



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No.306 OF 2022

Smti. Jayanti Das,
Wife of Nripendra Chandra Das,
Resident of Village: Naya Patan, PO:
Bhanganzar, PS: Badarpur, District:
Karimganj, Assam, PIN – 788701.

.....Appellant

-Versus-

1. The State of Assam, represented by the Principal Secretary to the Government of Assam, Department of Panchayat & Rural Development, Dispur, Guwahati – 781006.

2. The Deputy Commissioner, Karimganj, PO, PS & District: Karimganj, Assam.

3. The President, Badarpur Anchalik Panchayat, PO: Bhangabazar, District: Karimganj, Assam.

4. The Secretary, Masly Gaon Panchayat, District: Karimganj, Assam.

5. Smti. Lila Begum,
Wife of Jamal Uddin,
Group Member No.1 of Masly Gaon Panchayat, Village: Kazir Bazar, PO: Bhangabazar, District: Karimganj, Assam, PIN – 788701.

6. Smti. Ayesa Begum,
Wife of Abdul Hannan,
Group Member No.2 of Masly Gaon Panchayat, Village: Masly, PO:

Bhangabazar, District: Karimganj,
Assam, PIN – 788701.

7. Smti. Manowara Begum,
Wife of Ala Uddin,
Group Member No.3 of Masly Gaon
Panchayat, Village: Masly, PO:
Bhangabazar, District: Karimganj,
Assam, PIN – 788701.

8. Rangalal Dey,
Son of Late Ranjit Dey,
Group Member No.4 of Masly Gaon
Panchayat, Village: South Masly, PO:
Bhangabazar, District: Karimganj,
Assam, PIN – 788701.

9. Aklas Uddin,
Son of Helal Uddin,
Group Member No.5 of Masly Gaon
Panchayat, Village: Masly, PO:
Bhangabazar, District: Karimganj,
Assam, PIN – 788701.

10. Smti. Sakti Rani Das,
Wife of Rajesh Das,
Group Member No.6 of Masly Gaon
Panchayat, Village: Rajpasha, PO:
Bhangabazar, District: Karimganj,
Assam, PIN – 788701.

11. Smti. Mamon Chakraborty,
Wife of Dhruvojyoti Chakraborty,
Group Member No.7 of Masly Gaon
Panchayat, Village: Naya Patan, PO:
Bhangabazar, District: Karimganj,
Assam, PIN – 788701.

12. Safar Uddin,
Son of Abdul Bari,
Group Member No.8 of Masly Gaon
Panchayat, Village: Kankalash, PO:
Bhangabazar, District: Karimganj,
Assam, PIN – 788701.

13. Smti. Purnima Rabidas,
Wife of Sunil Rabidas,
Group Member No.9 of Masly Gaon
Panchayat, Village: Sarapur (Harizon

Basti), PO: Bhangabazar, District: Karimganj, Assam, PIN – 788701.

14. Ibrahim Ali,
Son of Ilyas Ali,
Group Member No.10 of Masly Gaon Panchayat, Village: Kazirgram, PO: Bhangabazar, District: Karimganj, Assam, PIN – 788701.

.....Respondents

– B E F O R E –
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Appellant	: Mr. M.H. Laskar, Advocate.
For the Respondent Nos.1, 3 & 4	: Mr. K. Konwar, Advocate.
For the Respondent No.2	: Ms. S. Konwar, Junior Government Advocate, Assam.
Date of Judgment & Order	: 25th January, 2023.

JUDGMENT & ORDER (ORAL)

[(N. Kotiswar Singh, CJ (Acting))]

Heard Mr. M.H. Laskar, learned counsel for the appellant. Also heard Mr. K. Konwar, learned counsel appearing for the respondent Nos.1, 3 & 4 and Ms. S. Konwar, learned Junior Government Advocate, Assam, appearing for the respondent No.2.

2. The present appeal has been preferred against the judgment & order dated 25.07.2022 passed by the learned Single Judge in WP(C) No.3211/2022, by which the learned Single Judge has dismissed the writ petition.

3. Brief facts relevant for deciding the present appeal is that the appellant is the elected President of the Masly Gaon Panchayat under Badarpur Anchalik Panchayat in the district of Karimganj. It is the case of the appellant that a meeting for no confidence motion against her was held on 02.05.2022. According to the appellant, though the no confidence motion was carried out but it was not done by way of secret ballot, as provided under Section 18.5 of the Assam Panchayat Act, 1994 (in short, "1994 Act"). Section 18.5 of the 1994 Act reads as follows:-

"18(5) The 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 decided by secret ballot."

4. Accordingly, it has been submitted that since the no confidence motion was carried out against the appellant without resorting to secret ballot, the same is illegal. Another contention of the appellant is that recording of the resolution was not properly done. The learned Single Judge considered both the submissions and by the impugned judgment & order and observed thus:-

"10. Two basic grounds have been urged in this writ petition. The first ground is a legal ground of infraction of Section 18(5) of the Act which requires holding of any meeting of no-confidence by secret ballot. The second ground is that though the no confidence motion had actually failed, the resolution has been recorded incorrectly by which prejudice has been caused to the petitioner."

So far as the first ground is concerned, there is no manner of dispute that the mandate of Section 18 of the Act has been held by this Court in a catena of decisions to be a mandatory one. However, the

said submission has to be decided on the facts and circumstances of each case. In the instant case, even if an intervention is made on the said ground of not having the no-confidence by secret ballot, in the instant case, all the members, who are 10 in numbers, have filed the Caveat and have opposed the present petitioner.

11. In view of the same, this Court is of the opinion that there will be no substantial change by remand of the matter as the question of no-confidence motion is ultimately a game of numbers and in the present case, all the 10 members are opposing the writ petitioner.”

5. The correctness of the aforesaid opinion rendered by the learned Single Judge in the aforesaid judgment & order has been put to challenge in this appeal.

6. Section 15 of the 1994 Act deals with no confidence motion against the President and Vice President. Sub-Section (1) of Section 15 thereof provides that every President and Vice President shall be deemed to have vacated his office forthwith when resolution expressing want of confidence in him is passed by a majority of two third of the total number of membership of the Gaon Panchayat.

Section 15(1) of the 1994 Act reads as follows:-

“15. No confidence motion against the President and Vice-President:- [(1) Every President or Vice-President shall be deemed to have vacated his office forthwith when 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.....]

Section 18 of the 1994 Act provides the quorum and the procedure to be adopted while holding a meeting of the Gaon Panchayat.

While ordinarily voting in any meeting of the Gaon Panchayat can be done by raising of hands as provided under Section 18(5) of the 1994 Act, it has been specifically provided that when it relates to no confidence motion, the matter has to be decided by secret ballot.

Section 18(5) of the 1994 Act reads as follows,

"18.....

(5) The 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 decided by secret ballot."

7. Thus, it has been specifically mentioned under Section 18(5) of the 1994 Act that any matter relating to the no confidence motion has to be conducted by way of secret ballot. Admittedly, in the present case it was not done so as can be seen from the impugned resolution. The impugned resolution dated 02.05.2022 reads as follows:-

*"Special meeting of Masly Gaon Panchayat
Place - Office of the Masly Gaon Panchayat
Date-02.05.2022. Day - Monday,
Time - 11.30 A.M.*

The agenda of meeting:

1. Discussion and decision over no confidence motion.

Signature of the present ward members:

- 1. Safar Uddin Ahmed*
- 2. Ibrahim Ali*
- 3. Ranga Lal Dey*
- 4. Mamon Chakraborty*
- 5. Aklas Uddin*
- 6. Sakti Rani Das*
- 7. Purnima Rabi Das*
- 8. Asma Begum*
- 9. Lila Begum*
- 10. Manowara Begum*
- 11. Jayanti Das*

Today the special meeting for no confidence motion against the president of the Masly Gaon Panchayat was presided over by the vice-president of the gaon panchayat. The proceeding of the meeting started in the presence of the Block Development Officer (Aftab Uddin Mazumder) of Badarpur Block Development office after the Vice-president Smti. Monowara Begum taken over the seat. The Secretary of the gaon panchayat (Sri Ashim Kumar Bhuiyan) stated the agenda of the meeting.

Resolution No.1 - When Rangalal Dey, ward member of ward No.4 proposed the no-confidence motion, the rest 9 other ward members supported the motion. So the process for casting of vote was not necessary in the meeting.

Therefore, the resolution for no confidence motion is adopted against the president of the gaon panchayat through overwhelming majority of 10 members who stood up and raised their hands in support of the no confidence motion.

Thereafter the Vice-president (President of the meeting) thanked the ward members and the officials present and declared the end of the meeting.”

8. Though the learned Single Judge has held that since the question of no confidence is ultimately a game of numbers and in the present case, all the members were opposing the writ petitioner/appellant, it would not serve any purpose if the matter is remanded back for fresh consideration.

9. We are unable to agree with the said decision of the learned Single Judge inasmuch as since the law provides a particular method of carrying out the exercise of conducting a no confidence motion, the same should be strictly adhered to. The law provides, as mentioned above, that the no confidence motion should be held by resorting to secret ballot. Merely because all the members present had opposed the writ petitioner/appellant cannot be a

reason to reject the claim of the writ petitioner/appellant. In other words, the mandate of law has to be followed. There is a specific reason for insisting upon secret ballot as any such independent decision taken by way of secret ballot, will ensure that a person casts his vote independently and is not visited with any adverse consequences which may happen if the vote cast is known to others, who may not approve of such vote.

10. Secrecy of ballot is one of the important attributes of election in a democracy which would ensure that the vote cast is totally independent and not influenced by any other person, except his own conscience and volition. The sense of independence and volition would be compromised if the secrecy is not maintained. It is the essence of democracy encapsulated in Section 18(5) of the Act.

11. In the present case since the votes were not cast by the members by way of secret ballot but in the open, the opinion and mind of the members obviously are known to everybody.

12. It is well settled that if the law requires a particular thing to be done in a particular manner, it has to be done in the manner prescribed by law and if not done, it will be non-existent in the eyes of law as held by the Apex Court in a catena of cases. [See: *Sharif-ud-din Vs. Abdul Gani Lone*, (1980) 1 SCC403; *Cherukuri Mani Vs. State of*

A.P., (2015) 3 SCC 722; Tata Chemicals Ltd. Vs. Commissioner of Customs, (2015) 11 SCC 628].

13. On this ground, we are satisfied that the impugned resolution dated 02.05.2022 brought against the writ petitioner/appellant is not sustainable in law, which was passed in violation of the provisions of Section 18(5) of the 1994 Act.

14. Accordingly, the appeal is allowed by setting aside the impugned judgment & order dated 25.07.2022 passed by the learned Single Judge in WP(C) No.3211/2022. Since the said no confidence motion can be said to be void and *non-est*, a fresh process for holding the no confidence motion is required to be initiated in accordance with the provisions of the 1994 Act by resorting to secret ballot as expeditiously as possible.

15. With the aforesaid observation and direction, the writ appeal stands allowed.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant