaon Panchayat disentitling her to continue in the office of the President, Larsing Gaon Panchayat. Consequently, the writ petition is liable to be dismissed and the same is accordingly dismissed. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant