

GAHC010103752021



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

Case No. : WP(C)/3359/2021

REHENA KHATUN
W/O- LT. HUSEN ALI, VILL- TAPESWARA, P.O. TAPESWARA, P.S.
KALGACHIA, DIST.- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 12 ORS.
THROUGH THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, PANCHAYAT
AND RURAL DEVELOPMENT DEPTT., DISPUR, GHY-06

2:THE DY. COMMISSIONER
BARPETA
DIST.- BARPETA
ASSAM

3:THE CHIEF EXECUTIVE OFFICER
BARPETA ZILLA PARISHAD
BARPETA
DIST.- BARPETA
ASSAM

4:THE EXECUTIVE OFFICER
RUPOSHI ANCHALIK PANCHAYAT
RUPOSHI
DIST.- BARPETA
ASSAM

5:THE PRESIDENT
RUPOSHI ANCHALIK PANCHAYAT
RUPOSHI
P.O. KALGACHIA
DIST.- BARPETA

ASSAM

6:THE SECRETARY
64 NO. TAPESWARA GAON PANCHAYAT
VILL- TAPESWARA
P.O. KALGACHIYA
P.S. KALGACHIA
DIST.- BARPETA
ASSAM

7:RAHIMA KHATUN
W/O- ABDUL KALAM CHOUDHURY
VILL- BALAR PATHAR
P.O. SHOWPUR
P.S. KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

8:REKHA PARBIN
W/O- ABUL KASHEM
VILL- BALAR PATHAR
P.O. SHOWPUR
P.S. KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

9:FATEMA KHATUN
W/O- HOSEEN ALI
VILL- TAPESWARA
P.O. KALGACHIA
P.S. KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

10:TAIZUDDIN AHMED
S/O- HAZARAT ALI
VILL AND P.O. BALAGAON
P.S. KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

11:HASINA KHATUN
S/O- SHAH ALAM
VILL- DABANDIA

P.O. GUNIALGURI
P.S. KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

12:TOSHER ALI
S/O- FAIZUDDIN
VILL- DABANDIA
P.O. GUNIALGURI
P.S. KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

13:RAMZAN ALI
S/O- ABDUL LATIF SARKAR
VILL- BALAR PATHAR
P.O. SHOWPUR
P.S. KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 78131

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the petitioner(s) : Ms. R. Ali, Advocate.

For the respondent(s) : Mr. S. Dutta, SC, P&RD Deptt.
Mr. D.P. Borah, Advocate, R-5
Mr. B.D. Deka, Advocate, R-7

Date of hearing and judgment : 11.09.2023

JUDGMENT & ORDER

1. The instant writ petition has been filed by the Petitioner for a Writ of Certiorari to set aside and quash the impugned letter dated 14.06.2021 issued by the Respondent No.6, the Secretary of the 64 No. Tapeswara Gaon

Panchayat referring the matter to the President, Ruposhi Anchalik Panchayat for holding the special meeting to discuss No-Confidence Motion against the Petitioner; for setting aside and quashing the impugned letter dated 15.06.2021 issued by the Executive Officer, Ruposhi Anchalik Panchayat for holding the special meeting to discuss No-Confidence Motion against the Petitioner; for setting aside and quashing the impugned resolution dated 21.06.2021 adopted in the special meeting expressing No-Confidence Motion against the Petitioner and to allow the Petitioner to work as the President of the said Gaon Panchayat.

2. The facts as could be discerned from a perusal of the writ petition is that the Petitioner was directly elected as the President of 64 No. Tapeswara Gaon Panchayat (for short referred to as the 'Gaon Panchayat in question') in the district of Barpeta, Assam. It was alleged in the writ petition that some members of the Gaon Panchayat in question in collusion with the Secretary of the Gaon Panchayat in question had hatched conspiracy to oust the Petitioner. On 21.06.2021, the Petitioner received a letter from the Executive Officer of Ruposhi Anchalik Panchayat regarding a special meeting held on 21.06.2021 to discuss the No-Confidence Motion against the Petitioner and the Petitioner was requested to submit her explanation within 3 (three) days against the said resolution.

3. Thereupon the Petitioner made enquiries and could come to learn that the Secretary of the Gaon Panchayat in question had informed that 7 (seven) numbers of members of the Gaon Panchayat in question had submitted a letter dated 28.05.2021 for holding a special meeting to discuss No-Confidence Motion against the Petitioner alleging that they have no confidence due to some

activities. The Petitioner could further come to learn that the Secretary had tried to serve the letter by office notice but could not serve the letter and as such after the expiry of 15 (fifteen) days from the date of receipt of the letter, the Secretary referred the matter to the Ruposhi Anchalik Panchayat on 14.06.2021 for necessary action. It was also stated in the writ petition that the Executive Officer of the Ruposhi Anchalik Panchayat was not authorized by the Assam Panchayat Act, 1994 (for short "the Act of 1994") to issue a Notice on 15.06.2021 for holding the special meeting to be held on 21.06.2021. It was further alleged that on the basis of the Notice issued by the Executive Officer of the Ruposhi Anchalik Panchayat dated 15.06.2021, a special meeting was convened and held on 21.06.2021 in the office of the Ruposhi Anchalik Panchayat and a resolution was adopted on 21.06.2021 expressing no-confidence against the Petitioner.

4. Be that as it may, it may be relevant at this stage to take note of that the Petitioner herein had enclosed to the writ petition the requisition issued by seven members of the Gaon Panchayat dated 28.05.2021 as Annexure-2 to the writ petition. It further reveals from the records that the instant writ petition was filed on 13.07.2021 challenging the various notices as well as the impugned resolution adopted on 21.06.2021. The records further show that on 23.07.2021, this Court had issued Notice and in the interim directed that the impugned resolution dated 21.06.2021 shall not be given effect to. The said interim order has been in force since then till date.

5. The records further show that the private Respondent Nos.7 to 13 had filed an affidavit-in-opposition on 09.11.2021. In the said affidavit-in-opposition

it was mentioned that the notice dated 02.06.2021 and 14.06.2021 issued by the Secretary of the Gaon Panchayat in question had been duly sent to the Petitioner through registered post with AD. It was further mentioned that the Petitioner had refused to accept the said notice and the same had returned back to the sender with an endorsement "Refused". It was further mentioned that the Petitioner was also informed about the letter dated 28.05.2021 submitted to the Secretary by the seven members through registered post with A.D, however, the Petitioner refused to accept the same. Further to that, it was also stated that as the Petitioner had intentionally refused to accept all the three notices, the Secretary of the Gaon Panchayat in question therefore, having no alternative referred the matter to the Anchalik Panchayat on 14.06.2021. In paragraph-10 of the said affidavit-in-opposition it was mentioned that the Secretary of the Gaon Panchayat in question had followed all the procedures of law and had referred the matter after completion of fifteen days, inasmuch as, the letter for no-confidence was issued on 28.05.2021 and the same was intimated to the Petitioner and hence the timeframe of fifteen days expired on 12.06.2021 and subsequently two notices were issued in favour of the Petitioner i.e. on 02.06.2021 and 14.06.2021 and the resolution was passed on 21.06.2021.

6. Today when the matter was taken up for hearing, Mr. S. Dutta, learned Standing Counsel appearing on behalf of the P&RD Department has also produced the records.

7. I have heard the learned counsel for the parties and perused the materials on record including the records so produced by Mr. S. Dutta, learned Standing Counsel for the P&RD Department.

8. The issue involved in the instant writ petition is twofold. First, as to whether there has been compliance to Section 15 of the Act of 1994 and secondly, whether the Executive Officer of the Ruposhi Anchalik Panchayat had the authority to convene the special meeting for no-confidence against the Petitioner on 21.06.2021.

9. The first issue relates as to whether there has been any infraction to the provisions of Section 15 of the Act of 1994. The materials on record so produced do not show that on 28.05.2021 the requisition so made by the seven members of the Gaon Panchayat in question was served upon the Petitioner. It is also seen that on 02.06.2021 the Secretary of the Gaon Panchayat had issued a communication to the Petitioner by registered post. Though it reveals from the records that the communication dated 02.06.2021 issued by the Secretary of the Gaon Panchayat in question to the Petitioner was booked on 04.06.2021 and from the track consignment issued by the Postal Department it reveals that the said document was refused but it is not clear from the records as to whether the Petitioner had notice that the document which he purportedly refused was a requisition made for holding the No-Confidence Motion by seven members of the Gaon Panchayat even assuming that the contents of the track consignment of the Postal Department is correct. Under such circumstances, it is therefore the opinion of this Court that the issuance of the notice through registered post and the purported refusal by the Petitioner would not come within the ambit that the Petitioner had due notice that the said communication was a notice in terms with Section 15(1) of the Act of 1994.

10. This Court also cannot be unmindful of the fact that it is a settled principle of law that if a notice is refused by the President or the President declines to hold the meeting; the President would not be entitled to the benefit of the period of fifteen days as stipulated in Section 15(1) of the Act of 1994. The record reveals that the Respondent No.6 i.e. the Secretary of the Gaon Panchayat assuming that the Petitioner had refused to accept the notice accordingly had issued the notice to the President of the Ruposhi Anchalik Panchayat on 14.06.2021.

11. Before further analysing the first point for determination this Court now finds it relevant to take note of the second point of determination as to whether the Executive Officer of the Ruposhi Anchalik Panchayat had the authority to issue the notice dated 15.06.2021. The records which have been produced by Mr. S. Dutta, learned Standing Counsel, P&RD Department shows that there is an endorsement made by the President of the Ruposhi Anchalik Panchayat that the notice be issued and for that purpose the Executive Officer of the Ruposhi Anchalik Panchayat was directed to do so. Therefore, the notices which were issued by the Executive Officer of the Ruposhi Anchalik Panchayat was done at the behest of the President of the Ruposhi Anchalik Panchayat which cannot in the opinion of this Court be said to be a notice issued by the Executive Officer of the Ruposhi Anchalik Panchayat without authority.

12. In view of the above, the issue therefore arises for determination is as to whether the Petitioner had notice of the requisition so made by the Respondent Nos.7 to 13 in the writ petition for convening a No-Confidence Motion against the Petitioner. The adjudication of this aspect of the matter would require intricate examination of the evidence on record, inasmuch as, in the present

proceedings it cannot be ascertained as to whether the Petitioner had refused the communication dated 02.06.2021 with the knowledge that the said communication had enclosed the requisition made by the Respondent Nos.7 to 13. Under such circumstances, this Court, therefore, is of the opinion that the interest of justice would be met if the said requisition so made by the Respondent Nos.7 to 13 is brought to a logical conclusion taking into account that the Petitioner now had due knowledge about the contents of the said requisition dated 28.05.2021, as the same has been enclosed to Annexure-2 to the writ petition.

13. Under such circumstances, this Court, therefore, disposes of the instant writ petition with the following observations and directions:

(i) As the Petitioner now has notice of the requisition so made by the Respondent Nos.7 to 13, vide the communication dated 28.05.2021, it would be deemed that the Petitioner has received the said requisition today and as such, the Petitioner is given the liberty to call for a meeting to discuss the No-Confidence Motion against the Petitioner within 26.09.2023. It is made clear that the impugned resolution dated 21.06.2021 which have been challenged in the instant proceedings shall be subject to the outcome of the meeting to be held on or before 26.09.2023.

(ii) It is further made clear that if the Petitioner fails to hold the meeting within 26.09.2023 as directed hereinabove, the impugned resolution so adopted in the No-Confidence Motion dated 21.06.2021 shall hold the field and thereby the Petitioner would be deemed to be ousted of the post of

the President of the Gaon Panchayat in question on the basis of the impugned Resolution dated 21.06.2021.

(iii) The interim order so passed by this Court dated 23.07.2021, whereby the impugned resolution adopted on 21.06.2021 was stayed shall hold the field till such decision is taken in the meeting of No-Confidence Motion if convened in terms with the observations made hereinabove or till 26.09.2023 if no meeting is convened by the Petitioner in terms with the liberty given hereinabove.

14. With the above, the instant writ petition stands disposed off.

15. The Registry is directed to serve a copy of the instant judgment to Mr. S. Dutta, learned Standing Counsel, P&RD Department for due notice and effective compliance.

JUDGE

Comparing Assistant