

GAHC010151172023



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

Case No. : WP(C)/3964/2023

ANAMIKA NAHA AND 4 ORS
W/O DIPANKAR NAHA, R/O VILLAGE ALOICHERRA PART-I, P.O. MANIPUR
BAGAN, DIST. HAILAKANDI, ASSAM, PIN 788165.

2: BIPLOB DAS

S/O LATE BIMAL DASM R/O VILLAGE NISHKAR (LALPANI)
P.O. MANIPUR BAGAN
DIST. HAILAKANDI
ASSAM
PIN 788165.

3: SHRI TAPAN SUKLABAIDYA
S/O LATE GOPENDRA SUKLABAIDYA
R/O VILLAGE LALPANI
P.O. MANIPUR BAGAN
DIST. HAILAKANDI
ASSAM
PIN 788165.

4: SMTI JHARNA ROY

W/O AJAY ROY

R/O VILLAGE ALOICHERRA PART-V
P.O. MANIPUR BAGAN
DIST. HAILAKANDI
ASSAM
PIN 788165.

5: SMTI MINA RANI KAR

W/O KRISHNAPADA KAR
R/O VILL. ALOICHERRA PART-II

P.O. LALPANI DIST. HAILAKANDI
ASSAM
PIN 788165

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHAATI-6

2:THE DEPUTY COMMISSIONER

HAILAKANDI
ASSAM
PIN 788163.

3:THE ADDITIONAL DEPUTY COMMISSIONER

HAILAKANDI
ASSAM
PIN 788163.

4:THE CHIEF EXECUTIVE OFFICER

HAILAKANDI ZILA PARISHAD
HAILAKANDI
ASSAM
PIN 788151.

5:THE PRESIDENT

SOUTH HAILAKANDI ANCHALIK PANCHAYAT
ALOICHERRA PART-V
P.O. MANIPUR BAGAN
DIST. HAILAKANDI
ASSAM
PIN 788165.

6:THE BLOCK DEVELOPMENT OFFICER-CUM-SECRETARY AND
EXECUTIVE OFFICER

SOUTH HAILAKANDI DEVELOPMENT BLOCK
ALOICHERRA PART-V
P.O. MANIPUR BAGAN
DIST. HAILAKANDI
ASSAM
PIN 788165.

7:THE SECRETARY

MANIPUR NISKAR GAON PANCHAYAT
P.O. MANIPUR
DIST. HAILAKANDI
ASSAM
PIN 788165.

8:SHRI RAJU ROY

S/O LATE JITENDRA KUMAR ROY
PRESIDENT
MANIPUR NISKAR GAON PANCHAYAT
R/O ALOICHERRA PART-VII
P.O. MANIPUR BAGAN
DIST. HAILAKANDI
ASSAM
PIN 788165

Advocate for the Petitioner : MR. I H LASKAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

19.09.2023

Heard Mr. P. K. Deka, learned counsel appearing for the writ petitioners.

Also heard Mr. J. Handique, learned Government Advocate, Assam appearing for the respondent Nos.2 and 3. Mr. P. Handique, learned Standing Counsel, P & RD Department, Assam has appeared for the respondent Nos.1 and 4 to 7. None has appeared for the respondent No.8.

2. The facts of the case, in a nutshell, are that as many as 7 (seven) members of the Manipur Niskar Gaon Panchayat, in the district of Hailakandi, had submitted a requisition dated 29.05.2023 before the Secretary of the Gaon Panchayat with a request to convene a special meeting so as to discuss the no-

confidence motion proposed against the respondent No.8, who is the President of the Gaon Panchayat. Upon receipt of the requisition dated 29.05.2023 the respondent No.7 i.e. the Secretary of the Gaon Panchayat, had placed the same before the respondent No.8 on 31.05.2023, seeking his approval to convene the special meeting. However, no approval was granted by the respondent No.8. Therefore, after waiting for a period of 15 days, the respondent No.7 had forwarded the requisition to the President of the concerned Anchalik Panchayat on 16.06.2023 which was received by him on the same date. However, no action was taken on the said requisition by the President of the Anchalik Panchayat also. As such, after waiting for a period of seven days, as permissible under the law, on 26.06.2023 the respondent No.7 had forwarded the requisition to the respondent No.2 i.e. the Deputy Commissioner (now District Commissioner), Hailakandi for doing the needful. When no action was taken by the respondent No.2 for convening the special meeting, the instant writ petition has been filed by as many as five requisitionists, *inter-alia* praying for issuance of a writ of mandamus directing the respondents to convene the meeting.

3. The respondent No.2 has filed affidavit wherein, it has been stated in paragraph 2 that the special meeting could not be convened to discuss the no-confidence motion since the respondent No.7 i.e. the Secretary of the Gaon Panchayat had committed a mistake in his failure to adhere to the timeline as provided under the law. As such, the requisitionist was advised to submit a fresh requisition for convening such a meeting. In the affidavit it has further been mentioned that the Secretary of the Gaon Panchayat has admitted his mistake in the reply to the show-cause notice dated 30.06.2023 served upon him.

Accordingly, warning was issued to the respondent No.7 not to repeat such mistake in future.

4. Mr. Deka has argued that there was a mistake in the calculation of the timeline as provided under Section 15(1) of the Assam Panchayat Act, 1994 made by the respondent No.2 as a result of which, the meeting was not convened by him.

5. It is to be noted herein that as per Section 15(1) of the Assam Panchayat Act, 1994 when a requisition expressing want of confidence on the President or Vice-President of a Gaon Panchayat is received, meeting is required to be convened by the Secretary of the Gaon Panchayat with the approval of the President or the Vice-President, as the case may be, depending on the post against which the motion is proposed, within a period of 15 days from the date of receipt of the notice. If, however, no such meeting is convened within 15 days, then the Secretary of the Gaon Panchayat shall, within three days thereafter, refer the matter to the President of the concerned Anchalik Panchayat, who shall convene the meeting within 7 days from the date of receipt of the information from the Secretary of the Gaon Panchayat and preside over the same. In case the President of the Anchalik Panchayat does not take action in the matter within the specified seven days time, then the Secretary of the Gaon Panchayat is required to inform the matter to the Deputy Commissioner/SDO(Civil), as the case may be, within three days after the expiry of stipulated 7 days time whereafter, the concerned Deputy Commissioner/SDO(Civil) is required to convene the meeting within seven days from the date of receipt of the information with intimation to the Zilla Parishad and the Anchalik Panchayat and preside over the meeting so convened.

6. In the present case, the time available for the President of the Anchalik Panchayat to convene the special meeting was for a period of seven days with effect from 16.06.2023, which ended on 23.06.2023. Therefore, three days thereafter would end on 26.06.2023. It is not in dispute that the letter by the Secretary of the Gaon Panchayat was received by the respondent No.2 on 26.06.2023. If that be so, it cannot be said that the letter was sent to the respondent No.2 after the expiry of the statutory period, as per prescription of Section 15(1) of the Assam Panchayat Act, 1994.

7. Mr. P. Handique, learned Standing Counsel, P & RD Department has submitted in his usual fairness that as per the provision of Section 9 of the General Clauses Act, 1897, which is perimateria provision to Section 9 of the Assam General Clauses Act, 1912 dealing with commencement and termination of time, the date 23.06.2023 ought to have been excluded while calculating the three days time. If the same is done then the three days would evidently expire on 26.06.2023. Therefore, it is a clear case of mistake committed by the respondent No.2 and not the respondent No.7 while computing the timeline prescribed under Section 15(1) of the Assam Panchayat Act, 1994.

8. Mr. J. Handique, learned Government Advocate, Assam has also supported the said contention of the learned departmental counsel.

9. After a careful reading of the provisions of Section 15(1) of the Assam Panchayat Act, 1994 in the light of the materials available on record, this Court is also of the opinion that the last date for the Secretary of the Gaon Panchayat to communicate the information pertaining to the requisition dated 29.05.2023 to the respondent No.2 was 26.06.2023. Since the respondent No.2 had in fact

received the information from the respondent No.7 on 26.06.2023, it was not a case where the respondent No.7 had failed to adhere to the timeline as prescribed by Section 15(1) of the Act of 1994 while furnishing information to the authorities by following the procedure delineated under the provision of the Act of 1994.

10. Situated thus, this Court is of the unhesitant opinion that the view taken by the respondent No.2 in this case was clearly erroneous. As such, this writ petition succeeds and is hereby allowed.

11. The respondent No.2 is directed to convene a special meeting of the Manipur Niskar Gaon Panchayat so as to discuss the no-confidence motion proposed against the respondent No.8 and preside over the said meeting. The meeting will be convened within 10 days from the date of receipt of a certified copy of this order by giving seven clear days notice to the members, intimating the date, place and time of the meeting.

With the above observation, the writ petition stands disposed of.

JUDGE

Comparing Assistant