

GAHC010214672022



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

Case No. : WA/343/2022

BIDHYA RATNA SINGHA AND ORS.
(GROUP MEMBER, TARAPUR G. P.),
S/O SELUNGBA SINGHA,
VILL.- RAMNGAR TUKO, TARAPUR PART- VI,
P.O.- TARAPUR PART-VII,
DIST.- CACHAR ASSAM, PIN-788003.

2: TAPAN KUMAR DAS
(GROUP MEMBER
TARAPUR G. P.)

S/O BIRENDRA CHANDRA
R/O VILL. DURGANAGAR
TARAPUR PART- VII
P.O. TARAPUR PART-VII
DIST.- CACHAR ASSAM
PIN-788003.

3: BIBHUTI DAS
(GROUP MEMBER
TARAPUR G. P.)

S/O LATE GOPESH DAS

VILL.- OAPARA
TARAPUR PART- VII
P.O.- TARAPUR PART-VII

DIST.- CACHAR ASSAM
PIN-788003.

4: APARNA DAS PURKAYASTHA
(GROUP MEMBER
TARAPUR G. P.)

W/O KANU DAS PURKAYASTA

VILL.- MANIPURI BASTI
TARAPUR PART- VII
P.O.- TARAPUR PART-VII

DIST.- CACHAR ASSAM
PIN-788003.

5: JAHANARA BEGUM BARBHUIYA
(GROUP MEMBER
TARAPUR G. P.)

W/O LATIF UDDIN BARBHUIYA

VILL.- MAZUMDARBAZAR
TARAPUR PART- VII
P.O.- TARAPUR PART-VII

DIST.- CACHAR ASSAM
PIN-788003.

6: MILI DAS
(GROUP MEMBER
TARAPUR G. P.)

W/O MINTU KANTI DAS DAS

VILL.- NARAYANPUR
TARAPUR PART- VI
P.O.- TARAPUR PART-VII

DIST.- CACHAR ASSAM
PIN-788003

VERSUS

THE STATE OF ASSAM AND ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPTT., DISPUR, GUWAHATI- 6.

2: THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
DISPUR
PANJABARI ROAD
JURI PAR GUWAHATI- 37.

3:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR
DIST.- CACHAR
ASSAM
PIN-788001

4:THE CHIEF EXECUTIVE OFFICER
CACHAR ZILLA PARISHAD
P.O.- SILCHAR
DIST.- CACHAR
ASSAM
PIN-788001.

5:THE EXECUTIVE OFFICER
SILCHAR ANCHALIK PANCHAYAT CUM BLOCK DEVELOPMENT OFFICER
SILCHAR DEVELOPMENT BLOCK
P.O. MEHERPUR
DIST.- CACHAR
ASSAM
PIN-788015.

6:THE PRESIDENT
SILCHAR ANCHALIK PANCHAYAT
P.O.- MEHERPUR
DIST.- CACHAR
ASSAM
PIN- 788015.

7:THE SECRETARY
118 NO. TARAPUR GAON PANCHAYAT
P.O.- TARAPUR
DIST.- CACHAR
ASSAM
PIN- 788008.

8:SWAPNA PAUL (DAS)
PRESIDENT
118 NO. TARAPUR GAON PANCHAYAT

W/O BIDHAN RANJAN PAUL
VILL.- TARAPUR PART- VII
P.O.- TARAPUR PART- VII
DIST.- CACHAR
ASSAM PIN-788008.

9:ARUN ROY

GROUP MEMBER OF NO. 7 TARAPUR GAON PANCHAYAT
SON OF SRI RANTU ROY
R/O-VILLAGE-NETAJINAGAR OF TARAPUR VI
P.O-TARAPUR PART-VII
DISTRICT-CACHAR
ASSAM PIN-788003.

10:SAGORIKA PAUL
GROUP MEMBER OF NO 2 TARAPUR GAON PANCHAYAT
W/O- MRITUNJOY PAUL
R/O- VILLAGE- TARAPUR SIB-BARI ROAD OF TARAPUR PART-VII
P.O- TARAPUR PART VII
DISTRICT-CACHAR
ASSAM PIN-788003.

11:JOBA BHATTACHARJEE
GROUP MEMBER OF NO. 3 OF TARAPUR GAON PANCHAYAT
W/O- MOLLIK BHATTACHARJEE
R/O-VILLAGE TARAPUR
SIB BARI ROAD OF TARAPUR PART- VII
DISTRICT- CACHAR
ASSAM PIN- 788003.

12:RAHIM UDDIN MAZARBHUYAN
GROUP MEMBER OF NO. 10 OF TARAPUR GAON PANCHAYAT
S/O- SURJJAD ALI MAZARBHUYAN
R/O- VILLAGE DEVELOPMENT COMPLEX RAMNAGAR OF TARAPUR PART
VI P.O- TARAPUR PART -VI
DISTRICT- CACHAR
ASSAM PIN-788003

For the appellants : Mr. B.J. Ghosh,
Mr. T. Sk., Advocates

For the respondent Nos.1, 2,
4, 5, 6, 7 : Mr. K. Konwar, Standing Counsel, PNRD

For the respondent No.3 : Mrs. M. Bhattacharjee,
Additional Senior Government Advocate, Assam

For the respondent No.8 : Mr. K.P. Pathak
Mr. H.I. Choudhury, Advocates

– B E F O R E –

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

01-03-2023

S. Mehta, C.J.

This intra-Court writ appeal is preferred by the appellants (Respondent Nos.8, 11, 12, 13, 15 and 16 in the writ petition) assailing the order dated 20.09.2022 passed by the learned Single Judge accepting the writ petition filed by the respondent No.8/writ petitioner against the No Confidence Motion taken against the writ petitioner by ten members of the 118 No. Tarapur Gaon Panchayat.

The respondent No.8/writ petitioner was elected as the President of the 118 No. Tarapur Gaon Panchayat in or around April, 2019. Her tenure was of five years as per Assam Panchayat Act, 1994. Ten members of the Gaon Panchayat initiated proceedings for holding a No Confidence Motion against the respondent No.8/writ petitioner. There are divergent stands of the parties regarding service of the notice of No Confidence Motion upon the petitioner as per requirement of the Act of 1994.

Be that as it may. The meeting was held on 30.10.2021 and No Confidence Motion was passed by all the ten members who had moved the same. The resolution drawn in the minutes of the meeting 30.10.2021 was challenged by the respondent No.8 herein by filing the writ petition, being, WP(C) No.6287/2021 which has been accepted vide order dated 20.09.2022, which is assailed in the present appeal.

Learned counsel for the appellants urged that the writ petitioner herself was present in the meeting held on 30.10.2021 and thus, she could not question validity of the impugned action on the ground of non-service of notice. In support of his contentions, learned counsel for the appellants has placed reliance on the judgment

rendered by the Hon'ble Supreme Court in the case of ***Padmini Singha vs. State of Assam & Others***, reported in ***(2018) 10 SCC 561*** and urged that the respondent herself being present in the meeting, could not have raised the objection of non-service of notice and as such, the No Confidence Motion ought not to have interfered by the learned Single Judge.

Per contra, learned counsel representing the respondent No.8 (writ petitioner) supported the impugned order urging that merely because the respondent No.8/writ petitioner was present in the meeting held on 30.10.2021, that by itself would not validate the otherwise illegal procedure in convening the meeting. He thus, implored the Court to dismiss the appeal and affirm the order of the learned Single Judge. He further submits that as the learned Single Judge has permitted the dissatisfied members to convene a fresh meeting to hold No Confidence Motion, no prejudice is being caused to the appellants herein. It was further submitted that few of the members (Respondent Nos.9, 10, 14 and 17 in the writ petition) who moved the No Confidence Motion, have sworn affidavits stating that persons having political influence coerced them into voting against the respondent No.8/writ petitioner. The learned counsel for the respondent No.8/writ petitioner urged that no interference is required in the impugned order.

We have given our thoughtful consideration to the submissions advanced at the Bar and have gone through the materials available on record. It is an admitted position that the respondent No.8/writ petitioner being the elected President of the Gaon Panchayat, was present in the meeting convened on 30.10.2021 wherein, the No Confidence Motion was passed. The situation in hand, thus, is squarely covered by the following observations made by the Hon'ble Supreme Court in the case of ***Padmini Singha (supra)***.

“13. From the foregoing, it is quite vivid that the meeting was held to discuss the Motion of No-Confidence. The respondent no. 6 who was a beneficiary attended the meeting and voting had taken place. It is well settled in law 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. There are certain exceptions. One such exception 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. The ultimate result would be valid even if the requirement or condition is not performed. We are disposed to think that in the obtaining fact situation, no public interest was affected. The BDO presided over the meeting and everyone knew that the meeting was called for passing a resolution either in favour of or against the No Confidence Motion. The respondent no. 6 knowing fully well participated in the meeting and the resolution was passed against her. After losing in the voting process, the assail was made to the procedure of calling the meeting. We are inclined to think, had the respondent no. 6 not participated in the meeting, the matter would have been absolutely different. Having participated, it has to be held that the respondent no. 6 had waived the condition precedent.”

The aforesaid judgment was cited before the writ court, however, the ratio thereof seems to have not been properly considered/applied in the impugned judgment. As the Hon'ble Supreme Court, while deliberating upon the provisions of the Act of 1994 has unequivocally held in the case of *Padmini Singha (supra)* that having participated, the President of the Gaon Panchayat waived the condition precedent of service of notice, the factual matrix of the present case is squarely covered by the ratio of the above judgment and as a consequence, the respondent President having remained present in the meeting dated 30.10.2021, cannot question the validity of the procedure preceding the convening of the meeting.

The submission of the learned counsel representing some of the members of the Gaon Panchayat who were party to the No Confidence Motion that their signatures were procured under threat, duress and coercion has no merit whatsoever because the affidavit so filed is vague and unconvincing on the face of the record.

Consequently, the writ appeal succeeds and is hereby allowed. The impugned

order dated 20.09.2022 passed by the learned Single Judge in WP(C) 6287/2021 is hereby reversed.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant