

GAHC010213212021



IN THE GAUHATI HIGH COURT

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

WRIT APPEAL No. 10/2022

Sri Kamran Pasha Choudhury,

Age 33 years, S/O- Mustafa Uddin Choudhury,

Resident of Village- Baghan,

P.O. Kathaltali, District-Karimganj, Assam

PIN-788725

.....Appellant

-Versus-

1. The State of Assam,

To be represented by the Commissioner & Secretary to the Government of Assam, Panchayat and Rural Department, Dispur, Guwahati-06

2. The Commissioner,

Panchayat and Rural Department.
Panjabari, Juripar, Guwahati-37.

3. The Deputy Commissioner,

Karimganj, P.O. & Dist- Karimganj,

Assam, PIN-788710.

4. The Chief Executive Officer,
Karimganj Zilla Parishad,
Karimganj, P.O. & Dist- Karimganj
Assam, PIN-788710.

5. The Block Development Officer,
Lowairpoa Development Block,
P.O. Lowairpoa, Dist- Karimganj,
Assam, PIN-788728.

6. The President,

Lowairpoa Anchalik Panchayat,
P.O. Lowairpoa, Dist- Karimganj,
Assam, PIN-788728.

7. The Secretary,
35 NO. Baghan Gaon Panchayat,
P.O. Kathaltali, Dist- Karimganj,
Assam, PIN-788725.

8. Smt. Sultana Begum,
W/o- Nur Uddin, Vice President- 35 No. Baghan
Gaon Panchayat, P.O. Kathaltali, Dist- Karimganj
Assam, PIN-788725

9. Rubi Khanam,
W/o- Sabir Ahmed, Ward Member,
Ward No.1, 35 No. Baghan Gaon Panchayat,
P.O. Kathaltali, Dist- Karimganj, Assam,
PIN-788725.

10. Miralakshmi Kairi
W/o- Sonat Kumar Kairi,
Ward Member, Ward No.2
35 No. Baghan Gaon Panchayat,
P.O. Kathaltali, Dist. Karimganj
Assam, PIN-788725.

11. Debotosh Debnath,

S/o- Kamal Nath, Ward Member,
Ward No.5, 35 No. Baghan Gaon Panchayat,
P.O. Kathaltali, Dist. Karimganj, Assam,
Pin-788725.

12. Abdul Rejak,

Ward Member, Ward No.4,
35 No. Baghan Gaon Panchayat,
P.O. Kathaltali, Dist. Karimganj, Assam
PIN-788725.

13. Arati Rajak

W/o- Bolua Rajak, Ward Member
Ward No.9, 35 No. Baghan Gaon Panchayat,
P.O. Kathaltali, Dist. Karimganj,
Assam, PIN-788725.

14. Rajesh Gowala,

Ward Member,
Ward No.10
35 No. Baghan Gaon Panchayat,
P.O. Kathaltali, Dist. Karimganj, Assam,
PIN-788725

.....Respondents

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

For the Appellant : M.H. Laskar, Adv.

For the Respondents : Mr. S. Dutta, Standing Counsel, P&RD
Mr. P. Sarmah, Adv. for Respondent No. 3
Mr. S.A. Hussain, Advocate for Respondents
No. 4 & 12
Mr. .M. Sulaiman, Adv for respondent No. 8
Mr. D.K. Bagchi, Advocate for Respondents No.

Date of Hearing & Judgment : **28.02.2023**

JUDGMENT & ORDER

(SOUMITRA SAIKIA, J)

This writ appeal is directed against the order dated 09.08.2021 passed by the learned Single Judge in W.P(C) No. 3333/2021. By the impugned order, the writ petition filed by the appellant assailing the order dated 18.05.2021, removing him as President of 35 no. Baghan Gaon Panchayat under Lowairpoa Anchalik Panchayat, was dismissed by the learned Single Judge.

2. The appellant was the President of 35 No. Baghan Gaon Panchayat under Lowairpoa Anchalik Panchayat in the District of Karimganj. On 22.01.2021, eight (8) members of Gaon Panchayat filed a requisition for a special meeting for no confidence motion against the appellant before the Secretary of the Gaon Panchayat. It is the submission of the appellant that the Secretary of the Gaon Panchayat forwarded the requisition dated 22.01.2021 to the President, Lowairpoa Anchalik Panchayat on 15.02.2021 without informing the President, of the 35 No. Baghan Gaon Panchayat namely the appellant herein. Thereafter, the President, Lowairpoa Anchalik Panchayat issued notice dated 17.02.2021 informing that 22.02.2021 was the date fixed of the meeting for no confidence motion against the appellant. In terms of the notice issued by the Lowairpoa

Anchalik Panchayat, the special meeting was convened and held on 22.02.2021 whereby, no confidence motion against the appellant was moved and adopted. Thereafter, vide the order dated 15.05.2021, the appellant was removed as President of Lowairpoa Anchalik Panchayat. It is the submission of the learned counsel for the appellant that such procedure adopted by the Secretary, Lowairpoa Anchalik Panchayat and the President, Lowairpoa Anchalik Panchayat is in complete violation of the provisions of Section 15 of the Assam Panchayat Act, 1994 and the Rules made thereunder. Being aggrieved, the writ petition was preferred.

3. The learned Single Judge upon due consideration of the entire matter, dismissed the writ petition. Being aggrieved, the present appeal has been filed on the following grounds:

"I) For that, the learned Single Judge has erred in law as well as facts in passing the impugned Judgment and Order dated 09.08.2021 and as such, the same is liable to be set aside and quashed.

II) For that, the Hon'ble Single Judge committed error in dismissing the case only after perusal of the records at the motion stage itself without asking the respondents authorities to file the counter-affidavit, as such, the appellant/petitioner couldn't get the chance to file his response challenging the genuineness of the records. It is submitted that the records were manipulated by the GP Secretary in connivance with the Anchalik Panchayat President and others. As such, the impugned order dated 09.08.2021 passed

by the learned Single Judge in W.P(C) No. 3333/2021 is liable to be interfered with.

III) For that, the learned Single Judge wholly relied on the records produced by the counsel for the respondent authority which were in fact forged and manipulated. It is submitted that the Secretary of the G.P. never brought the requisition dated 22.01.2021 to the notice of the appellant/writ petitioner at any stage and fraudulently forwarded the same to the President of Anchalik Panchayat in gross violation of Section 15(1) of the Assam Panchayat Act, 1994. As such, the impugned order is liable to be set aside.

IV) For that, the learned Single Judge failed to consider the fact that although the impugned fraudulent no-confidence resolution was adopted on 22.02.2021 removing the appellant/writ petitioner from the post of GP President, but the Deputy Commissioner, Karimganj issued the impugned order dated 18.05.2021 after about 3 months from the date of adoption of the no-confidence resolution. Such order of the Deputy Commissioner authorizing the Vice-President to act as President for indefinite period is not sustainable in law being in violation of Section 10(1) of the Assam Panchayat Act which provided that in case any vacancy arises in the office of the President due to removal, the same shall be filled up by way of election in terms of Section 6(1)(b) of the Act, unless the vacancy is for less than 1 month duration. In the instant case, the impugned fraudulent no-confidence resolution was adopted on 22.02.2021. As per section 15(1) of the Act, the President shall be deemed to have vacated his office forthwith when the no-confidence resolution is passed. As such, in view of the impugned fraudulent

no-confidence resolution, the appellant/petitioner would be deemed to have vacated his office on 22.02.2021. Therefore, when vacancy has remained for more than 1 month, the Deputy Commissioner being the Returning Officer ought to have issued order directing holding of fresh election to the post of President in terms of the Act. But the Deputy Commissioner, after 3 months of the adoption of the impugned fraudulent representation, issued the impugned order dated 18.05.2021 authorising the Vice-President to act as President which is illegal. As such, the impugned order dated 18.05.2021 is liable to be set aside and the Deputy Commissioner may be directed to conduct fresh election in terms of the mandate of the Assam Panchayat Act.

V) For that in any view of the matter the impugned Judgment and Order dated 09.08.2021 is liable to be set aside and quashed.”

4. Before us, it was urged by the appellant that the entire proceedings adopted pursuant to the notice issued by the Lowairpoa Anchalik Panchayat is in contravention with the provisions of Section 15 of the Assam Panchayat Act, 1994. According to the appellant, the Anchalik Panchayat can issue notice for a special meeting only when the President of the Gaon Panchayat, namely the appellant herein refuses to act upon the requisition submitted by the requisitionists upon the same being presented before the President by the Secretary of the Gaon Panchayat. The learned counsel for the appellant has strenuously urged that the Secretary of the Gaon Panchayat failed to bring it to the notice of the appellant and instead forwarded it to the Anchalik Panchayat.

Such procedure is alien to the provisions prescribed under the Panchayat Act, 1994 and therefore, no confidence motion adopted vide meeting held on 22.02.2021 and the subsequent order dated 18.05.2021 of removal of the appellant are contrary to the provisions of the Assam Panchayat Act and *non est* in law. It is submitted that the impugned order dismissing the writ petition should be interfered with as the learned Single Judge had failed to address these issues.

5. In this context, it is first necessary to refer to the provisions of Section 15 of the Assam Panchayat Act, 1994, which reads as under:

"Section 15 - No confidence motion against the President and Vice President:— (1) Every President or Vice-President shall be deemed to have vacated his office forthwith when resolution expressing want of confidence in him is passed by a majority of two third of the total number of members of the Gaon Panchayat.

Such a meeting shall be specially convened by the Secretary of the Gaon Panchayat with approval of the President of the Gaon Panchayat. Such meeting shall be presided over by the President if the motion is against the Vice- President, and by the Vice-President, if the motion is against the President. In case such a meeting is not convened within a period of fifteen days from the date of receipt of notice, the Secretary of the Gaon Panchayat shall within three days, refer the matter to the President of the concerned Anchalik Panchayat, who shall convene the meeting within seven days from the date of receipt of the information from the Secretary of the Gaon Panchayat and preside over such 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 three days after the expiry of the stipulated seven days time and the concerned Deputy Commissioner/Sub-Divisional Officer (C) shall convene the meeting within seven days from the date of the

receipt of the information with intimation to the Zilla Parishad and the Anchalik Panchayat and preside over the meeting so convened :

Provided that the concerned Deputy Commissioner/Sub-Divisional Officer (C) 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 meeting:

Provided further that when a non- confidence motion is lost, no such motion shall be allowed in the next six months."

(2) The requisition for such a special meeting under Sub-Section (1) shall be signed by not less than one third of the local number of members of the Gaon Panchayat and shall be delivered to the President or Vice-President as the case may be, of the concerned Anchalik Panchayat with intimation to the Deputy Commissioner of the District.

(3) Without Prejudice to the provision under this Act a President or a Vice-President of a Gaon Panchayat may be removed from office by the concerned Anchalik Panchayat with the approval of the Zilla Parishad for misconduct of his/her duties or neglects or incapacity to perform his/her duties or for being persistently remiss in the discharge of or guilty of any disgraceful conduct and President or Vice-President so removed shall not be eligible for re-election as President or Vice-President during the remaining term of office either as President or Vice-President of such Gaon Panchayat.

Provided that no such President or Vice-President of a Gaon Panchayat shall be removed from office unless he is given reasonable opportunity to furnish explanation to the Anchalik Panchayat.

(4) A vice-President so removed from his office under Sub-Section (3) may also be removed from membership of the Gaon Panchayat by the Government after the giving member a reasonable opportunity furnish his explanation.

(5) If, under sub-section (1), the members of the Gaon Panchayat express want of confidence both in the President and Vice-President of the Gaon Panchayat at the same time and issue notices, the Secretary of the Gaon Panchayat, within seven days from the date of receipt of such notices, shall report the matter to the President of the concerned Anchalik Panchayat who shall arrange to convene the meeting within fifteen days from the date of receipt of the intimation, separately, to consider the motion against the President first and to consider the motion against the Vice-President next day and shall

preside over both the meetings. The President of the concerned Anchalik Panchayat presiding the meeting shall have no vote.

In case the President of the concerned Anchalik Panchayat does not take action as above, the Secretary of the Gaon Panchayat, within three days after the expiry of the stipulated fifteen days time, shall refer the matter to the concerned Deputy Commissioner or the Sub-Divisional Officers (C), as the case may be. On receipt of the information, the Deputy Commissioner or the Sub-Divisional Officer as the case may be, shall convene both the meetings in the manner as above; within fifteen days from the date of receipt of the information with intimation to the concerned Anchalik Panchayat and Zilla Parishad and preside over such meetings:

Provided that the concerned Deputy Commissioner or the Sub Divisional Officer as the case may be, in case of his inability to preside over the meeting, may depute a Gazetted Officer not below the rank of Class- I Gazetted Officer to preside over such meeting:

Provided further that if it is not possible to hold the meeting for a situation due to non-attendance of the requisite number of members in such meeting or meetings as the case may be, the no-confidence motion shall automatically stands cancelled and motion shall be deemed to have lost, in the event of which no such motion shall be allowed within the next six months."

6. Under Section 15 of the Panchayat Act, 1994, once a no confidence motion against the President or the Vice President, as the case may be, is adopted by a majority of two-third of the total number of members of the Gaon Panchayat, the President or the Vice President, as the case may be, shall be deemed to have vacated his office forthwith. Such a meeting for no confidence is required to be specially convened by the Secretary of the Gaon Panchayat with the approval of the President of the Gaon Panchayat. In case such a meeting is not convened within a period of fifteen days from the date of receipt

of notice, the Secretary of the Gaon Panchayat shall within three days, refer the matter to the President of the concerned Anchalik Panchayat, who shall then convene the meeting within seven days from the date of receipt of the information from the Secretary of the Gaon Panchayat and preside over such meeting.

7. In the present case, there is a finding of fact by the learned Single Judge that from the records produced it was seen that eight members of the 35 no. Baghan Gaon Panchayat submitted a requisition notice addressed to the President of the said Gaon Panchayat for convening a special meeting on the no confidence motion against the appellant as the President. The said notice was received by the Secretary on 29.01.2021 and he in turn issued a letter dated 01.02.2021 to the appellant along with the said requisition notice seeking for approval and for fixation of a date for holding the no confidence meeting as per the provisions of Section 15(1) of the Assam Panchayat Act, 1994. The learned Single Judge further recorded a finding on fact that on 05.02.2021, the President/appellant herein refused to go through the note-sheet and again on 08.02.2021 he refused to accord his approval on the note-sheet. Under such circumstances, the requisition was sent by the Secretary of the Gaon Panchayat to the President of the Lowairpoa Anchalik Panchayat, who issued the notice dated 17.02.2021 fixing 22.02.2021 as the date for meeting to be held at 1.00 PM as at Lowairpoa Anchalik Panchayat Block Office.

8. This Court, vide an earlier order dated 12.09.2022, issued a direction to the learned Standing Counsel, P&RD Department to file an affidavit showing all stages of the proceedings taken in the meeting of the Panchayat right from submission of the requisition to holding of the meeting. Pursuant to the order of this Court, an affidavit was filed. By the said affidavit, the steps taken towards adopting the no confidence motion against the appellant were brought on record. In the said affidavit, there is a categorical averment that in the special meeting of no confidence held on 22.02.2021, the appellant himself was present along with nine elected ward members. The no confidence motion was conducted by the Anchalik Panchayat by holding of Secret Ballot. After conclusion of the voting and counting of the Ballot papers it was found that eight number of ward members had voted in favour of the motion and one vote was cancelled on the ground that a blank Ballot Paper was inserted in the Ballot Box without giving a tik mark. Accordingly, the motion was considered to have been passed and adopted by more than two-third majority members as per the provisions of Section 15(1) of the Assam Panchayat Act, 1994. Thereafter, the proceedings of the no confidence motion was forwarded to the Deputy Commissioner, Karimganj with a request for issuing orders to permit the Vice President of the Panchayat to discharge function of the President in terms of the provisions of the Panchayat Act. The Deputy Commissioner, Karimganj after taking into consideration the result of the No Confidence

Motion had issued the order dated 18.05.2021 removing the appellant as President of 35 No. Bhagan Gaon Panchayat and allowing the Vice President to discharge functions of the said Gaon Panchayat. The averments in the said affidavit filed by the Department has not been controverted by the appellant by filing any rejoinder or reply-affidavit. The respondents No. 9, 11 13 & 14 had filed separate affidavits making identical averments in support of the appellant that they had raised objections against the convening of the no confidence meeting on 22.02.2021 against the appellant but the respondent No. 6 used the signature of the respective ward members by showing they had favoured the no confidence motion.

9. The controversy in respect of the present proceedings is whether the procedure adopted by the Secretary of the Gaon Panchayat and the Lawairpoa Anchalik Panchayat in respect of the requisition for no confidence motion and the adoption of resolution of No Confidence against the President, namely the appellant, is in contravention with the mandate of Section 15(1) of the Act. Although, the appellant denied any knowledge of the requisition for a special meeting for convening of the No Confidence meeting, against the appellant and it is alleged that the Secretary of the Panchayat had forwarded to the Anchalik Panchayat without the approval or without bringing it to the notice of the appellant, in the affidavit dated 27.09.2022 filed by the Block Development Officer, Lowairpoa Development Block and respondent No. 5 in the writ appeal

specific averments have been made that the appellant refused to acknowledge the receipt of the requisition notice forwarded by the Secretary of the Gaon Panchayat and further also refused to accept the said notice when it was sent by the peon book. In the absence of the appellant controverting such specific averments, it will have to be accepted that the appellant refused to give approval to the requisition notice and forwarded by the Secretary of the Gaon Panchayat. If that be so, then as per the provisions of the Panchayat Act, 1994, the Secretary is required to forward the requisition to the Anchalik Panchayat for conducting the meeting and which was thereafter notified by the Anchalik Panchayat and the meeting was held and resolution was adopted by two-third majority of the ward members.

10. Under the circumstances, objections raised by the respondents No. 9, 11 13 & 14 will not materially alter the fact that the motion of 'No Confidence' against the appellant was adopted, in the absence of any written objection/complaint by the respondents No. 9, 11, 13 and 14 brought on record before this Court in support of such averments. Further the appeal is preferred by the appellant and the primary grievance of the appellant is that the procedure prescribed under Rule of Section 15(1) has been violated by the Secretary by forwarding the copy of the requisition for the no confidence motion to the Lowairpoa Anchalik Panchayat without bringing it to the notice of the appellant for seeking approval as mandated under law.

11. Under such circumstances, we find that the conclusions arrived at by the learned Single Judge are just and proper. In the facts and circumstances of the case, the learned Single Judge has taken a possible view. Therefore, in an intra-Court appeal where the learned Single Judge has taken a possible view, an appellate Court in the course of an intra-Court appeal will not interfere with such findings of the learned Single Judge unless they are perverse or contrary to statutory prescription.

12. Accordingly, we decline to interfere with the finding of the learned Single Judge vide Judgment and order dated 09.08.2021 passed in W.P(C) No. 3333/2021, the writ appeal is accordingly dismissed. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant