

GAHC010120012023



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

Case No. : WP(C)/3223/2023

RASHIDA KHATUN
WIFE OF NAZRUL ISLAM,
VILLAGE- RAMPUR SATRA,
P.S. BATADRAVA,
DIST.- NAGAON, ASSAM,
PIN- 782122.

VERSUS

THE STATE OF ASSAM AND 15 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DEPUTY COMMISSIONER
NAGAON
PO AND PS- NAGAON

DISTRICT- NAGAON (ASSAM)

PIN 782001.

3:THE CHAIRMAN
NAGAON ZILLA PARISHAD
P.O. AND P.S.- NAGAON

DISTRICT- NAGAON (ASSAM)
PIN- 782001.

4:THE CHIEF EXECUTIVE OFFICER
NAGAON ZILLA PARISHAD
P.O. AND P.S.- NAGAON

DISTRICT- NAGAON (ASSAM)

PIN- 782001.

5:THE PRESIDENT
BATADRAVA ANCHALIK PANCHAYAT
P.O- DHING
P.S DHING

DISTRICT- NAGAON (ASSAM)

PIN- 782123.

6:THE EXECUTIVE OFFICER
BATADRAVA ANCHALIK PANCHAYAT
P.O- DHING
P.S DHING

DISTRICT- NAGAON (ASSAM)

PIN- 782123.

7:THE SECRETARY
RAMPUR SATRA GAON PANCHAYAT
VILLAGE- RAMPUR SATRA

P.O. KODOMONI
P.S.- BATADRAVA

DISTRICT- NAGAON (ASSAM)

PIN- 782122.

8:MUSABBIR HUSSAIN
SON OF SAMSUDDIN

VILLAGE- HAIDUBI PATHER

P.O. BATAMARI

P.S.- BATADRAVA

DISTRICT- NAGAON (ASSAM)

PIN- 782122.

9:ANJUARA KHATUN

WIFE OF ABDUL MATALEB

VILLAGE- HAIDUBI PATHER

P.O. BATAMARI

P.S.- BATADRAVA

DISTRICT- NAGAON (ASSAM)

PIN- 782122.

10:KALPANA BEGUM
WIFE OF SAIFUL ISLAM

VILLAGE- RAMPUR SATRA

P.O.- KODOMONI

P.S.- BATADRAVA

DISTRICT- NAGAON (ASSAM)

PIN- 782122.

11:SAHIDUL ISLAM
SON OF ABDUL GONI

VILLAGE- RAMPUR SATRA

P.O.- KODOMONI

P.S.- BATADRAVA

DISTRICT- NAGAON (ASSAM)

PIN- 782122.

12:ABDUL RAHMAN
SON OF IBRAHIM DHALI

VILLAGE- RAMPUR SATRA

P.O.- KODOMONI

P.S.- BATADRAVA

DISTRICT- NAGAON (ASSAM)

PIN- 782122.

13:ASFINA BEGUM
WIFE OF AMINUL HOQUE

VILLAGE- RAMPUR SATRA

P.O.- KODOMONI

P.S.- BATADRAVA

DISTRICT- NAGAON (ASSAM)

PIN- 782122.

14:SHAJAHAN ALI
SON OF ABDUL RASID

VILLAGE- CHALA PATHAR

P.O.- CHALA PATHAR

P.S.- BATADRAVA

DISTRICT- NAGAON (ASSAM)

PIN- 782122.

15:SABIKUN NEHAR
WIFE OF ABUL HUSSAIN

VILLAGE- CHALA PATHAR

P.O.- CHALA PATHAR

P.S.- BATADRAVA

DISTRICT- NAGAON (ASSAM)

PIN- 782122.

16:REKIB UDDIN
SON OF JAYNAL ABEDIN

VILLAGE- CHALA PATHAR

P.O.- CHALA PATHAR

P.S.- BATADRAVA

DISTRICT- NAGAON (ASSAM)

PIN- 782122

Advocate for the Petitioner : Mr. B. K. Mahajan, Advocate
Mr. A. K. Baruah, Advocate

Advocate for the Respondents : Mr. K. N. Choudhury, Sr. Advocate
Mr. M. K. Hussain, Advocate
Mr. N. K. Debnath, SC, P&RD

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 28.11.2023

Date of Judgment : 28.11.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioner challenging the resolution dated 29.05.2023 thereby removing the petitioner from the post of President, Rampur Satra Gaon Panchayat as well as the impugned communication dated 29.05.2023 issued by the Executive Officer Batadrava Anchalik Panchayat.

2. The specific case of the petitioner herein is that the requisition was submitted by the 8 (eight) Ward Members of Rampur Satra Gaon Panchayat expressing no confidence against the petitioner who was the President of the said Gaon Panchayat. The said requisition was received by the Secretary, Rampur Satra Gaon Panchayat on 17.03.2023. Thereupon, on 18.03.2023, the said notice regarding no confidence against the petitioner was served upon the petitioner. The further case of the petitioner is that without waiting for the mandatory period of 15 (fifteen) days, the Secretary, Rampur Satra Gaon Panchayat referred the matter

vide communication dated 30.03.2023 to the President, Batadrava Anchalik Panchayat. Thereupon, it is the further case of the petitioner that 10 (ten) Ward members joined together to file a writ petition before this Court which was registered and numbered as WP(C) No.2363/2023 whereby this Court vide an order dated 17.05.2023 issued notice and further observed that pendency of the writ petition shall not be a bar for the respondent authorities to proceed with the matter as regards convening of the special meeting to discuss the motion of no confidence as per the provisions of the Assam Panchayat Act, 1994 (for short, 'the Act of 1994'). The petitioner further stated that on 29.05.2023, the special meeting was convened at 11:00 AM showing that the said meeting was being convened as per the direction of this Court. 9 (nine) Members voted against the petitioner and on the basis of which the President of the Batadrava Anchalik Panchayat declared that the meeting of no confidence was over. On the same date, the Executive Officer of Batadrava Anchalik Panchayat issued a communication to the Deputy Commissioner, Nagaon submitting the minutes of the no confidence meeting. It is however not known what steps have been taken thereupon by the Deputy Commissioner, Nagaon. The petitioner on coming to learn about the same has approached this Court by filing the instant writ petition.

3. This Court vide an order dated 05.06.2023 issued notice and in the meantime it was directed that the Gaon Panchayat authorities shall not take any major decision as regards the financial affairs of the Gaon Panchayat other than the decisions as regards its day to day affairs.

4. The record reveals that the private respondents, i.e. the respondent Nos.8 to 16 have filed their affidavit-in-opposition wherein it was duly

admitted that on 18.03.2023, the President's approval was sought for in order to convene the meeting of no confidence. It was also mentioned that the then President of Rampur Satra Gaon Panchayat, i.e. the petitioner did not accord the approval of the same and as such the Secretary, Rampur Satra Gaon Panchayat forwarded the letter on 30.03.2023 to the President of Batadrava Anchalik Panchayat for convening the meeting of no confidence. It was further mentioned that on the basis of the orders dated 08.05.2023 and 17.05.2023 passed in WP(C) No.2363/2023, the no confidence meeting was held on 29.05.2023 which was presided over by the President of Batadrava Anchalik Panchayat, and thereupon, a no confidence was passed against the petitioner by following the provisions of Section 15 & 18 (5) of the Act of 1994. Further to that, in the said affidavit, various judgments have been referred to.

5. Be that as it may, it is seen that on 09.11.2023, the Chief Executive Officer, Nagaon Zilla Parishad had in pursuance to an order dated 18.10.2023 passed by this Court in I.A.(C) No.2790/2023 conferred powers upon one Musabbir Hussain, the Vice-President of Rampur Satra Gaon Panchayat to function as the President of Rampur Satra Gaon Panchayat subject to final outcome of the present writ petition.

6. I have heard the learned counsel for the petitioner. Mr. B. K. Mahajan, who submitted that the action of the Secretary of Rampur Satra Gaon Panchayat to refer the matter to the Batadrava Anchalik Panchayat on 30.03.2023 was in clear contravention to Section 15 of the Act of 1994 which mandates that the President be given 15 (fifteen) days period for convening the meeting. The learned counsel for the petitioner submits that admittedly on 18.03.2023, the requisition notice was served upon the

petitioner and as such till 02.04.2023, the Secretary, Rampur Satra Gaon Panchayat could not have taken such action.

7. Mr. K. N. Choudhury, the learned senior counsel appearing on behalf of the private respondents submits that as to whether Section 15 of the Act of 1994 is mandatory or directory is a question which would require a detail analysis. However, the learned senior counsel submits that the private respondents are not adverse to giving the petitioner an opportunity to hold the meeting within a period of 15 (fifteen) days from today, i.e. on or before 13.12.2023. Mr. K. N. Choudhury, the learned senior counsel appearing on behalf of the private respondents submits that if the petitioner fails to do so, then the law should take its course as per the stipulation contained in the provisions of the Act of 1994.

8. I have also heard Mr. N. K. Debnath, the learned Standing Counsel appearing on behalf of P&RD Department who had produced the record. Mr. N. K. Debnath, the learned Standing Counsel, P&RD Department though submits that the petitioner never had an intention of convening the meeting but the fact remains that there is nothing to show that the petitioner did not decline to hold the meeting.

9. Upon hearing the learned counsel for the parties and taking into account that the period of 15 (fifteen) days was not complied with as per the mandate of Section 15 of the Act of 1994, this Court is of the opinion that the said amounts to an infraction to Section 15 of the Act of 1994, and accordingly, the impugned resolution of no confidence which was adopted on 29.05.2023 is bad in law for which the same is accordingly set aside.

10. This Court has also duly taken note of the Office Order dated 09.11.2023 issued by the Chief Executive Officer, Nagaon Zilla Parishad whereby the respondent No.8 was asked to exercise the function of the President subject to the outcome of the present writ petition. The said order also therefore, stands set aside and quashed as the same has been issued in the interim and was subject to the outcome of the writ petition wherein the Resolution of no confidence was challenged.

11. In view of setting aside and quashing the impugned resolution dated 29.05.2023 as well as Office Order dated 09.11.2023, the petitioner is restored back to the post of the President, Rampur Satra Gaon Panchayat with immediate effect.

12. Be that as it may, this Court also cannot be unmindful of the fact that the petitioner admittedly has the notice of the requisition which he received on 18.03.2023. Therefore, this Court grants the liberty to the petitioner to convene the special meeting for discussing the no confidence motion against the petitioner on or before 13.12.2023. It is made clear that further course of action shall be dependent upon the meeting if convened and if it is not convened within the time permitted herein then law would take its course as per the provisions of the Act of 1994.

13. This Court however makes it clear that the petitioner as the President of the Gaon Panchayat shall not be entitled during this period to take any financial decision in respect to the Gaon Panchayat save and except what is required to be done to carry out the day-to-day activities, that too in consultation with the Chief Executive Officer of the Nagaon Zilla Parishad.

14. In view of the above observations and directions, the instant writ petition stands disposed of.

15. Interim order, if any, shall no longer survive in view of the disposal of the instant writ petition.

JUDGE

Comparing Assistant