

GAHC010161842021



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

Case No. : WP(C)/5350/2021

AMINA KHATUN
W/O. LT. ZAKIR HUSSAIN, VILL. AND P.O. BHAWRIA BHITA, P.S.
CHHAYGAON, DIST. KAMRUP, ASSAM, PIN-781137.

VERSUS

THE STATE OF ASSAM AND 16 ORS
THROUGH- THE SECRETARY, TO THE GOVT. OF ASSAM, PANCHAYAT AND
RURAL DEVELOPMENT DEPTT., DISTPUR, GUWAHATI-781006.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
ASSAM
PANJABARI
JURIPAR
GUWAHATI.

3:THE DEPUTY COMMISSIONER
KAMRUP (R)
AMINGAON
GUWAHATI.

4:THE CHIEF EXECUTIVE OFFICER
KAMRUP ZILLA PARISHAD
AMINGAON
GUWAHATI.

5:THE IN CHARGE EXECUTIVE OFFICER
AND EX-OFFICIO SECRETARY
GOROIMARI ANCHALIK PANCHAYAT
GOROIMARI
DIST. KAMRUP
ASSAM.

6:THE SECRETARY
NO 3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137.

7:JAINUDDIN AHMED
OFFICE PEON
NO.3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137.

8:MINNATI BEGUM
VICE PRESIDENT
NO.3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137.

9:ALI AKBAR
MEMBER
NO.3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137.

10:AKHTAR HUSSAIN
MEMBER
NO.3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137.

11:SONA UDDIN
MEMBER
NO.3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137.

12:NURJAMAL HOQUE

MEMBER
NO.3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137.

13:RAHIMA KHATUN
MEMBER
NO.3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137.

14:ROMESHA KHATUN
MEMBER
NO.3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137.

15:CHAMER ALI
MEMBER
NO.3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137.

16:JAHANARA BEGUM
MEMBER
NO.3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137.

17:MONOWARA KHATUN
MEMBER
NO.3 BHAWRIA BHITA GAON PANCHAYAT
VILL. AND P.O. BHAWRIA BHITA
DIST. KAMRUP
ASSAM
PIN-781137

Advocates :

Petitioner : Mr. S.C. Biswas, Advocate
Mr. R. Majumdar, Advocate
Mr. N. Ahmed, Advocate
Respondent nos. 1, 2, 4, 5 & 7 : Mr. S. Dutta, Standing Counsel, Panchayat & Rural
Development [P&RD] Department
Respondent no. 3 : Mr. N. Goswami, Junior Government Advocate, Assam
Respondent nos. 8 – 15 : Mr. A. Mannaf, Advocate
Date of Hearing and Judgment & Order : 20.02.2023

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]**

Date : 20-02-2023

The writ petition under Article 226 of the Constitution of India has been instituted by the petitioner assailing the proceedings, initiated by a requisition notice submitted by 8 [eight] nos. of Ward Members of No. 3 Bhauriabhitha Gaon Panchayat on 06.08.2021, in its entirety, which proceedings had ultimately culminated in a special meeting held, on 26.08.2021, in the office of the Goroimari Anchalik Panchayat, with the passing of a motion of no confidence against the petitioner. In the special meeting held on 26.08.2021, the alleged motion of no confidence initiated against the petitioner for the purpose of removing her from the office of the President, No. 3 Bhauriabhitha Gaon Panchayat was stated to have been passed with more than two-third majority since 8 [eight] nos. of Ward Members of No. 3 Bhauriabhitha Gaon Panchayat voted against the petitioner by the process of secret ballots. The petitioner has also laid challenge to a letter dated 09.09.2021 of the respondent no. 4 whereby the respondent no. 4 had intimated his approval to the resolution passed in the special meeting in the matter of no confidence on 26.08.2021.

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

2.1. In the General Panchayat Election held in the year 2018, the petitioner submitted her nomination for the post of President, No. 3 Bhauriabhitha Gaon Panchayat. In the General Panchayat

Election so held, the petitioner got elected to the post of President, No. 3 Bhauriabitha Gaon Panchayat [hereinafter also referred to as 'the Gaon Panchayat', at places] as per the provisions of Section 6[1][b] of the Assam Panchayat Act, 1994. In the same General Panchayat Election, the respondent nos. 8 – 17 also got themselves elected as Ward Members of No. 3 Bhauriabitha Gaon Panchayat. Apart from the directly elected President, No. 3 Bhauriabitha Gaon Panchayat is consisted of 10 [ten] nos. of Ward Members. After the election, the respondent no. 8 got elected as the Vice-President of the Gaon Panchayat in terms of the provision contained in Section 6[3] of the Assam Panchayat Act, 1994. On 06.08.2021, 8 [eight] nos. of Ward Members of the Gaon Panchayat submitted a requisition notice, addressed to the President of the Gaon Panchayat i.e. the petitioner, expressing want of confidence in the petitioner to continue in the capacity of President, No. 3 Bhauriabitha Gaon Panchayat and had sought for convening of a special meeting to discuss the motion of no confidence.

3. The contesting parties are not in disagreement on the point that the requisition notice was submitted under the seals and signatures of 8 [eight] nos. of Ward Members i.e. the respondent nos. 8–15 as requisitionists to the respondent no. 6 i.e. the Secretary of No. 3 Bhauriabitha Gaon Panchayat. The dispute between the petitioner on one hand and 8 [eight] nos. of Ward Members as the requisitionists of the requisition notice on the other hand, is about the date on which the requisition notice dated 06.08.2021 was brought to the notice of the petitioner seeking her approval to convene a special meeting in terms of the provisions contained in Section 15[1] of the Assam Panchayat Act, 1994. The petitioner has questioned the role played by the respondent no. 6 in not bringing the requisition notice dated 06.08.2021 in the manner such a requisition notice is required to be brought.

4. While not dealing with the events which occurred in the interregnum from 06.08.2021 to 21.08.2021 for the time being, the events which occurred on and from 21.08.2021 can be noticed from the contents of a letter dated 21.08.2021 of the respondent no. 6, addressed to the President, Goroimari Anchalik Panchayat. By the letter dated 21.08.2021, the respondent no. 6 had referred the matter relating to the motion of no confidence to the President, Goroimari Anchalik Panchayat to take necessary steps in the matter, more particularly, with regard to the requisition notice submitted by 8 [eight] nos. of Ward Members of No. 3 Bhauriabitha Gaon Panchayat. In the letter dated 21.08.2021, the respondent no. 6 mentioned that the requisition notice submitted by 8 [eight] nos. of Ward Members was placed before the President, No. 3 Bhauriabitha Gaon Panchayat i.e. the petitioner through an office file sent with the Office Peon of the Gaon Panchayat i.e. the respondent no. 7. In the said letter,

the respondent no. 6 had further mentioned that the office file containing the requisition notice was forwarded to the petitioner on 09.08.2021, 12.08.2021 and 17.08.2021 respectively. The office file was stated to have been taken by the Office Peon lastly on 17.08.2021 to the petitioner's residence with the local Gaonburah with him and finding the petitioner absent in her residence, the notice was hanged in the front of the house of the petitioner.

4.1. On receipt of the letter dated 21.08.2021 from the respondent no. 6, the respondent no. 5 had issued notices, under his signature and seal, on 23.08.2021 to the President, the Vice-President and the other 9 [nine] Ward Members of No. 3 Bhauriabhitha Gaon Panchayat with the information that the special meeting to discuss the no confidence motion had been convened at 01-30 p.m. on 26.08.2021 in the office of the Goroimari Anchalik Panchayat. The noticees were thereby, requested to attend the special meeting at the venue, date and time, mentioned in the notice dated 23.08.2021. It is the case of the petitioner that though she had learnt on 23.08.2021 about the convening of the special meeting on 26.08.2021, she did not attend the meeting. As per the minutes of the special meeting held, on 26.08.2021, in the office of the Goroimari Anchalik Panchayat, the President of Goroimari Anchalik Panchayat presided over the same. Except the petitioner, all the 10 [ten] Ward Members of No. 3 Bhauriabhitha Gaon Panchayat attended the special meeting. After having a discussion, a decision was taken to decide the motion on the basis of secret ballots and accordingly, ballot papers were distributed to all the Ward Members of No. 3 Bhauriabhitha Gaon Panchayat. After the casting of votes by way of secret ballots was complete, the ballot papers were counted. On counting, it was found that 9 [nine] nos. of Ward Members voted in favour of the no confidence motion and one vote was rejected. Thereafter, it was resolved that the motion of no confidence brought against the petitioner was passed by the requisite two-third majority as 9 [nine] Ward Members had voted in favour of the motion. The minutes of the special meeting was thereafter, forwarded by the respondent no. 5 to the respondent no. 3 and to the respondent no. 4.

5. Having gone through the resolution taken in the special meeting dated 26.08.2021, the respondent no. 4, by his letter dated 09.09.2021, had accorded his approval to the resolution taken in the special meeting convened on 26.08.2021.

6. I have heard Mr. S.C. Biswas, learned counsel for the petitioner; Mr. S. Dutta, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1, 2, 4, 5 & 6;

Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent no. 3; and Mr. A. Mannaf, learned counsel for the respondent nos. 8 to 15. As per order dated 30.03.2022 of the Lawazima Court, the notices upon the respondent no. 6, the respondent no. 7, the respondent no. 16 and the respondent no. 17 were duly served but despite service of notices, the said respondents have not appeared in the instant proceedings.

7. Mr. Biswas, learned counsel for the petitioner has submitted that the Secretary of the Gaon Panchayat [the respondent no. 6] had never brought the requisition notice dated 06.08.2021 to the knowledge and notice of the petitioner at any point of time prior to 17.08.2021. He has submitted that in the letter dated 21.08.2021, sent by the respondent no. 6 to the President, Goroimari Anchalik Panchayat, he had incorrectly projected that the office file containing the requisition notice was placed before the petitioner on 09.08.2021, 12.08.2021 and 17.08.2021 respectively. It is his further submission that even if it is assumed that the requisition notice was brought to the knowledge of the petitioner on 09.08.2021, the respondent no. 6 could not have assumed the authority and jurisdiction to refer the matter to the jurisdictional Anchalik Panchayat, in the absence of any endorsement in such office file by the petitioner rejecting the proposal to convene the special meeting. It was incumbent on the part of the respondent no. 6 in the absence of any approval/rejection/endorsement in such office file, from the petitioner, to wait for a period of 15 [fifteen] days from 09.08.2021 to expire and thereafter only, to refer the matter to the jurisdictional Anchalik Panchayat. As the respondent no. 6 had referred the matter on 21.08.2021 to the jurisdictional Anchalik Panchayat, which was prior to expiry of 15 [fifteen] days from 09.08.2021, the consequential action like the notice dated 23.08.2021 and the resolution passed in the special meeting held on 26.08.2021 are also to be held unsustainable in law. He has further submitted that the notice dated 23.08.2021 is also liable to be set aside as the same was in violation of the time-period prescribed by Section 17[3] of the Assam Panchayat Act, 1994, as the notice had given only 2 [two] clear days notice instead of mandatory 3 [three] clear days notice.

8. Mr. Dutta, learned Standing Counsel, P&RD Department has submitted that the Secretary of the Gaon Panchayat had duly placed the requisition notice dated 06.08.2021 before the petitioner through the official channel. The office file was sent to the petitioner along with the requisition notice, firstly on 09.08.2021 and thereafter, on the dates, already indicated in the notice dated 21.08.2021. It is submitted by him that the petitioner was not found in her residence on 17.08.2021 and similarly, a plea has been taken in the writ petition that the petitioner was not in her residence. When the requisition notice was

taken by the Office Peon of the Gaon Panchayat to the residence of the petitioner on 17.08.2021, the petitioner was found absent in her house and the Office Peon i.e. the respondent no. 7 had to hang the notice in front of the petitioner's residence in presence of the Gaonburah. In view of such sequence of events, Mr. Dutta has submitted that it is clear that the petitioner had avoided the service of the requisition notice deliberately and in such fact situation, the Secretary of the Gaon Panchayat had no other option but to refer the matter to the jurisdictional Anchalik Panchayat.

9. Mr. Mannaf, learned counsel for the respondent nos. 8 – 15 has adopted the submissions of the learned Standing Counsel, P&RD Department. Mr. Mannaf has further submitted that since in the special meeting held on 26.08.2021, all the 10 [ten] nos. of Ward Members of No. 3 Bhauriabhitha Gaon Panchayat attended and exercised their options by way of secret ballots resulting in passing of the motion of no confidence by more than two-third majority with 9 [nine] nos. of Ward Members voting against the petitioner, the petitioner has no right to continue in the capacity of the President, No. 3 Bhauriabhitha Gaon Panchayat.

10. I have duly considered the submissions of the learned counsel for the parties and also perused the materials brought on record by the parties through their pleadings. I have also gone through the records produced by the Standing Counsel, P&RD Department.

11. Before dilating on the aspects contended by the parties, it is apt to refer to the provision 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/or the Vice-President, as the case may be, 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 a President of a Gaon Panchayat 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. As per Section 15[2], the requisition notice for such a special meeting shall be signed by not less than one-third of the total members of the Gaon Panchayat and shall be delivered to the President or the 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, refer the matter to the President of the concerned Anchalik Panchayat, who shall convene the special 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.

12. There is no dispute to the fact that on 06.08.2021, a requisition notice of even date, with signatures and seals of 8 [eight] nos. of Ward Members of No. 3 Bhauriabhitha Gaon Panchayat as requisitionists, was delivered to the respondent no. 6 i.e. the Secretary of No. 3 Bhauriabhitha Gaon Panchayat. There is also no dispute to the fact that the respondent no. 6 had received the requisition notice. From the contents of the letter dated 21.08.2021 of the respondent no. 6, it has emerged that the requisition notice was put up in an official file by the respondent no. 6 and the same was purportedly sent to the petitioner seeking her approval to convene the special meeting in terms of the provisions contained in Section 15[1] of the Assam Panchayat Act, 1994. On perusal of the records, it does not emerge that the petitioner had made any endorsement in the said office file, stated to have been put up before her on 09.08.2021 onwards till 17.08.2021. Had there been any endorsement from the end of the petitioner with a denial to convene the special meeting, the Secretary of the Gaon Panchayat would have assumed the authority and jurisdiction to refer the matter of no confidence immediately thereafter, to the jurisdictional Anchalik Panchayat. But such was not the case in hand. In the absence of any endorsement from the petitioner in the official file, purportedly sent to the petitioner along with the requisition notice on 09.08.2021, 12.08.2021 and 17.08.2021, the Secretary of the Gaon Panchayat ought to have waited atleast for a period of 15 [fifteen] days from 09.08.2021 to expire and thereafter, to refer the matter to the jurisdictional Anchalik Panchayat. The period of 15 [fifteen] days from 09.08.2021 would have expired on 24.08.2021 and it was during the period of next 3 [three] days from 25.08.2021, the Secretary of the Gaon Panchayat would have assumed the jurisdiction to refer the matter to the jurisdictional Anchalik Panchayat. As it has emerged from the records, the Secretary of the Gaon Panchayat in the case in hand, had referred the matter to the jurisdictional Anchalik Panchayat on 21.08.2021, which was before expiry of 15 [fifteen] days from 09.08.2021.

13. In **Ali Ahmed Mazumdar vs. State of Assam and others**, reported in **2011 [3] GLT 396**, the Hon'ble Division Bench has discussed the necessity of bringing the notice of no confidence motion to

the personal knowledge of the President of a Gaon Panchayat. It has been observed therein that the Secretary of the Gaon Panchayat who received the notice on behalf of the President, is cast with a legal duty, which is mandatory in nature, to inform the President forthwith about the receipt of such notice with a note put up in official file for his personal knowledge and to pass necessary order either according approval or declining to accord approval to convene the special meeting for discussion on the no confidence motion by the Panchayat Members. Because of the extremely possible disastrous consequence, like removal from office, attached to the no confidence motion preceded by compliance of certain statutory procedures as laid down in Section 15 of the Assam Panchayat Act, 1994, it has been held that a notice of no confidence motion received by the Secretary of the Gaon Panchayat on behalf of the President of the Gaon Panchayat, cannot be construed as due notice to the President and the period of 15 [fifteen] days as contemplated under Section 15[1] of the Assam Panchayat Act, 1994 could be counted only from the date of bringing the notice to personal knowledge of the President of the Gaon Panchayat formally through official note, and not otherwise. The Hon'ble Division Bench has also assigned the reason as to why the said receipt of notice of no confidence motion by the Secretary cannot be construed as due notice. By observing that a dishonest Panchayat Secretary, for dubious purpose or on extraneous consideration to serve some vested interest, may play mischief by holding back the notice from the President of the Gaon Panchayat against whom the Panchayat Members have expressed loss of confidence, to create a situation for it and to show/prove that the President has failed to convene the special meeting within 15 [fifteen] days as prescribed under Section 15[1] of the Assam Panchayat Act, 1994 and to make out a case for referring the matter to Anchalik Panchayat to convene a special meeting by it. The Division Bench has further observed while supporting the ratio laid down in the case titled **Sita Satnami vs. State of Assam and others**, reported in **2010 [3] GLT 291**, that the Secretary of the Gaon Panchayat can assume jurisdiction only after expiry of 15 [fifteen] days from the date of bringing the requisition notice to the notice of the President of the Gaon Panchayat, to refer the matter to the President of the jurisdictional Anchalik Panchayat and any reference of the matter to the jurisdictional Anchalik Panchayat by the Secretary of the Gaon Panchayat before such expiry of period of 15 [fifteen] days, would be in flagrant transgression of the statutory provisions contained in Section 15[1] of the Assam Panchayat Act, 1994. In **Sipra Das vs. State of Assam and others**, reported in **2017 [3] GLT 691**, it has been held that a reference made by the Secretary of the Gaon Panchayat to the concerned Anchalik Panchayat before the expiry of 15 days from the date on which the notice was allegedly brought to the knowledge of the President of the Gaon Panchayat is bad in law and is liable to be declared so.

14. As per Section 17[3] of the Assam Panchayat Act, 1994, contained as under :-

“17. Meeting of the Gaon Panchayat :

[3] Seven clear days notice of an ordinary meeting and three clear days notice of a special meeting specifying the place, date and time of such meeting and the business to be transacted therein shall be given by the Secretary of the Gaon Panchayat and fix the notice on the notice-board of the Gaon Panchayat office.”

15. The notice issued by the respondent no. 5 i.e. the Executive Officer, Goroimari Anchalik Panchayat on 23.08.2021 had mentioned that the special meeting would be convened on 26.08.2021. In the considered view of this Court, ‘clear days’ would mean while calculating it must exclude the start date and the date of the special meeting. From the notice dated 23.08.2021, it clearly transpires that there were just two clear days [24.08.2021 & 25.08.2021] in between the date of the notice i.e. the start date [23.08.2021] and the date of the special meeting thereby convened [26.08.2021]. The Hon’ble Division Bench in the writ appeal, **W.A. no. 189/2021 [Hafizur Rahman vs. the State of Assam and 15 others]**, decided on 17.12.2021, has observed that Section 17[3] of the Assam Panchayat Act, 1994 has clearly stipulated that in case of any special meeting [which is a meeting for no confidence motion], three clear days notice has to be given. It has been held that when such three clear days notice for a special meeting is not found to be given, it has to be held that such notice is in violation of Section 17[3] of the Assam Panchayat Act, 1994. A co-ordinate bench of the Court in the writ petition, **W.P.[C] no. 181/2021 [Jahanara Ahmed vs. the State of Assam and 13 others]**, has also observed in similar manner. In both the decisions, it has been observed that if the motion of no confidence stated to have been passed against the President of the Gaon Panchayat by the requisite two-third majority in a special meeting there was any infraction of the statutory prescription contained in Section 17[3] of the Assam Panchayat Act, 1994, then the same cannot be given effect to. Thus, there was clear violation of the statutory prescription contained in Section 17[3] of the Assam Panchayat Act, 1994, with no three clear days notice for the special meeting.

16. The concept of tenure of an elected office-bearer of any Panchayati Raj Institution, governed by democratic principles, is controlled by a limitation of no confidence and the fixed tenure provided in the governing statute, that is, the Assam Panchayat Act, 1994 can get shortened due to removal from

loss of confidence in such elected office-bearer, as provided for in the statute. This curtailment in the tenure in view of removal of an elected office-bearer is based on the democratic principle that the elected office-bearer against whom such motion is passed, has ceased to enjoy the support and confidence of the requisite majority of members, as fixed by the governing statute. From the provisions of Section 15[1] of the Assam Panchayat Act, 1994, it is clearly discernible that a President of a Gaon Panchayat can continue in that capacity so long as he/she enjoys the confidence of two-third of the total number of Ward Members of the Gaon Panchayat. As soon as he/she loses the confidence of a majority of two-third of the total number of Ward Members of the Gaon Panchayat and a motion of no confidence is passed against him/her by such majority of two-third of the total members of the Gaon Panchayat, such a President of a Gaon Panchayat shall be deemed to have vacated his/her office forthwith.

17. Reverting back to the facts of the case, it is noticed that the requisition notice dated 06.08.2021 was submitted by 8 [eight] nos. of Ward Members out of total 10 nos. of Ward Members of No. 3 Bhauriabhitha Gaon Panchayat and in the special meeting held on 26.08.2021, 10 [ten] nos. of Ward Members attended and 9 [nine] nos. of Ward Members cast their votes by secret ballots against the petitioner. As the proceedings of the special meeting has been interfered with on the premise that there was non-adherence of the procedure required to be followed to bring the requisition notice to the knowledge of the petitioner in the manner recognized and there was no clear three days notice for the special meeting, the motion of no confidence, brought against the petitioner, cannot be held to have been lost. Thus, having regard to the entire conspectus of background fact situation obtaining in the case in hand, this Court is of the considered view that the motion of no confidence, brought against the petitioner, shall continue from the stage at which it has been interfered with.

18. Taking a cue from the direction made by a Division Bench of this Court in **Karun Kanti Malakar and others, vs. Nosir Ahmed Mazumdar and others**; reported in **2010 [3] GLT 415**, and **Mocklishur Rahman vs. the State of Assam**, reported in **2017 [4] GLT 933**; this Court is of the view that a similar direction is called for in the case in hand also because the motion of no confidence is not lost and still survives in view of the fact that it was taken up for consideration in an illegally convened special meeting on 26.08.2021. It is, therefore, directed that the petitioner as the President of No. 3 Bhauriabhitha Gaon Panchayat shall convene a special meeting at 11-00 a.m. on 13.03.2023 at the office of No. 3 Bhauriabhitha Gaon Panchayat. Besides that, the petitioner while convening the special

meeting, shall serve requisite notices by mentioning the time [11-00 a.m.], date [13.03.2023] and venue of such special meeting [the office of No. 3 Bhauriabhitha Gaon Panchayat] in compliance of the criterion prescribed in Section 17[3] of Assam Panchayat Act, 1994 upon all the stakeholders including 10 [ten] nos. of Ward Members of No. 3 Bhauriabhitha Gaon Panchayat, to attend the special meeting. In order to ensure that the proceedings of such special meeting are carried out properly, the Deputy Commissioner, District – Kamrup shall depute one Gazette Officer, not below the rank of Class-I Gazetted Officer, as an observer for the purpose of the special meeting.

19. The matter of restoration or otherwise of the petitioner in the post of President, No. 3 Bhauriabhitha Gaon Panchayat will abide by the outcome of the special meeting to be convened in terms of the direction made above. The writ petition is allowed to the extent indicated, with the observations made and directions given above. There shall, however, be no order as to cost.

20. A copy of this order be furnished to Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department and Mr. N. Goswami, learned Junior Government Advocate, Assam for the purpose of taking necessary steps for compliance from their ends.

JUDGE

Comparing Assistant