

GAHC010202532022



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

Case No. : WRIT PETITION (C) No. 6551/2022

Smti Bulima Begum, W/o - Sri Anowar Hussain, Village
& P.O. - Chotoguma, District - Dhubri, Assam.

.....Petitioner

-Versus-

1. The State of Assam, Represented by the Principal Secretary to the Government of Assam, Panchayat & Rural Development, Dispur, Guwahati-06.
2. The Deputy Commissioner, Dhubri, P.O. & District – Dhubri, Assam, Pin - 783301.
3. The Executive Officer, Hatidhura Anchalik Panchayat, P.O. – Hatidhura, District – Dhubri, Assam, Pin - 783335.
4. The President, Hatidhura Anchalik Panchayat, P.O. – Hatidhura, District – Dhubri, Assam, Pin - 783335.
5. The Secretary of Chotoguma G.P., P.O. – Chotoguma, District – Dhubri, Assam, Pin – 783335.
6. Sri Akramul Hoque Mondal, Vice President, Chotoguma G.P., S/o- Afjal Hussain Mondal, P.O. – Chotoguma, District – Dhubri, Assam, Pin – 783335.
7. Sri Fazal Ali Sheikh, Member, Chotoguma G.P. S/o -

Abu Bakkar Sheikh, Village - Binnaguri Part-II, P.O. – Chotoguma, District – Dhubri, Assam, Pin – 783335.

8. Mrs. Rehena Bibi, Member, Chotoguma G.P., W/o - Mr. Nozrul Islam, Village – Bholarkhash, P.O. – Chotoguma, District – Dhubri, Assam, Pin - 783335

9. Mrs. Monowara Bewa, Member, Chotoguma G.P., W/o - Late Surat Ali, Village & P.O. – Chotoguma, District – Dhubri, Assam, Pin – 783335.

10. Smti Monowara Bibi, Member, Chotoguma G.P., W/o - Sri Abdul Kader, Village & P.O. –Chotoguma, District – Dhubri, Assam, Pin - 783335

11. Sri Nityananda Sutradhar, Member, Chotoguma G.P., S/o - Sri Krishna Sutradhar, Village & P.O. – Chotoguma, District – Dhubri, Assam, Pin - 783335

12. Smti Sazeda Bibi, Member, Chotoguma G.P., W/o - Sri Bellal Hussain, Village & P.O. Chotoguma, District – Dhubri, Assam, Pin- 783335

13. Smti Bhajana Debnath, Member, Chotoguma G.P., W/o - Sri Narayan Debnath, Village & P.O. – Chotoguma, District – Dhubri, Assam, Pin- 783335

14. Sri Ajob Ali Mondal, Member, Chotoguma G.P., S/o - Sorhab Ali Mondal, Village & P.O. – Chotoguma, District – Dhubri, Assam, Pin- 783335

15. Sri Aynal Hoque, Member, Chotoguma G.P., S/o - Mohur Uddin Sk., Village – Kaimmati, P.O. – Chotoguma, District – Dhubri, Assam, Pin- 783335

16. Sri Amit Tarafdar, A.P. Member from Chotoguma G.P., S/o - Late Anil Tafadar, Village & P.O. Chotoguma, District –

Dhubri, Assam, Pin - 783335

17. Smti Ommey Salma Khatun, Vice President of Hatidhura A.P., W/o - Manik Ali, Village - Tamacha Basjan, P.O. – Tamarhat, District – Dhubri, Assam, Pin - 783335

18. Smti Purnima Adhikary, A.P. Member of Dingdinga G.P., W/o - Radheshyam Adhikari, Village – Haripur, P.O. Dingdinga, District – Dhubri, Assam, Pin- 783335.

.....Respondents

Advocates :

Petitioner	: Mr. B.C. Das, Senior Advocate Mr. D.A. Kaiyum, Advocate.
Respondent nos. 1, 3 & 5	: Mr. S. Dutta, Standing Counsel Panchayat & Rural Development Department
Respondent no. 2	: Mr. K. Gogoi, Additional Senior Government Advocate
Respondent nos. 4, 16 & 17	: Mr. H. Das, Advocate
Respondent nos. 6, 7, 10, 11, 13 & 15	: Mr. U.K. Nair, Senior Counsel Mr. A.F.N.U. Mollah, Advocate
Respondent nos. 8, 9, 12 & 14	: Mr. J. Abedin, Advocate
Date of Hearing	: 11.05.2023, 23.05.2023 & 25.05.2023
Date of Judgment & Order	: 25.05.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

This writ petition under Article 226 of the Constitution of India has been instituted by the petitioner assailing the proceedings of a special meeting held at 11-00 a.m. on 17.09.2022 in the office of Hatidhura Anchalik Panchayat to discuss a motion of no confidence brought against the petitioner as the President of Chotoguma Gaon Panchayat on the basis of a requisition notice submitted by 8 [eight] nos. of Ward Members of Chotoguma Gaon Panchayat on 18.07.2022 expressing want of confidence in the petitioner to continue as the President of Chotoguma Gaon Panchayat and requesting the respondent no. 5 i.e. the Secretary of Chotoguma Gaon Panchayat to convene a special meeting. The petitioner has also sought for directions in the nature of mandamus to the respondent authorities to cancel/withdraw and/or not to give effect to the notice dated 14.09.2022 issued by the President of Hatidhura Anchalik Panchayat [the respondent no. 4] and for a direction to allow the petitioner to continue and perform the functions of the President of Chotoguma Gaon Panchayat.

2. The sequence of events leading to the institution of the present writ petition can be expounded, in brief, as follows :-

2.1. In the General Panchayat Election held on 09.12.2018, the petitioner contested for the post of President of Chotoguma Gaon Panchayat. The results of the election were declared on 14.12.2018 and the petitioner got elected to the post of President of Chotoguma Gaon Panchayat [hereinafter referred to as 'the Gaon Panchayat', at places, for convenience] as per the provisions of

Section 6[1][b] of the Assam Panchayat Act, 1994, as amended. In the said General Panchayat Election, the respondent nos. 6 – 15 also got themselves elected as Ward Members of the Gaon Panchayat. After the election, the respondent no. 6 got elected as the Vice-President of the Gaon Panchayat in terms of the provisions of Section 6[3] of the Assam Panchayat Act, 1994, as amended, in the first meeting of the Gaon Panchayat held on 06.02.2019.

2.2. On 18.07.2022, 8 [eight] nos. of Ward Members of the Gaon Panchayat submitted a requisition notice addressing the same to the President of the Gaon Panchayat i.e. the petitioner expressing want of confidence in her as President of the Gaon Panchayat and seeking convening of a special meeting within 15 days from the date of receipt of the requisition notice to discuss the motion of no confidence. The requisition notice dated 18.07.2022 was received by the respondent no. 5 on 19.07.2022 under his signature and seal.

2.3. It was the contention of the petitioner that despite receipt of the requisition notice by the respondent no. 5 on 19.07.2022, he did not bring the same to the notice and knowledge of the petitioner. It was also contended that the Ward Members of the Gaon Panchayat also did not bring the requisition notice to the notice and knowledge of the petitioner. As a result, the petitioner was completely unaware about the requisition notice dated 18.07.2022 till 17.09.2022.

2.4. The Secretary of the Gaon Panchayat, that is, the respondent no. 5 had referred the matter including the requisition notice to the President of Hatidhura Anchalik Panchayat by his letter dated 02.08.2022 mentioning inter alia that

despite visits of the office peon to the residence of the petitioner, the requisition notice could not be served upon the petitioner for approval to convene the special meeting. By the letter dated 02.08.2022, the respondent no. 5 sought intervention of the President of Hatidhura Anchalik Panchayat for convening the special meeting by taking necessary steps.

2.5. On receipt of the letter dated 02.08.2022 from the respondent no. 5, the Executive Officer of the Hatidhura Anchalik Panchayat [the respondent no. 3] issued a notice dated 06.08.2022 to the petitioner, the Ward Members of the Gaon Panchayat and other officials informing them that the no confidence motion brought against the petitioner would be discussed in a meeting convened at 10-30 a.m. on 09.08.2022 at the office of Hatidhura Anchalik Panchayat.

2.6. It was the contention of the petitioner that she did not even receive the notice dated 06.08.2022 as the same was not served upon her.

2.7. A special meeting was thereafter, held in the office of the Hatidhura Anchalik Panchayat on 09.08.2022 as convened by the notice dated 06.08.2022 issued under the hand of the respondent no. 3. The said special meeting was presided by the President of the Hatidhura Anchalik Panchayat. As per the records of proceedings of the said special meeting, 9 [nine] nos. of Ward Members of the Gaon Panchayat were present. The motion of no confidence against the petitioner was moved and the motion was decided on the basis of signatures taken from the Ward Members of the Gaon Panchayat. As per Resolution no. 1 adopted in the special meeting, 9 [nine] nos. of Ward Members

of the Gaon Panchayat gave their signatures against the President of the Gaon Panchayat. After recording so, Resolution no. 1 was adopted to the effect that the motion of no confidence was decided unanimously against the petitioner.

2.8. Assailing the proceedings of the special meeting convened and held on 09.08.2022, the petitioner approached this Court by way of a writ petition, W.P. [C] no.5362/2022. The primary ground of challenge therein was that there was gross violation of the procedure prescribed in the Assam Panchayat Act, 1994, more specifically, the provisions of Section 18[5] thereof. It was contended that sub-Section [5] of Section 18 had specifically prescribed about requirement of deciding a motion of no confidence only by way of secret ballot. The writ petition came up for consideration on 22.08.2022. By taking note of the provisions of Section 18[5] of the Assam Panchayat Act, 1994, the Court observed that since the law prescribed has prescribed for deciding a no confidence motion by secret ballot, any other method or mode was strictly prohibited. With such observation, the proceedings of the special meeting held on 09.08.2022 was interfered with. The Court also took note of the fact that the majority of the Ward Members of the Gaon Panchayat participated in the proceedings of the special meeting held on 09.08.2022. Having regard to the democratic principles, the Court while interfering with the Resolution no. 1 dated 09.08.2022 granted liberty to the disgruntled Ward Members of the Gaon Panchayat to hold a special meeting to discuss the motion of no confidence afresh against the petitioner. The Court while disposing of the writ petition by its order dated 22.08.2022, dispensed with the procedure of issuance of a fresh notice and directed to hold a special meeting at 11-00 a.m. on 17.09.2022 in the office of the Hatidhura Anchalik Panchayat to discuss the motion of no

confidence brought against the petitioner afresh. It was further directed that the Deputy Commissioner, Dhubri would depute an official under whose supervision the special meeting to discuss the no confidence motion would be held.

2.9. Pursuant to the above direction made by the Court in the order dated 22.08.2022, a notice stood issued under the hand of the President, Hatidhura Anchalik Panchayat on 14.09.2022 to the stakeholder including the petitioner. By the notice dated 14.09.2022, the petitioner was informed to the effect that the special meeting was convened and would be held at 11-00 a.m. on 17.09.2022 in the office of the Hatidhura Anchalik Panchayat. The copies of the notice dated 14.09.2022 were also forwarded to the authorities indicated therein for their information.

2.10. On 17.09.2022, the special meeting, as directed to be held by the order dated 22.08.2022 and intimated by the notice dated 14.09.2022, was held in the office of the Hatidhura Anchalik Panchayat at the scheduled time. The Circle Officer, Agomoni Revenue Circle was deputed by the Deputy Commissioner, Dhubri as his representative in terms of the direction of the Court. The special meeting, held on 17.09.2022, was presided over by the President of the Hatidhura Anchalik Panchayat [the respondent no. 4] wherein the petitioner as the President of the Gaon Panchayat and 10 nos. of Ward Members of the Gaon Panchayat, that is, the respondent nos. 6 – 15 herein participated along with the following three officials viz. [i] the Circle Officer, Agomoni Revenue Circle; [ii] the Block Development Officer-cum-Executive Officer, Hatidhura Anchalik Panchayat; and [iii] the Secretary, Chotoguma Gaon Panchayat.

2.11. It is noticed from the proceedings book maintained for the special meeting held on 17.09.2022 that, the respondent no. 16, the respondent no. 17 and the respondent no. 18 had also subscribed their signatures in the proceeding books maintained for the special meeting. As per the proceedings of the special meeting, the process of secret voting through ballot papers was resorted to, to decide the motion. After completion of the voting process, the ballot papers were counted. On counting, it was found that 7 [seven] nos. of Ward Members had cast their votes in favour of the motion of no confidence against the petitioner whereas 3 [three] nos. of Ward Members had cast their votes against the motion of no confidence. As per the Resolution adopted, the motion of no confidence was held to have been passed by majority of two-third of the total Ward Members of the Gaon Panchayat and accordingly, the motion was accepted. The proceedings of the special meeting held on 17.09.2022 was signed by the Circle Officer, Agomoni Revenue Circle with the counter signature of the Executive Officer, Hatidhura Anchalik Panchayat.

2.12. The Circle Officer, Agomoni Revenue Circle had thereafter, submitted a Report to the Deputy Commissioner, Dhubri about the proceedings of the special meeting held on 17.09.2022. The Deputy Commissioner, Dhubri after receipt of the proceedings of the special meeting and the Report of the Circle Officer, Agomoni Revenue Circle, had observed the motion of no confidence to be duly passed against the petitioner by a majority of more than two-third of the total number of Ward Members of the Gaon Panchayat. By holding so in his Order dated 22.09.2022, the Deputy Commissioner, Dhubri allowed the Vice-President of the Gaon Panchayat i.e. the respondent no. 6 to exercise and perform all the

powers and discharge all the duties of the President of the Gaon Panchayat as per the provisions of Section 13[2][d] of the Assam Panchayat Act, 1994, as amended, with the further observation that the Vice-President would continue till the office of the President was filled up in the manner provided by Section 6[1][b] of Assam Panchayat Act, 1994.

3. I have heard Mr. B.C. Das, learned Senior Counsel assisted by Mr. D.A. Kaiyum, learned counsel for the petitioner; Mr. S. Dutta, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1, 3 & 5; Mr. K. Gogoi, learned Additional Senior Government Advocate, Assam for the respondent no. 2; Mr. H. Das, learned counsel for the respondent nos. 4, 16 & 17; Mr. U. K. Nair, learned Senior Counsel assisted by Mr. A.F.N.U. Mollah, learned counsel for the respondent nos. 6, 7, 10, 11, 13 & 15; and Mr. J. Abedin, learned counsel for the respondent nos. 8, 9, 12 & 14.

4. Mr. Das, learned Senior Counsel for the petitioner has submitted that the special meeting was directed to be convened on 17.09.2022 by the order dated 22.08.2022 passed in the writ petition, W.P.[C] no. 5362/2022. It is his submission that the provisions of Section 15 of the Act, 1994 has prescribed the procedure for holding of the special meeting in case the requisite nos. of Ward Members of the Gaon Panchayat expressed no confidence in the President of the Gaon Panchayat who, as per Section 6[1][b] of the Assam Panchayat, 1994, is directly elected by the electorate of all the constituencies of the Gaon Panchayat. Though the President of the Gaon Panchayat is directly elected in the said manner, the provisions of the Assam Panchayat Act, 1994 have envisaged a situation of removal of the President by the requisite nos. of Ward

Members of the Gaon Panchayat, who are elected from the individual constituencies of the Gaon Panchayat. As soon as a motion of no confidence is held to be passed by the requisite majority against the President of the Gaon Panchayat, the President of the Gaon Panchayat stands removed altogether from the Gaon Panchayat without any further role in the affairs of the Gaon Panchayat in the subsequent period. Thus, there has to be strict compliance of the provisions of the Assam Panchayat Act, 1994 in the process of such removal. In a special meeting convened and held for the purpose of discussing a motion of no confidence, there should not be any kind of influence by the participation of persons, who are not parts of that particular Gaon Panchayat. By referring to the provisions of Section 17 of the Assam Panchayat Act, 1994, he has submitted that the provisions contained therein do not contemplate participation of any outsiders, be it a member of the jurisdictional Anchalik Panchayat or the jurisdictional Zilla Parishad, who has otherwise no role in the business and affairs of a Gaon Panchayat. As in a special meeting convened and held for the purpose of discussing a motion of no confidence, it is the President of the Gaon Panchayat who is likely to be visited with the disastrous consequence of removal, there is utmost requirement of a free and fair process for a decision on the motion. The presence of three outsiders in the special meeting convened and held on 17.09.2022 had itself vitiated the proceedings of the said special meeting. The very presence of these three outsiders was enough to infer the reasonable possibility of wielding influence on the stakeholders who had participated in such a special meeting. It is submitted by him that from the provisions of Rule 46, Rule 48 and Rule 50 of the Assam Panchayat [Constitution] Rules, 1995, it is clearly discernible that it is only the elected members of a Panchayat Raj Institution who can have a say either in a general

meeting or, more particularly, in a special meeting. He has also referred to a decision of this Court in *Sudhir Kumar Barua vs. State*, reported in AIR 1962 Assam 94, to buttress his point that a non-member should not take part in deliberations in a proceeding to take a decision by an authority, whose composition is clearly defined.

5. Mr. Nair, learned Senior Counsel representing the respondent nos. 6, 7, 10, 11, 13 & 15 has strenuously contended that the conduct of the petitioner after the special meeting, held on 17.09.2022, was not above board. In the records of proceedings there is no reflection that the petitioner had, at any point of time, raised any objection as regards the presence of the respondent nos. 16, 17 & 18 in the special meeting. In view of such non-reflection, it can be very easily inferred that the petitioner participated in the special meeting without any kind of objection as regards the participation of these so called outsiders. He has clearly refuted the allegations made by the petitioner in paragraph 19 of the writ petition to the effect that threats were given by these so called outsiders to the Ward Members of the Gaon Panchayat to cast vote in a particular manner. There is no whisper in the writ petition that the petitioner during the course of special meeting or at any point of time thereafter, had raised any objection before any authority about the participation of the so called outsiders and about their having any manner of influence in the outcome of special meeting till the institution of the writ petition. It is not open for the petitioner to raise any issue of prejudice at a belated stage. He has further submitted that no outsider or authorized person was present at the time of voting, contrary to allegations leveled by the petitioner. He has, however, admitted that there was a pre-vote meeting and in the said pre-vote meeting, the respondent no. 16, the

respondent no. 17 and the respondent no. 18 were present but after the pre-vote meeting, they did not take any part. Thus, they had not participated in the process of voting which was by secret ballots, thus, removing any doubt about them having any kind of influence in the outcome of the special meeting.

6. Mr. Abedin, learned counsel representing the respondent nos. 8, 9, 12 & 14 has submitted that in the special meeting, directed to be convened on 17.09.2022, all of them participated and the voting process was through secret ballots. As regards participation of the respondent nos. 16, 17 & 18 are concerned, he has submitted that those persons in their capacity as Members and Vice-President of the Anchalik Panchayat were present in the special meeting. As regards the roles played by them, he has submitted that the respondent nos. 16, 17 & 18 had just advised the Gaon Panchayat members how to vote in the motion. By referring to the statements made in the affidavits in-opposition filed on behalf of the respondent nos. 8, 9, 12 & 14, he has submitted that though there was some kind of commotion but these respondents did not see any direct threat given by the respondent nos. 16, 17 & 18 to any of the Ward Members of the Gaon Panchayat. It is submitted by him that the respondent nos. 16, 17 & 18 should not have been present in the special meeting, which was held in terms of the direction of this Court vide order dated 22.08.2022.

7. Mr. Das, learned counsel representing the respondent nos. 4, 16 & 17 has submitted that the respondent nos. 16 & 17 were invited as guests to the special meeting as they are Members and Vice-President respectively of the Hatidhura Anchalik Panchayat. Admitting the presence of the respondent nos.

16, 17 & 18 in the special meeting, it is submitted by him that in the special meeting, there was a discussion about the process of voting by secret ballots where these respondents were present. In the said discussion, it was decided to conduct the voting process by secret ballots in another room and the respondent nos. 16, 17 & 18 were not present in the room where the process of voting through secret ballots took place. He has denied about giving any threat to the Ward Members of the Gaon Panchayat by any of the respondent nos. 16, 17 & 18 for casting their votes in favour of the motion of no confidence. As the Circle Officer, Agomoni Revenue Circle was the person in charge in holding the special meeting and he himself had prepared the ballot papers for casting the votes, there was no question of exerting any influence by the respondent nos. 16, 17 & 18 in a particular manner.

8. Mr. Dutta, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department who has received the records of the proceedings of the special meeting, held on 17.09.2022, has submitted that the petitioner against whom the no confidence motion was brought, was present throughout the proceedings of the special meeting and marked her attendance by subscribing her signature in the attendance register/proceeding book. From the minutes of the special meeting recorded under the signature of the Circle Officer, Agomoni Revenue Circle and the Executive Officer, Hatidhura Anchalik Panchayat, it is discernible that the petitioner did not raise any kind of objection as regards the presence of the respondent nos. 16, 17 & 18 in the deliberations held for discussing the motion. As there was no objection from the end of the petitioner, it can be deemed that the petitioner had waived her right and it is not open for the petitioner to raise such a plea at a subsequent point of time. In support of

his submissions, he has referred to the decision of the Hon'ble Supreme Court of India in Padmini Singha vs. State of Assam and others, reported in [2018] 10 SCC 561.

9. Mr. Gogoi, learned Additional Senior Government Advocate, Assam representing the respondent no. 2 has submitted that the Circle Officer, Agomoni Revenue Circle was deputed to supervise the proceedings of the special meeting, ordered to be held. The said officer i.e. the Circle Officer, Agomoni Revenue Circle after completion of the proceedings of the special meeting had submitted a Report on 17.09.2022 itself wherein he had reported that in the special meeting, the process of secret voting was resorted to and after counting, the motion was found to have been passed by the requisite majority as 7 [seven] nos. of Ward Members voted in favour of the motion with 3 [three] nos. of Ward Members voting against the motion. The respondent no. 2 after consideration of the proceedings of the special meeting and the Report submitted by the Circle Officer, Agomoni Revenue Circle, had passed the order dated 22.09.2022 holding that the motion was passed by the majority of two-third of the total number of the Ward Members of the Gaon Panchayat. It was after reaching such finding, the Vice-President of the Gaon Panchayat was allowed to perform the duties and responsibilities of the President of the Gaon Panchayat in terms of the provisions of Section 13[2][d] of the Panchayat Act, 1994.

10. I have given due consideration to the submissions advanced by the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings. I have also gone through the authorities

cited at the Bar apart from the Constitutional and Statutory provisions, referred to by the learned counsel for the parties, in the course of their submissions.

11. From the facts and circumstances of the case, the issues which have fallen for consideration are, firstly, whether in a special meeting convened and held for the purpose of discussing a motion of no confidence brought against the sitting President of a Gaon Panchayat, there can be participation of other members or persons who are not constituents of the concerned Gaon Panchayat; and secondly, if the answer to the first issue is not in the affirmative, what would be the effect of such participation in the outcome of such a special meeting. Before dilating on the issues, it is appropriate to refer to the stands taken by the parties in their respective counter affidavits.

12. In the writ petition, the petitioner has assailed that in the special meeting convened and held on 17.09.2022 in the office of Hatidhura Anchalik Panchayat i.e. the venue of the special meeting, the respondent nos. 16, 17 & 18 were unauthorisedly present and they remained present during the entire course of the special meeting till completion of its proceedings. The petitioner has alleged that she had come to learn from the Ward Members of the Gaon Panchayat that the respondent no. 16, 17 & 18 had also threatened the Ward Members of the Gaon Panchayat to cast their votes in favour of the motion or else, to face dire consequences and in view of such threats, the Ward Members of the Gaon Panchayat cast their votes under fear and coercion.

13. In the counter affidavit filed on behalf of the respondent nos. 8, 9, 12 & 14, the said respondents while admitting the presence of the Vice-President and

two Members of the Anchalik Panchayat in the special meeting, have taken a stance that those Members/Vice-President of the Anchalik Panchayat had just advised the Ward Members of the Gaon Panchayat to vote for the motion. The allegation of any kind of threat was refuted in the counter affidavit while stating that there was some kind of commotion. It is, however, mentioned that as per procedure, the elected representatives of the Anchalik Panchayat should not have been present in the special meeting.

14. In the counter affidavit filed on behalf of the respondent nos. 6, 7, 10, 11, 13 & 15, those respondents have taken a stand that no outsider or authorized person was present at the time of voting in the room where the voting by secret ballots took place and such position continued till the last Ward Member cast his vote. They had, however, admitted that the voting process was preceded by a pre-vote meeting in the presence of all the persons who had signed the Minutes of the proceedings of the special meeting, to discuss and explain the procedure of voting through the secret ballot. It is averred that after the pre-vote meeting was over, no other person/outsider was present during the voting process except the authorized official persons and the ballot box was opened in presence of the Members/Signatures to the Resolution dated 17.09.2022. Refuting the allegation of influence, it is averred that the Members of the Anchalik Panchayat put their signatures in the proceedings of the special meeting only for the purpose of putting the business of the proceedings in writing and for maintaining formality. The allegation of threat by the three elected representatives of the Anchalik Panchayat was categorically denied. It is asserted that had there been any kind of threat or undue pressure, the petitioner ought to have complained before the competent authority or lodged

information before the police but no such step was taken by the petitioner till the filing of the writ petition. It is submitted that the petitioner only after her removal from the office of the President of the Gaon Panchayat had as an afterthought, raised the plea of presence of outsiders in the special meeting and, as such, the petitioner should be precluded from raising such plea. The respondent nos. 4, 16 & 17 in their counter affidavit, have averred that the respondent nos. 16 & 17 were invited as 'guests' to the special meeting by the respondent no. 4 and accordingly, they attended the special meeting. They had, however, denied their presence in the room where the process of voting through secret ballot took place.

15. From the stands taken by the parties, in the afore-stated manner in their respective counter affidavits, it is clearly discernible that the respondent nos. 16, 17 & 18 had made their appearances at the venue of the special meeting on 17.09.2022. The presence of the respondent nos. 16, 17 & 18 in the special meeting is evident from the fact that they had subscribed their signatures in the Minutes of the proceedings of the special meeting, maintained in a register. A perusal of the proceedings book, presented before the Court in original, demonstrates the fact of presence of the respondent nos. 16, 17 & 18 in the special meeting. The respondent no. 17 is the Vice-President of Hatidhura Anchalik Panchayat whereas the respondent no. 16 & the respondent no. 18 are Members of Hatidhura Anchalik Panchayat.

16. Though a stand has been taken by the respondent nos. 16 & 17 in the counter affidavit filed by them along with the respondent no. 4 to the effect that they were invited as guests to the special meeting, the notice issued by the

President of Hatidhura Anchalik Panchayat on 14.09.2022 informing about convening of the special meeting on 17.09.2022, did not indicate so. A perusal of the notice dated 14.09.2022 goes to indicate that the copies of the said notice were sent to [i] the Deputy Commissioner, Dhubri; [ii] the Chief Executive Officer, Dhubri Zilla Parisha, [iii] the Vice-President, Hatidhura Anchalik Panchayat; [iv] the Members of Hatidhura Anchalik Panchayat; and [v] the Officer In-Charge, Tamarhat Police Post; for their information only. The respondent nos. 4, 16 & 17 have failed to show any other notice, etc. to substantiate their contention that they were invited as guests to the special meeting. By order dated 07.11.2022, the matter was found ready as regards service. The respondent no. 18 who is similarly situated with the respondent no. 16 & the respondent no. 18, has chosen not to take part in the instant proceedings.

17. From the above obtaining fact situation, it is clear that the respondent no. 16, respondent no. 17 and the respondent no. 18 made their appearance in the special meeting and had participated in the deliberations in some manner. The stands of the parties are found at variance as regards their exact roles during the deliberations that took place in the entire course of the special meeting. Even if it is accepted that that they did not take part or they were not present when the voting process through secret ballot was taking place in another room but the respondent no. 16, the respondent no. 17 and the respondent no. 18 had themselves admitted that they were present in the process of discussion about the manner in which the voting process would take place.

18. At this stage, it is appropriate to refer to the provisions of Section 15,

Section 17 and Section 18[5] of the Assam Panchayat Act, 1994.

18.1. Section 15 of the Assam Panchayat Act, 1994 has provided for the matter of no confidence against the President and Vice-President of a Gaon Panchayat. It is provided inter alia in sub-section [1] of Section 15 that every President 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 approval of the President of the Gaon Panchayat. As per Section 15[2], the requisition notice for such a meeting shall have to be signed by not less than one third of the total number of Members of the Gaon Panchayat and shall be delivered to the President of the concerned Gaon Panchayat with intimation 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 is to 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. In case the President of the Anchalik Panchayat does not take action as above within the specified seven days time the concerned Gaon Panchayat Secretary shall inform the matter to the Deputy Commissioner/Sub-Divisional Officer [Civil], as the case may be, within 3 [three] days after the expiry of the stipulated 7 [seven] days time and the concerned Deputy Commissioner/Sub Divisional Officer [Civil] shall 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. The first proviso to Section 15[1] has provided that the concerned Deputy Commissioner/Sub-Divisional Officer [Civil], as the case may be, in case of his inability to preside over the meeting, may depute one Gazetted Officer under him not below the rank of Class-I Gazetted Officer to preside over such specially convened meeting. The second proviso to sub-section [1] of Section 15 has laid down to the effect that when a no confidence motion is lost, no such motion shall be allowed in the next six months.

18.2. It is iterated that sub-section [2] of Section 15 has inter alia prescribed that the requisition of such a meeting shall be signed by not less than one third of the total number of Members of the Gaon Panchayat and shall be delivered to the President of the concerned Gaon Panchayat with intimation to the Deputy Commissioner of the District. The rest parts of Section 15, that is, sub-section [3], sub-section [4] and sub-section [5] are not referred to herein as the same are not of relevance for the purpose of the lis in hand.

18.3. Section 17 of the Assam Panchayat Act, 1994 has provided for meetings of the Gaon Panchayat providing in sub-section [1] about holding of a meeting at least once in two months for transaction of its business. As per Section 17[2], the President of the Gaon Panchayat, whenever he thinks fit, and shall upon the written request of not less than one-third of the total number of Members and on a date within 15 [fifteen] days from the receipt of such request, call a special meeting. Section 17[3] has inter alia provided that three clear days' notice is necessary for a special meeting and such notice has to

specify the place, date and time of special meeting and the business to be transacted therein. The Secretary of the Gaon Panchayat has been entrusted to give such notice apart from fixing the notice on the notice board of the Gaon Panchayat office. Sub-Section [4] of Section 17 is of relevance and according to Section 17[4], the officers to whom notice is given under sub-section [3] and other Government officers having jurisdiction over the Gaon Panchayat area or any part thereof shall be entitled to attend every meeting of the Gaon Panchayat and take part in the proceedings but shall not be entitled to vote.

18.4. It has been made mandatory by sub-section [5] of Section 18 of the Assam Panchyat Act, 1994 that in a special meeting where a no confidence motion is discussed, the motion is to be decided by secret ballot.

19. The notice dated 14.09.2022 issued under the hand of the respondent no. 4 was an act of information to the persons mentioned therein but from paragraph 6 of their joint counter affidavit filed by the respondent no. 4 [the President, Hatidhura Anchalik Panchayat]; the respondent no. 15 [Member, Hatidhura Anchalik Panchayat]; and the respondent no. 17 [the Vice-President, Hatidhura Anchalik Panchayat], it is clearly discernible that apart from the act of information by the respondent no. 4, there was admittedly an act of invitation also from the end of the respondent no. 4 to the respondent no. 16; the respondent no. 17 and the respondent no. 18 to take participation in the proceedings of the special meeting, convened by the respondent no. 4 as 'Guests'. It is the contention of the petitioner that such participation of the respondent no. 16, the respondent no. 17 and the respondent no. 18 is clearly prohibited and had the effect of vitiating the entire proceedings of the said

special meeting as the Constitutional provisions in Chapter IX have not provided for representation of any elected representatives of any other Panchayati Raj Institutions [PRIs], be it from the intermediate level in the PRI, at the village level.

20. From a reading of Section 17 in its entirety, it is evident that the meeting of the Gaon Panchayat also includes special meeting. One kind of special meeting is held for the purpose of discussing a motion of no confidence envisaged under sub-section [1] of Section 15 and as such, the provisions therein are to be read in the context of the provisions contained in Section 15, which has specifically prescribed that the President of a Gaon Panchayat can be removed from his office only in a special meeting wherein such motion is passed by a majority of two-third of the total number of Ward Members of the Gaon Panchayat.

21. The provisions of Section 15 has provided that ordinarily, a motion of no confidence brought against the President of a Gaon Panchayat is to be discussed in a special meeting held in the office of the Gaon Panchayat under the chairmanship of the Vice-President of the same Gaon Panchayat. It is only in the event the special meeting envisaged to be convened and held, at first point of time, in the office of the Gaon Panchayat could not be held due to situation mentioned therein, the proceedings in connection with the no confidence motion stand transferred to the jurisdiction of the Anchalik Panchayat. Once the matter of no confidence motion stands transferred to the jurisdiction of the Anchalik Panchayat, the President of the Anchalik Panchayat has been entrusted with the responsibility to preside over the special meeting to discuss the motion of no confidence. If the special meeting would have been held in the office of

the Gaon Panchayat, the President of the jurisdictional Anchalik Panchayat does not have any role to play with regard to the motion of no confidence at the special meeting envisaged to be convened and held at the office of the Gaon Panchayat as the same would have been presided over by the Vice-President of the Gaon Panchayat. Once the matter of no confidence motion stands referred to the jurisdictional Anchalik Panchayat, the President of the Anchalik Panchayat steps into the position of the person with the responsibility of presiding over such a special meeting. On reference of the matter of no confidence to the jurisdictional Anchalik Panchayat in such manner, the matter remains an affair limited to the concerned Gaon Panchayat and it does not become an affair of the jurisdictional Anchalik Panchayat.

22. Sub-Section [4] of Section 17 of the Panchayat Act, 1994 has circumscribed the matter of issuance of notice in connection with a special meeting. It mentions about only two categories of persons who can attend a meeting or a special meeting of a Gaon Panchayat. Notices in respect of a meeting of the Gaon Panchayat which includes special meeting, is made limited to the officers to whom notice is to be given under sub-section [3] of Section 17 and other Government officers having jurisdiction over the said Gaon Panchayat area or any part thereof. It is only those two category of persons, who are entitled to attend every meeting of the Gaon Panchayat and to take part in the proceedings. Though in sub-section [3] of Section 17, it is not specifically indicated to whom the notice is to be given but a combined reading of sub-section [3] and sub-section [4] of Section 17 makes it evident that it is only the Ward Members of the Gaon Panchayat which includes the Vice-President and the President of the Gaon Panchayat to whom such notices are to be given

specifying the place, date and time of such special meeting along with the business to be transacted therein.

23. By the Constitution [Seventy-Third Amendment] Act, 1956 which came into effect on and from 24.04.1993, Part IX of the Constitution of India came to be amended, with the objective of bringing the concept of self-governance to the grass-root level by decentralization of power. The Constitution of India has envisaged a three-tier Panchayati Raj System. Part IX of the Constitution of India has provided for a three-tier Panchayati Raj system at the village level, the intermediate level and the district level respectively. The Statement of Objects and Reasons of the Constitution [Seventy-Third Amendment] Act, 1992 reads as under :-

THE CONSTITUTION [SEVENTYTHIRD AMENDMENT] ACT, 1992

Statement of Objects and Reasons appended to the Constitution [Seventy-second Amendment] Bill, 1991 which was enacted as the Constitution [Seventy-third Amendment] Act, 1992.

Though the Panchayati Raj institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Casts, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

2. Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the short-comings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of

Panchayati Raj institutions to impart certainty, continuity and strength to them.

23.1. Article 243B in Part IX of the Constitution of India has provided for a three-tier Panchayati Raj Institutions [PRI] by stating that there shall be constituted in every State, Panchayats at the village, the intermediate and the district levels in accordance with the provisions of Part IX.

23.2. The provisions of Article 243C of the Constitution of India have provided for composition of Panchayats. Article 243C contained in Part IX of the Constitution of India reads as under :

243C. Composition of Panchayats.—

[1] Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

[2] All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

[3] The Legislature of a State may, by law, provide for the representation—

[a] of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

[b] of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

[c] of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a

Panchayat area at a level other than the village level, in such Panchayat;

[d] of the members of the Council of States and the members of the Legislative Council of the State, where they are registered as electors within—

[i] a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

[ii] a Panchayat area at the district level, in Panchayat at the district level.

[4] The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

[5] The Chairperson of —

[a] a Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

[b] a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

23.3. Clause [1] of Article 243C of the Constitution of India has empowered the Legislature of the State, by law, to make provisions with respect to the composition of Panchayats, subject to other provisions of Part IX. It is in exercise of the powers conferred by Part IX of the Constitution of India, the State Legislature has enacted the Assam Panchayat Act, 1994.

24. The provisions relatable to Clause [1] of Article 243C of the Constitution of India are enacted in Section 6, Section 32 and Section 65 of the Assam Panchayat Act, 1994 which are about composition of the Gaon Panchayat, the Anchalik Panchayat and Zilla Parishad respectively.

24.1. Sub-section [1] of Section 6 of the Assam Panchayat Act, 1994 which has provided for constitution of Gaon Panchayat. It states that the Gaon Panchayat shall consist of —

[a] Ten members to be directly elected by the voters of the territorial

constituencies of the Gaon Panchayat area – one from each constituency in the manner prescribed.

[b] President of the Gaon Panchayat who shall be elected directly by the voters of the territorial constituencies of the Gaon Panchayat area in the manner prescribed.

24.2. Sub-Section [1] of Section 32 of the Panchayat Act, 1994 has provided for constitution of Anchalik Panchayat and it states that every Anchalik Panchayat shall consist of –

[a] One member from each Gaon Panchayat to be directly elected from the territorial constituencies of the Gaon Panchayats under the jurisdiction of the Anchalik Panchayats;

[b] The Presidents of the Gaon Panchayats falling within the jurisdiction of the Anchalik Panchayats;

[c] The Members of the House of People and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly, the Anchalik Panchayat.

Sub-section [2] of Section 32 of the Assam Panchayat Act, 1994 states that every member shall have the right to vote whether or not chosen by direct election in the meetings of the Anchalik Panchayat. By sub-section [1] of Section 43, the right to vote in a motion of non-confidence against the President and or the Vice-President of an Anchalik Panchayat is restricted to only the directly elected Members of the Anchalik Panchayat.

24.3. Sub-section [1] of Section 65 of the Panchayat Act, 1994 has provided for constitution of the Zilla Parishad and it states that the Zilla Parishad shall consist of –

[i] the members directly elected from the territorial constituencies of the district.

Provided that Government may be notification in the Official Gazette determine the territorial constituencies in the district keeping in view the overall population of the district at a rate of one member for a population not less than 40 thousand and that each territorial constituency shall elect one member to the Zilla Parishad through direct election in the manner prescribed;

[ii] the President of the Anchalik Panchayats;

[iii] the Members of the House of People and the Members of the State Legislative Assembly representing a part or whole of the district whose constituencies lie within the district.

By sub-section [2] thereof, the right to vote has been given to all the members except in the motion of no confidence in which only the directly elected member and members nominated by the Government shall exercise such right to vote.

25. The matter of representation in the three-tire Panchayati Raj Institutions [PRIs] in such manner in the Assam Panchayat Act is pursuant to Clause [3] of Article 243C of the Constitution of India. By Clause 3 of Article 423[C], the Legislature of a State, by law, can provide for the representation limited to the

following persons :- [a] of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level; [b] of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level; [c] of the Members of the House of the People and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat; and [d] of the Members of the Council of States and the Members of the Legislative Council of the State, where they are registered as electors within [i] a Panchayat area at the intermediate level, in Panchayat at the intermediate level; and [ii] a Panchayat area at the district level, in Panchayat at the district level.

25.1. By Clause [4] of Article 243C, the right to vote in the meeting of the Panchayat has been made limited to the Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area. As per Clause [5] of Article 243C, the Chairperson of a Panchayat at the village level shall be elected in such a manner as the Legislature of a State may, by law, provide and the Chairperson of a Panchayat at the intermediate level or district level shall be elected by and from amongst, the elected members thereof. Thus, there is a clear distinction in the manner of election of a Chairperson/President of a Panchayat at the village level/Gaon Panchayat in the Constitution of India and the Assam Panchayat Act, 1994 from that of the Chairperson/President of the PRIs at the other two levels.

25.2. From an analysis of sub-clause [a], sub-clause [b], sub-clause [c] and

sub-clause [d] of Clause [3] of Article 243C of the Constitution of India, it is clearly discernible that the Chairpersons of the Panchayat at the intermediate level, in the case of the State of Assam is the President of a Anchalik Panchayat, can represent the Panchayat at the District level, that is, the Zilla Parishad and in that connection, the provisions of Section 65 of the Panchayat Act, 1994 are found to be in conformity of sub-clause [b] of Clause 3 of Article 243[C]. Sub-Clause [c] of Clause [3] of Article 243C has allowed representation of the Members of the House of the People and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat. Similarly, sub-clause [d] of Clause [3] has provided for representation of the Members of the Council of States and the Members of the Legislative Council of the State, where they are registered as electors within [i] a Panchayat area at the intermediate level, in Panchayat at the intermediate level; and [ii] a Panchayat area at the district level, in Panchayat at the district level. Sub-clause [a] of Clause [3] of Article 243C of the Constitution of India has provided for representation of the Chairpersons of the Panchayat at the Village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level. But conversely, it has not provided for any representative of the Panchayats at the intermediate level or at the district level in the Panchayat at the village level. The same is the position in the Assam Panchayat Act, 1994.

26. Thus, from a comparative analysis of the provisions of Section 6, Section 32 and Section 65 of the Panchayat Act, 1994 and Article 243C of the Constitution of India, it is clearly discernible that neither the Constitution of

India nor the Panchayat Act, 1994 has envisaged representation of any elected representatives of the Panchayat at the intermediate level or at the district level or of any elected representatives of the House of the People or the Legislative Assembly of the State or the Council of the State at the Panchayat at the village level.

27. A close scrutiny of Section 32 and Section 65 of the Panchayat Act, 1994 makes it evident that the Members of the House of the People and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Anchalik Panchayat or representing a part or whole of the district whose constituency lie within the district can have his representation and participation in the meetings of the Panchayat at the intermediate level and at the district level which in the case of the State, are the Anchalik Panchayat and the Zilla Parishad respectively. None of the provisions in the Panchayat Act, 1994 has allowed participation of the elected representatives of the House of the People or the Members of the Legislative Assembly of the State or the Zilla Parishad or the Anchalik Panchayat in the meeting of the Gaon Panchayats. By the provisions contained in sub-section [2] of Section 32 and sub-section [2] of Section 65, the Members of the Anchalik Panchayat and the Zilla Parishad have been given the right to vote but an exception carved out to the effect that in a motion of no confidence, only the directly elected members shall exercise the right to vote.

28. On analysis of Section 6 of the Panchayat Act, 1994 read with Article 243C of the Constitution of India, a Division Bench of this Court in *Dhirendra Chandra Das and others vs. State of Assam and others*, reported in [2016] 6 GLR 209,

has held that a President of the Gaon Panchayat is directly elected by the voters of the Gaon Panchayat in terms of the provisions of Section 6[1][b] and is one of the two constituents of the Gaon Panchayat. Though the President is a constituent of a Gaon Panchayat like the Members of the Gaon Panchayat but he is not a Member himself unlike the Vice-President. It is held therein to the effect that the President of a Gaon Panchayat not being a Member of the Gaon Panchayat under the Panchayat Act, 1994 under the provisions of Section 15[1] of the Panchayat Act, 1994, the President cannot be counted within the total number of Ward Members of the Gaon Panchayat and it is only the elected Members of the said Gaon Panchayat who shall decide the no confidence motion.

29. The scheme of the Assam Panchayat Act, 1994 has envisaged that if a President of the Gaon Panchayat is removed under Section 15, the vacancy created by him cannot be filled up by another Member of the Gaon Panchayat. Such vacancy can be filled up by only in terms of the provisions of Section 10 thereof, by holding election in the same manner again. On the other hand, in case of removal of the Vice-President of a Gaon Panchayat by a no confidence motion or otherwise, the same is to be filled up by any other existing Member because a Vice-President of a Gaon Panchayat is elected in its first meeting from among the 10 elected Members of the Gaon Panchayat. Thus, in case a President of a Gaon Panchayat is removed from his office in any manner including by a no confidence motion, he no longer remains a part of the said Gaon Panchayat. In case a vacancy occurs by reason of death, resignation or removal from the office of the President of a Gaon Panchayat a fresh election has to be held to elect the President of the Gaon Panchayat under Section 6[1]

[b] read with Section 10[1] of the Panchayat Act, 1994. It is only in the event the vacancy is for a period of less than one month, no such election shall be held. Thus, in case of removal of a President of a Gaon Panchayat by way of a no confidence motion, the said directly elected President is the only person who is likely to be visited with the extremely disastrous consequence of removal entirely from the affairs of the Gaon Panchayat.

30. The decision of the Hon'ble Supreme Court of India in Padmini Singha [supra] is pressed by Mr. Nair, learned Senior Counsel representing respondent nos. 6, 7, 10, 11, 13 & 15 and Mr. Dutta, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1, 3 & 5 to buttress the point that the petitioner by her presence throughout the proceedings of the special meeting, held on 17.09.2022, had waived the right to object to the presence and participation of the alleged unauthorized persons in the respondent no. 16, respondent no. 17 and the respondent no. 18. As the petitioner is found to have raised no objection to the presence of these persons during the course of the proceedings of the special meeting and even thereafter till the institution of the writ petition on 28.09.2022, it can be held that the petitioner had waived her right to contend that their presence has vitiated the proceedings of the special meeting.

31. In Padmini Singha [supra], the respondent no. 6 was a President of a Gaon Panchayat who faced a no confidence motion. Notices were issued on 21.03.2014 by the Block Development Officer [BDO] to the President of the Gaon Panchayat i.e. the respondent no. 6 informing her to attend a special meeting of no confidence motion to be convened on 31.03.2014 in the office of

the BDO. On 31.03.2014, the special meeting was presided over by the BDO. In the meeting, 9 [nine] Ward Members of the Gaon Panchayat cast their vote in favour of the no confidence motion and one member cast vote against the no confidence motion. Resolution was adopted that the respondent no. 6 lost the motion of no confidence. Being aggrieved by the passing of the no confidence motion against her, the respondent no. 6 preferred a writ petition before this Court challenging the legality and validity of the resolution expressing want of confidence against her in the special meeting held on 31.03.2014. The writ petition was allowed on the ground that by a letter dated 17.03.2014, the Deputy Commissioner instead of taking action in the matter, merely wrote back to the BDO to take steps in accordance with Section 15 of the Panchayat Act, 1994 and as such, there was no delegation of authority to the BDO to preside over the meeting. After the writ petition was allowed, an intra-court appeal was preferred and a Division Bench had upheld the decision of the learned Single Judge. When the appeal was preferred against the said decision before the Hon'ble Supreme Court of India, it has been observed that the respondent no. 6 who was a beneficiary, attended the special meeting and it was in her presence, the voting took place. It is observed therein that a mandatory provision of law requires strict compliance but there are situations where even if a provision is mandatory, non-compliance would not result in nullification of the act. One such exception to the said proposition is if a certain requirement or condition is provided in a statute for the benefit or interest of a particular person, the same can be waived by him if no public interest is involved and the ultimate result would be valid even if the requirement or condition is not performed. It considered the fact that the BDO presided over the meeting where all participants were fully aware that the meeting was called for passing a

resolution either in favour or against the no confidence motion. The respondent no. 6 knowing fully well participated in the said meeting and a resolution was passed against her. It was in such obtaining fact situation, the Hon'ble Supreme Court of India has reached a finding that since the respondent no. 6 knowing fully well participated in the meeting and challenge was made only after losing in the voting process, no public interest was found involved in such obtaining fact situation.

32. As found from the discussion above, neither Constitution of India nor the Assam Panchayat Act, 1994 has envisaged representation of any elected representative of the other Panchayati Raj Institutions like the Panchayat at the intermediate level i.e. the Anchalik Panchayat and the Panchayat at the district level i.e. the Zilla Parishad in the affairs of the Panchayat at the village level. The provisions of Section 17 of the Panchayat Act, 1994 has made the representation/participation in a meeting of a Gaon Panchayat including a special meeting, limited to the members of a Gaon Panchayat, the composition of which has been provided in Section 6 of the Assam Panchayat Act, 1994 and only to those Government Officers having jurisdiction over the Gaon Panchayat area or any part thereof. As in a special meeting held for the purpose of discussing a no confidence motion against the President of a Gaon Panchayat, it is the President of the Gaon Panchayat who is facing the motion, is likely to be visited with the adverse consequence of removal, with the further consequence that he would no longer be part of the Gaon Panchayat despite being elected directly by the entire electorate of the Gaon Panchayat, the statutory provision regarding representation in such a meeting must be strictly complied with. It is trite to mention that when the statute has restricted representation to a limited

extent, in view of the consequence, such representation must be limited in that manner only. It has been held in the landmark case of *Nazir Ahmed vs. King Emperor*, reported in AIR 1936 PC 253, that other methods of performance are held to be forbidden. In *Sudhir Kumar Barua [supra]*, the erstwhile Secretary of the Regional Transport Authority attended the meeting in his own capacity as a special invitee and not being a member, he participated in the deliberations in the meeting of the Regional Transport Authority. The Court in such situation had observed that since that person without being a member, participated in the deliberations as a member of the Regional Transport Authority in the special meeting, the entire proceedings of the meeting are vitiated. The same prohibition is found applicable in the case in hand. It is also established proposition of law that there has to be purity in an election process and an election has to be free, fair and transparent. When a restriction is put in place in public interest and can be seen to be founded on public policy, the doctrine of waiver may not be applicable in an automatic manner. The aspects of public interest and where the restrictions have been put in place on the foundation of public policy are matters to be examined vis-à-vis the doctrine of waiver.

33. If the submissions of the respondents are to be accepted then the consequence falling out of such acceptance will be that in a special meeting of a Gaon Panchayat held for the purpose of discussing a motion of no confidence, there could be representation either of the elected representatives of the jurisdictional Anchalik Panchayat or of the jurisdictional Zilla Parishad or of elected members of the Legislative Assembly or of elected members of the House of the People or of the elected members of the Council of State who might be holding a position of influence in such a meeting. As has been found

out on analysis, the provisions contained in Part IX of the Constitution of India as well as of the Assam Panchayat Act, 1994 have not envisaged such kind of representation in a meeting of a Gaon Panchayat which is an institution to be run in democratic principles at the grass-root level. This Court is of the unhesitant view that such restriction in representation of an elected representative of other Panchayati Raj Institutions [PRIs] in the affairs of a Gaon Panchayat is in the public interest and founded on public policy. As the Court is of the view that such restriction in the matter of representation is put in place in Part IX of the Constitution of India and the provisions of the Panchayat Act, 1994 in the public interest and is founded on public policy, the doctrine of waiver which has been urged by the respondents side on the basis of the decision in *Padmini Singha* [supra], has no applicability.

34. It is from the pleadings of the parties, it has clearly emerged that the Vice-President and two members of the jurisdictional Anchalik Panchayat were unauthorisedly present and took part in the deliberations held for the motion of no confidence. The counter affidavit filed by the four Ward Members i.e. the respondent nos. 8, 9, 12 & 14 has averred that these elected representatives of the Anchalik Panchayat advised the Gaon Panchayat members to vote for the motion of no confidence. Six other Ward Members of the Gaon Panchayat i.e. the respondent nos. 6, 7, 10, 11, 13 & 15 in their counter affidavit while admitting the presence of these elected representatives of the jurisdictional Anchalik Panchayat, have further stated that there was a pre-vote meeting before the process of voting by secret ballot and have admitted to the extent that these three elected representatives of the jurisdictional Anchalik Panchayat had discussed and explained the procedure of voting through secret ballots by

the Ward Members of the Gaon Panchayat and were not present in the particular room where the voting took place by secret ballots. But, they were present at the time of counting of votes. The sanctity of the process of voting is, thus, clearly vitiated by the spectre of the possibility of influence or if not, by the reasonable possibility of spectre of influence from the end of these elected representatives of the jurisdictional Anchalik Panchayat.

35. Viewed in the above context, this Court is of the considered view that the proceedings of the special meeting held on 17.09.2022, held in terms of the directions of this Court made by order dated 22.08.2022 stands vitiated irrespective of the fact that the unauthorized participation of the elected representatives of the Anchalik Panchayat was at the beginning of the deliberations or during the course of the deliberations of the special meeting and, notwithstanding the fact that the motion was purportedly passed with the requisite majority on the principle that if the act is vitiated at the very beginning every consequential act occurred thereafter, is also vitiated. In such view of the matter, the resolution adopted in the special meeting on the motion of no confidence is hereby set aside and quashed. Consequentially, order dated 22.08.2022 passed by the respondent no. 2 is also set aside and quashed.

36. 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 officebearer, as provided for in the statute. This truncation 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 enjoys the confidence of two-third of the total number of Ward Members of the Gaon Panchayat. As soon as he 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 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 office forthwith.

37. This Court cannot be oblivious of the fact that the requisition notice dated 18.07.2022 expressing want of confidence in the petitioner was submitted by 8 [eight] nos. of Ward Members of the Gaon Panchayat, which strength is more than two-third majority of the total number of Ward Members of the Gaon Panchayat. It cannot also be oblivious of the fact that on the previous two occasions, more than two-third majority of total numbers of Ward Members voted in favour of the no confidence motion. As on both the occasions, the process subsequent to requisition notice expressing want of confidence had failed finally either on technical grounds or due to non-adherence to the restriction made by the statute, this Court, thus, is of the considered view that it would be failing in its duty in exercising its power under Article 226 of the Constitution of India if this Court does not direct to hold a special meeting to decide the no confidence motion brought against the petitioner afresh.

38. A Full Bench of this Court in Forhana Begum Laskar vs. State of Assam and others, reported in 2009 [6] GLR 429, has held that if a no confidence motion is not lost attracting the bar against initiation of a fresh proceeding with the same objective within 6 [six] months thereafter, the process subsists and is capable of being furthered from the stage of interference. In Laxmi Singh and others vs. Rekha Singh and others, reported in [2020] 6 SCC 812, a three-judge Bench of the Hon'ble Supreme Court of India had interfered with a no confidence motion against the president of a Gaon Panchayat on the ground that the process of secret voting was not resorted to as per the provisions contained in Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961. It has observed that the ends of justice would be met if the motion was put into re-vote at a meeting to be convened again. A Division Bench of this Court in Karun Kanti Malakar and others vs. Nosir Ahmed Mazumdar and others, reported 2010 [3] GLT 415, had issued direction to convene special meeting within 15 days for bringing the motion of no confidence as the motion still survived. Similar kind of direction was given in Rita Rani Dushad vs. State of Assam and others, reported in 2016 [4] GLT 905; Mocklishur Rahman vs. the State of Assam and others, reported in 2017 [4] GLT 933; and in W.P.[C] no. 338/2023 [Hifjur Rahman Laskar vs. the State of Assam and others], decided on 11.05.2023.

39. In the peculiar fact situation obtaining in the case, more particularly, taking into consideration that on two occasions, the special meetings were not properly held and on both the occasions, a resolution was passed against the petitioner by more than requisite two-third majority of the total number of Ward Members

of a Gaon Panchayat, but interfered with later on, this Court is of the view that a direction is called for in the case in hand because the motion of no confidence is not lost and still survives. It is, therefore, directed that a special meeting to discuss the motion of no confidence against the petitioner shall be held at **11-00 a.m. on 12.06.2023** under the chairmanship of the President of Hatidhura Anchalik Panchayat [the respondent no. 4] at the office of the **Hatidhura Anchalik Panchayat**. In order to ensure a free and fair voting process by way of secret ballots, the Deputy Commissioner, Dhubri shall depute one Gazetted Officer under him not below Class-I Gazetted Officer for supervision. The Secretary & Executive Officer of Hatidhura Anchalik Panchayat shall ensure that the entire proceedings of the special meeting is videographed and there shall be no outsiders other than the petitioner, the Ward Members of the Gaon Panchayat, the President and Secretary of the Hatidhura Anchalik Panchayat and the deputed Gazetted Officer and other Government officials, permitted under Section 17 to attend such meeting. The petitioner as the President of the Gaon Panchayat and the respondent nos. 7 – 15 as the Ward Members of the Gaon Panchayat are directed to participate in the special meeting. As all of them are parties in the instant writ proceedings, the issuance of any further notice for the special meeting is dispensed with.

40. As the proceedings of the special meeting dated 17.09.2022 has been interfered with, it is observed that until the special meeting to discuss the motion of no confidence against the petitioner is held and decided on 12.06.2023, status quo as on date will continue.

41. With the findings arrived at, observations made and the directions given

above, the writ petition is allowed to the extent indicated above. There shall, however, be no order as to cost.

42. A copy of this order be furnished to Mr. Dutta, learned Standing Counsel, P&RD Department and Mr. Gogoi, learned Additional Senior Government Advocate, Assam for the purpose of taking necessary steps for compliance from their ends.

JUDGE

Comparing Assistant