

GAHC010221082022



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

Case No. : WP(C)/6971/2022

RUHUL AMIN
S/O LT. AKLASUR RAHMAN,
R/O VILL. 37 HAL, P.O. ANIPUR,
P.S. RATABARI, DIST- KARIMGANJ

.....Petitioner

-Versus-

- 1) THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO PANCHAYAT AND
RURAL DEPTT. GOVT. OF ASSAM, DISPUR GUWAHATI-781006
- 2) THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
PANJABARI GUWAHATI-37
- 3) THE DEPUTY COMMISSIONER KARIMGANJ
DIST. KARIMGANJ, ASSAM PIN-788701
- 4) THE CHIEF EXECUTIVE OFFICER
KARIMGANJ ZILLA PARISHAD
P.S. AND DIST. KARIMGANJ, ASSAM
- 5) THE BLOCK DEVELOPMENT OFFICER,
DULLAVCHERRA DIST. KARIMGANJ ASSAM, PIN-788736
- 6) THE PRESIDENT
DULLAVCHERRA ANCHALIK PANCHAYAT, P.O DULLAVCHERRA P.S.
RATABARI DIST. KARIMGANJ ASSAM, PIN-788736

7) THE SECRETARY
ANIPUR GAON PANCHAYAT P.S RATABARI,
DIST. KARIMGANJ PIN-788734

8) HARMILA BEGUM
W/O NAZRUL ISLAM
R/O VILL. NITAINAGAR P.O. RATABARI,
DIST. KARIMGANJ

9) HANIF UDDIN
S/O ABDUL JALIL
R/O VILL. HULLASHNAGAR, P.O. ANIPUR
DIST. KARIMGANJ

10) JYOTHNA BEGUM
W/O CHAD UDDIN,
R/O VILL. 37 HAL, P.O. ANIPUR
DIST. KARIMGANJ

11) PRITHWISH KR. SAHA
S/O PRASHANTO KR. SAHA,
R/O VILL. CHANNIGHAT P.O. ANIPUR
DIST. KARIMGANJ

12) ALAKA MALAKR
W/O RAHUL MALAKAR,
R/O GANDHARAJ BARI, P.O. RATABARI,
DIST. KARIMGANJ, ASSAM

13) MALATI SINHA
W/O MOHITUSH SINHA,
R/O VILL. BERATUK, P.O. ANIPUR
DIST. KARIMGANJ, ASSAM

14) ANUPAM SAHA
S/O LT MONIGOPAL SAHA,
R/O VILL. AMARKHAL P.O. ANIPUR
DIST. KARIMGANJ, ASSAM

15) HAFIZA BEGUM LASKAR
W/O MANJUR HUSSAIN,
R/O VILL. BILBARI, P.O. ANIPUR

DIST. KARIMGANJ, ASSAM

16) SOBIR AHMED
S/O LT. SANUHAR ALI,
R/O VILL. DULLAVPUR P.O. ANIPUR
DIST. KARIMGANJ, ASSAM

.....Respondents

Advocates :

For the Petitioner	: Mr. H.R.A. Chhousdhury, Sr. Advocate Mr. M.A. Choudhury, Advocate
For the Respondent nos. 1, 2, 4, 5 & 7	: Mr. S. Dutta, SC, P&RD Department
For the Respondent no. 3	: Ms. D. Bora Empanelled Advocate, Government of Assam
For the Respondent no. 6	: Mr. U. Dutta, Advocate
For the Respondent nos. 8 – 16	: Mr. J.M.A. Choudhury, Advocate

Date of Hearing and Judgment& Order : 07.02.2023

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

The writ petition under Article 226 of the Constitution of India has been instituted by the petitioner assailing the proceedings, initiated by a requisition notice submitted by 9 [nine] nos. of Ward Members of Anipur Gaon Panchayat on 26.09.2022, in its entirety, which proceedings had ultimately culminated in a special meeting, held on 17.10.2022, in the office of the Dullavcherra Anchalik Panchayat, with the passing of a motion of no confidence against the petitioner. In the special meeting held on 17.10.2022, the alleged motion of no confidence initiated against the petitioner for the purpose of removing him from the post of President of Anipur Gaon Panchayat was stated to have been passed with two-third majority since 9 [nine] nos. of Ward Members of Anipur Gaon Panchayat

voted against the petitioner by the process of secret ballots. The petitioner has also laid challenge to a letter dated 17.10.2022 of the respondent no. 5 and the order dated 21.10.2022 of the respondent no. 3, issued subsequent to the special meeting, held on 17.10.2022, on the strength of the resolution passed therein.

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

2.1. In the General Panchayat Election held in the year 2018, the petitioner submitted his nomination for the post of President of Anipur Gaon Panchayat. In the General Panchayat Election so held, the petitioner got elected to the post of President, Anipur Gaon Panchayat [hereinafter also referred to as 'the Gaon Panchayat', at places] as per the provisions of Section 6[1][b] of the Assam Panchayat Act, 1994. In the said General Panchayat Election, the respondent nos. 8 – 16 also got themselves elected as Ward Members of Anipur Gaon Panchayat. Apart from the directly elected President, Anipur Gaon Panchayat is consisted of 10 [ten] nos. of Ward Members. After the election, the respondent no. 12 got elected as the Vice-President of the Gaon Panchayat in terms of provisions of Section 6[3] of the Assam Panchayat Act, 1994. On 26.09.2022, 9 [nine] nos. of Ward Members of the Gaon Panchayat submitted a requisition notice, addressed to the Secretary of the Gaon Panchayat i.e. the respondent no. 7, expressing want of confidence in the President of the Gaon Panchayat i.e. the petitioner and sought for convening of a special meeting to discuss the motion of no confidence.

2.2. The contesting parties are not in disagreement on the point that the requisition notice was submitted under the seals and signatures of 9 [nine] nos.

of Ward Members i.e. the respondent nos. 8 – 16, as requisitionists and the requisition notice was received at 03-15 p.m. by the respondent no. 7 under his seal and signature on 26.09.2022 at the office of the Karimganj Zilla Parishad. The contestation between the parties started after receipt of the said requisition notice by the respondent no. 7 on 26.09.2022 at the office of the Karimganj Zilla Parishad. While it is the claim of the petitioner that the respondent no. 7 had never brought the requisition notice before him by adhering to the prescribed procedure, the stance that has been taken by the respondent nos. 8 – 16 is that the requisition notice was brought to the knowledge of the petitioner in accordance with the procedure. The dispute in relation to the same would be dilated in the later part of this order.

2.3. It has emerged from the notice issued by the President, Dullavcherra Anchalik Panchayat on 13.10.2022, addressed to the petitioner, that the respondent no. 7 had addressed a Communication to the President, Dullavcherra Anchalik Panchayat on 12.10.2022 stating **inter alia** that the petitioner as the President of Anipur Gaon Panchayat did not accord approval for a special meeting to discuss the motion of no confidence, sought for by 9 [nine] nos. of Ward Members of Anipur Gaon Panchayat including the Vice-President of the Gaon Panchayat [the respondent no. 12]. With reference to the Communication dated 12.10.2022 of the respondent no. 7, the President, Dullavcherra Anchalik Panchayat [the respondent no. 6] had sent the notice dated 13.10.2022 to the petitioner informing him that a special meeting to discuss the motion of no confidence brought against him would be held in the office chamber of the President, Dullavcherra Anchalik Panchayat at 02-00 p.m. on 17.10.2022. The petitioner has not denied the receipt of notice dated 13.10.2022, but he has asserted that the said notice was served on him only on

16.10.2020.

2.4. Subsequent to the notice dated 13.10.2022, the special meeting convened to discuss the motion of no confidence brought against the petitioner as the President of Anipur Gaon Panchayat, was accordingly held, as scheduled. From the proceedings of the special meeting, it has emerged that the special meeting was presided over by the respondent no. 6 in presence of the respondent no. 5. 9 [nine] nos. of Ward Members, that is, the respondent nos. 8 – 16 had attended the special meeting. The process of secret ballot was resorted to in the special meeting and at the end of the voting process, the ballot papers were counted. On counting, it was found that 9 [nine] nos. of Ward Members cast their votes in favour of the motion of no confidence against the petitioner. It was resolved in the special meeting that the petitioner no longer enjoyed the support of two-third majority of the Ward Members of Anipur Gaon Panchayat and the petitioner should be considered to have vacated the post of President, Anipur Gaon Panchayat w.e.f. 17.10.2022. The respondent no. 5 by his letter dated 17.10.2022 forwarded the records to the respondent no. 4 for information and necessary steps. Based on the proceedings of the special meeting held on 17.10.2022, the respondent no. 3 had passed the order dated 21.10.2022 confirming that the petitioner stood removed from the post of President, Anipur Gaon Panchayat. By the order dated 21.10.2022, the Vice-President of Anchalik Panchayat i.e. the respondent no. 12 was allowed to discharge the work of President of Anipur Gaon Panchayat with immediate effect.

3. I have heard Mr. H.R.A. Chhouthury, learned senior counsel assisted by Mr. M.A. Chouhdury, learned counsel for the petitioner; Mr. S. Dutta, learned

Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1, 2, 4, 5 & 7; Ms. D. Bora, learned Panel Advocate, Government of Assam for the respondent no. 3; Mr. U. Dutta, learned counsel for the respondent no. 6; and Mr. J.M.A. Choudhury, learned counsel for the respondent nos. 8 – 16.

4. Mr. Choudhury, learned senior counsel appearing for the petitioner has submitted that the Secretary of the Gaon Panchayat [the respondent no. 7] had never brought the requisition notice dated 26.09.2022 to the knowledge and notice of the petitioner at any point of time prior to 16.10.2022. It was only on 16.10.2022 when the notice dated 13.10.2022 issued by the respondent no. 6 was served upon the petitioner, the fact of submission of the requisition notice dated 26.09.2022 came to the knowledge of the petitioner. Mr. Choudhury has further submitted that the requisition notice could not have been served upon the petitioner during the period from 26.09.2022 till 01.10.2022 as the petitioner was hospitalized from 23.09.2022 to 01.10.2022 receiving treatment in respect of injuries sustained in an incident occurred on 23.09.2022. According to the petitioner, he was assaulted in the night hours of 23.09.2022 at a place, Pachali. The petitioner has brought allegation that the Ward Member from Ward no. 8 of the Gaon Panchayat [the respondent no. 9] along with few of his accomplices, was instrumental in carrying out the assault upon the petitioner with sharp weapons on 23.09.2022. As the petitioner sustained serious injuries in the incident, he was taken to the nearby health facility, Chargola Mini Primary Health Centre [PHC] immediately and finding his injuries serious, he was thereafter, referred therefrom to the Hailakandi Civil Hospital. The petitioner had thereafter, received treatment at the Silchar Medical College & Hospital [SMCH] on 24.09.2022 and subsequently, he was admitted at M/s Valley Hospital &

Research Centre [P] Ltd. from 24.09.2022 to 01.10.2022. The petitioner was discharged from M/s Valley Hospital & Research Centre [P] Ltd. only on 01.10.2022. As such, the requisition notice could have been brought to the notice of the petitioner only on 01.10.2022 or thereafter. In connection with the incident of assault, a crime case being Ratabari Police Station Case no. 281/2022, was registered and investigated into.

4.1. It is the submission of the learned senior counsel for the petitioner that even if it is assumed that the requisition notice was brought to the knowledge of the petitioner on 01.10.2022, the respondent no. 7 as the Secretary of the Gaon Panchayat could not have assumed the authority and jurisdiction to send the matter relating to the no confidence motion for consideration of the Anchalik Panchayat before expiry of 15 [fifteen] days from 01.10.2022 in the absence of any action from the petitioner either approving or declining to convene a special meeting to discuss the motion of no confidence. It is his further submission that be that as it may, there is no record which goes to show even **prima facie** that the requisition notice was brought to the knowledge of the petitioner on 01.10.2022 or any date thereafter. In such view of the matter, the entire proceedings culminating in the special meeting on 17.10.2022 are to be held as vitiated. As the convening of the special meeting on 17.10.2022 was not in accordance with the prescription laid down in Section 15 of the Assam Panchayat Act, 1994, the decision on the motion of no confidence is also to be held as bad. The consequential action taken by the respondent no. 5 on 17.10.2022 and by the respondent no. 3 on 21.10.2022 are also unsustainable in law and, thus, are also liable to be set aside and quashed.

4.2. Making the above submissions, Mr. Choudhury has submitted that the

petitioner is required to be restored to the post of President, Anipur Gaon Panchayat. In support of his submissions, he has referred to the decisions in **Ali Ahmed Mazumdar vs. State of Assam and others**, reported in **2011 [3] GLT 396 [DB]**; and **Sipra Das vs. State of Assam and others**, reported in **2017 [3] GLT 691**.

5. Mr. Dutta, learned Standing Counsel, P&RD has placed certain papers, forwarded to him by the respondent no. 5 with a covering letter dated 11.11.2022 and the letter dated 17.10.2022 of the respondent no. 5, in original. The papers include a page, claimed as a note-sheet page containing two notes, dated 26.09.2022 and dated 12.10.2022, which bear signature and seal of the Secretary, Anipur Gaon Panchayat [the respondent no. 7]. It is submitted that the respondent no. 7 had put up a note before the petitioner by the note-sheet on 26.09.2022 with the request to convene a special meeting on the basis of the requisition notice dated 26.09.2022. It is his submission that the when the petitioner did not made any remark with regard to convening of the special meeting, the respondent no. 7 by stating the actual situation on the one-page note sheet on 12.10.2022, forwarded the matter to the President, Dullavcherra Anchalik Panchayat [the respondent no. 6] on 12.10.2022. The respondent no. 7 on 12.10.2022 had remarked in the said note-sheet that the petitioner returned the file without any note. Mr. Dutta has, thus, submitted that since the petitioner had returned the requisition notice without any note, the same had amounted to refusal and the question of expiry of 15 [fifteen] days envisaged by Section 15 of the Assam Panchayat Act, 1994 does not require compliance. Mr. Dutta has also placed a Communication dated 29.01.2023 of the respondent no. 7, addressed to him.

6. Mr. J.M.A. Choudhury, learned counsel appearing for the respondent nos. 8 – 16 has submitted that the story regarding assault on the petitioner on 23.09.2022 is completely false. By referring to the final report submitted by the Investigating Officer [I.O.] of the case in connection with Ratabari Police Station Case no. 281/2022 vide Final Report no. 229/2022 dated 30.11.2022, he has submitted that the I.O. of the case finding no evidence regarding the assault upon the petitioner, had to submit the final report in the case. The final report goes to show that the entire sequence of events starting from the alleged incident of assault on 23.09.2022 to the subsequent hospitalization of the petitioner and his subsequent discharge on 01.10.2022 were only with the intention to thwart the democratic process initiated by the 9 [nine] nos. of Ward Members of the Gaon Panchayat to remove him from the post of President. Knowing well from before that a dissent was brewing against him and the same would result in a requisition notice from the disgruntled Ward Members, the petitioner had engineered the alleged assault on 23.09.2022 by implicating one of the Ward Members i.e. the respondent no. 9 falsely in the said incident. The respondent no. 9 has already been found blameless in the Final Report dated 30.11.2022. As regards the matter of bringing the requisition notice dated 26.09.2022, Mr. Choudhury has supported the submissions of the learned Standing Counsel, P&RD Department. Since the petitioner returned the requisition notice, the matter was rightly forwarded by the respondent no. 7 to the jurisdictional Anchalik Panchayat for taking further necessary steps in the matter and the Anchalik Panchayat had, in turn, rightly issued the notice dated 13.10.2022 convening the special meeting to discuss the motion of no confidence brought against the petitioner by the respondent no. 8 – 16 on 17.10.2022. It is his further submission that since 9 [nine] nos. of Ward

Members of the Gaon Panchayat being more than two-third majority, had voted in favour of the motion in the special meeting, the petitioner has no right to claim for his continuation in the post of President of the Gaon Panchayat. Since the petitioner had the knowledge that there was a requisition notice dated 26.09.2022 and a special meeting was convened on 17.10.2022, it does not lie on the part of the petitioner to claim that there was infraction of the provisions laid down in Section 15 of the Assam Panchayat Act, 1994.

6.1. Mr. J.M.A. Choudhury has submitted without prejudice to his other submissions, that even if the proceedings assailed in this writ petition are interfered with on the ground of any procedural infraction, the motion of no confidence brought against the petitioner could not be held to have been lost and the same would proceed further from the stage of interference. To buttress his submissions, he has referred to the decision in **Habibur Rahman vs. State of Assam**, reported in **2006 [Supp] GLT 218 [DB]** and a common judgment and order rendered in two writ petitions, **W.P.[C] no. 5512/2021 [Sri Ashish Nath vs. the State of Assam and 3 others]** and another, decided on 18.08.2022.

7. Mr. Dutta, learned counsel representing the respondent no. 6 has submitted that as soon as the respondent no. 6 received the Communication dated 12.10.2022 from the respondent no. 7 along with the requisition notice dated 26.09.2022 signed by 9 [nine] nos. of Ward Members of Anipur Gaon Panchayat, the respondent no. 6 had immediately convened the special meeting on 17.10.2022. The special meeting was held on 17.10.2022 as scheduled, with the attendance of 9 [nine] nos. of Ward Members of Anipur Gaon Panchayat and the same was chaired by the respondent no. 6. In the special meeting, the

process of secret voting was resorted to and on counting, it was found that 9 [nine] nos. of Ward Members of the Anipur Gaon Panchayat cast their votes in favour of the no confidence motion.

8. I have duly considered the submissions of 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 papers produced by the learned Standing Counsel, P&RD Department appended with the letter dated 11.11.2022 [supra] and the proceedings book of the special meeting, held in the office of Dullavcherra Anchalik Panchayat on 17.10.2022.

9. Before dilating on the aspects contended by the parties, it is apt to refer to the provision of Section 15 of the Assam Panchayat Act, 1994, as amended. Section 15 of the Assam Panchayat Act, 1994 has provided for the matter of no confidence against the President and the Vice-President of a Gaon Panchayat. As per Section 6[1][b] of the Panchayat Act, the President of a Gaon Panchayat is elected directly by the voters of the territorial constituencies of the Gaon Panchayat area in the manner prescribed. It is provided, **inter alia**, in sub-section [1] of Section 15 that 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 the approval of the President of the Gaon Panchayat. The requisition notice for such a special meeting shall be signed by not less than one-third of the total members of the Gaon Panchayat and shall be delivered to the President or Vice-President, as the case may be, of the concerned Gaon

Panchayat with information to the Deputy Commissioner of the District. In case such a meeting is not convened by the President within a period of 15 [fifteen] days from the date of receipt of the notice, the Secretary of the Gaon Panchayat shall within 3 [three] days, thereafter, refer the matter to the President of the concerned Anchalik Panchayat, who shall convene the 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.

10. There is no dispute to the fact that on 26.09.2022, a requisition notice of even date, with signatures and seals of 9 [nine] nos. of Ward Members of Anipur Gaon Panchayat as requisitionists, was delivered to the Secretary of Anipur Gaon Panchayat [the respondent no. 7] and the respondent no. 7 had duly acknowledged the receipt of the requisition notice at 03-15 p.m. on 26.09.2022 itself. The endorsement of the respondent no. 7 on the requisition notice goes to show that he received the requisition notice at the office of the Karimganj Zilla Parishad at 03-15 p.m. on 26.09.2022. There is also no dispute to the fact that the special meeting was convened and held on 17.10.2022 at the office of the Anchalik Panchayat. It is also not in dispute that the special meeting, held on 17.10.2022, was chaired by the President of the Anchalik Panchayat as required by the provisions of Section 15[1] of the Assam Panchayat Act, 1994. Sub-section [5] of Section 18 of the Panchayat Act, 1994 has made it mandatory that in a special meeting where a no confidence motion is discussed, the same is to be decided by secret ballots. It is also not in dispute that in the case in hand that in the special meeting held on 17.10.2022, the process of secret voting was resorted to and the motion of no confidence brought against the petitioner as the President of Anipur Gaon Panchayat was passed by not less than two-third of the total number of Ward Members of

Anipur Gaon Panchayat.

11. What have been sought to be disputed are the events occurred during the interregnum leading to the special meeting dated 17.10.2022. A perusal of the Discharge Certificate dated 01.10.2022 [Page no. 43 & 44 of the case papers] and the Certificate dated 01.10.2022 [Page no. 46 of the case papers] issued by M/s Valley Hospital & Research Centre [P] Ltd., goes to show that the petitioner was admitted in the said health facility on 24.09.2022 and he was discharged therefrom on 01.10.2022. The Certificate dated 24.09.2022 had certified that the petitioner was admitted in the said health facility with alleged assault of head injury and facial injury. The factum of the petitioner's admission in the said Hospital from 24.09.2022 to 01.10.2022 has not been specifically traversed by any of the respondents in their pleadings. It is a settled proposition that if an averment made in the writ petition is not controverted by the respondents, then the same is to be presumed to have been admitted.

12. The respondent nos. 8 – 16 have, however, brought an allegation that the alleged incident of assault upon the petitioner on 23.09.2022 was a false one and the same was engineered by the petitioner himself knowing fully well that a sizeable majority of the Ward Members of the Gaon Panchayat would bring a motion expressing want of confidence in him in the near future. The said respondents have also contended that the investigation resulting in the final report on 13.11.2022 is clear pointer on it. The First Information Report [FIR] with regard to the alleged incident dated 23.09.2022 was lodged by one Sri Mamun Rashid Khan, who is a brother of the petitioner, on 24.09.2022 and the said FIR was registered as Ratabari Police Station Case no. 281/2022 under Sections 120B/341/326, Indian Penal Code [IPC] on 24.09.2022. In the FIR, the

informant had **inter alia** alleged that at around 09-30 p.m./10-00 p.m. on 23.09.2022, the petitioner while he was proceeding on foot, was assaulted at a place, Pachali by sharp weapons by the three accused persons named therein including Sri Hanif Uddin [the respondent no. 9] and as a result of the attack, the petitioner sustained injuries on his person. The case papers further show that the petitioner was treated at the Silchar Medical College and Hospital [SMCH], Silchar after midnight on 24.09.2022 at its Casualty Ward. The Medical Prescription dated 24.09.2022 of the SMCH indicates prescription of medicines and suggestion of treatment to the petitioner. The Investigating Officer [I.O.] of Ratabari Police Station Case no. 281/2022, after completion of investigation, had submitted a final report vide Final Report no. 229/2022 dated 30.11.2022. The I.O. of the case submitted the final report with the remark that the case had to be returned in final report due to insufficient evidence. Thus, it cannot be said outrightly, contrary to the contentions advanced on behalf of the respondent nos. 8 – 16, that reporting of the crime case through the FIR dated 24.09.2022 which was registered as Ratabari Police Station Case no. 229/2022, was a false one. The respondent nos. 8 – 16 have also referred to a FIR lodged by the Medical & Health Officer–I, Chargula Mini PHC on 23.09.2022 before the Officer In-Charge, Ratabari Police Station which was registered as Ratabari Police Station Case no. 280/2022 under Sections 290/427/353/34, IPC r/w Section 3 of the Prevention of Damage to Public Property Act, 1984. A perusal of the contents of the said FIR **prima facie** goes to show that a disturbance was created in Chargula Mini PHC on 23.09.2022 by the persons accompanying the petitioner. The informant did not allege any kind of instigation on the part of the petitioner who was brought there purportedly in an injured condition, in the said incident. From the case papers, it has emerged that the petitioner had

approached the Court of learned Sessions Judge, Karimganj by filing a pre-arrest bail application, **Bail 438 Case no. 346/2022** apprehending his arrest in connection with Ratabari Police Station Case no. 280/2022. The Court of learned Sessions Judge, Karimganj having perused the contents of the FIR had observed that the entire allegation was made against the attendants of the petitioner and by an Order dated 07.10.2022, the pre-arrest bail application preferred by the petitioner was allowed by the Court of learned Sessions Judge, Karimganj.

13. Having considered the events that appeared to have occurred between 23.09.2022 to 01.10.2022, the projection made on behalf of the petitioner that he was admitted as an indoor patient in the hospital during the period from 24.09.2022 to 01.10.2022 has considerable force and in the absence of any other cogent materials, contrary to the position emerging therefrom, this Court is of the considered view that the admission of the petitioner as an indoor patient in the hospital from the period from 24.09.2022 till his discharge on 01.10.2022 is to be accepted.

14. The aspects which have, thus, fallen for consideration are the events on and from 01.10.2022. From the Communication bearing Memo no. AGP/2022-2023/18 dated 29.01.2023 of the respondent no. 7, addressed to the learned Standing Counsel, Panchayat and Rural Development Department, it is noticed that the respondent no. 7 did not maintain any Peon Book for transaction of the office business of Anipur Gaon Panchayat. According to the respondent no. 7, all Panchayat related correspondences are exchanged on **WhatsApp**. In so far as the requisition notice expressing lack of confidence in the petitioner as the President of the Gaon Panchayat is concerned, the respondent no. 7 has

mentioned that the correspondence in that regard was transacted through special requisition papers. The learned Standing Counsel, Panchayat and Rural Development Department has produced the one-page purportedly to be the note-sheet, maintained by the respondent no. 7 in relation to the requisition notice dated 26.09.2022. On a pointed query to the learned Standing Counsel, Panchayat and Rural Development Department, it is submitted by him that the purported one-page note-sheet is a uncoupled one and the same is not part of any office file maintained for the office purpose of Anipur Gaon Panchayat. Thus, it is evident that the said note-sheet page is the lone page maintained by the respondent no. 7 in connection with the proceedings under reference. On perusal of the contents of the said one-page note-sheet, two entries, dated 26.09.2022 & dated 12.10.2022, are noticed. By the entry dated 26.09.2022, the respondent no. 7 had claimed that he had brought the matter of submission of the requisition notice dated 26.09.2022 to the knowledge of the petitioner with the further request to convene a special meeting. Subsequent to the entry dated 26.09.2022, there were no further entries from the period from 26.09.2022 to 12.10.2022. The other entry dated 12.10.2022 mentioned that the petitioner as the President of Anipur Gaon Panchayat returned the file without any comment and the same was forwarded to the President, Dullavcherra Anchalik Panchayat for further necessary action.

15. In **Ali Ahmed Mazumdar vs. State of Assam and others**, reported in **2011 [3] GLT 396**, the Hon'ble Division Bench has discussed the necessity of bringing the notice of no confidence motion to the personal knowledge of the President of a Gaon Panchayat. It has been observed therein that the Secretary of the Gaon Panchayat who received the notice on behalf of the President, is cast with a legal duty, which is mandatory in nature, to inform the President

forthwith about the receipt of such notice with a note put up in official file for his personal knowledge and to pass necessary order either according approval or declining to accord approval to convene the special meeting for discussion on the no confidence motion by the Panchayat Members. Because of the extremely possible disastrous consequence, like removal from office, attached to the no confidence motion preceded by compliance of certain statutory procedures as laid down in Section 15 of the Assam Panchayat Act, 1994, it has been held that a notice of no confidence motion received by the Secretary of the Gaon Panchayat on behalf of the President of the Gaon Panchayat, cannot be construed as due notice to the President and the period of 15 days as contemplated under Section 15[1] of the Assam Panchayat Act, 1994 could be counted only from the date of bringing the notice to personal knowledge of the President of the Gaon Panchayat formally through official note, and not otherwise. The Hon'ble Division Bench has also assigned the reason as to why the said receipt of notice of no confidence motion by the Secretary cannot be construed as due notice. By observing that a dishonest Panchayat Secretary, for dubious purpose or on extraneous consideration to serve some vested interest, may play mischief by holding back the notice from the President of the Gaon Panchayat against whom the Panchayat Members have expressed loss of confidence, to create a situation for it and to show/prove that the President has failed to convene the special meeting within 15 days as prescribed under Section 15[1] of the Assam Panchayat Act, 1994 and to make out a case for referring the matter to Anchalik Panchayat to convene a special meeting by it. The Division Bench has further observed while supporting the ratio laid down in the case titled **Sita Satnami vs. State of Assam and others**, reported in **2010 [3] GLT 291**, that the Secretary of the Gaon Panchayat can assume

jurisdiction only after expiry of 15 days from the date of bringing the requisition notice to the notice of the President of the Gaon Panchayat, to refer the matter to the President of the Anchalik Panchayat and any reference of the matter to the jurisdictional Anchalik Panchayat by the Secretary of the Gaon Panchayat before such expiry of period of 15 days, would be in flagrant transgression of the statutory provisions contained in Section 15[1] of the Panchayat Act, 1994. In **Sipra Das vs. State of Assam and others**, reported in **2017 [3] GLT 691**, it has been held that a reference made by the Secretary of the Gaon Panchayat to the concerned Anchalik Panchayat before the expiry of 15 days from the date on which the notice was allegedly brought to the knowledge of the President of the Gaon Panchayat is bad in law and is liable to be declared so.

16. In **Habibur Rahman vs. State of Assam and others**, reported in **2006 [Supp] GLT 218**, a Division Bench of the Hon'ble Court has **inter alia** observed that as soon as the President of the Gaon Panchayat against whom the no confidence motion is brought, is delivered with a copy of such requisition for special meeting under Section 15[1] of the Assam Panchayat Act, 1994, the provision contained in sub-section [1] of Section 15 is to be held as complied with. The requirement would be substantially complied with if the Secretary of the Gaon Panchayat delivers a copy of such requisition to the President of the Gaon Panchayat against whom no confidence motion has been brought. There is no dispute to the propositions laid down in **Habibur Rahman** [supra]. The requisitionists herein i.e. the respondent nos. 8 – 16 had delivered the requisition notice dated 26.09.2022 to the Secretary of Anipur Gaon Panchayat [the respondent no. 7] on 26.09.2022. The issue involved herein is as to whether the respondent no. 7 who was delivered with the requisition notice on

26.09.2022, had brought the same to the knowledge of the President of the Gaon Panchayat in the manner required.

17. When the fact situation presented before the this Court in the case in hand are looked at by keeping into purview the provisions of Section 15[1] of the Panchayat Act and the ratio laid down in **Ali Ahmed Mazumdar** [supra], this Court finds that there could be two possibilities in the case in hand, **firstly**, the requisition notice was brought by the Secretary of the Gaon Panchayat to the notice of the President on 01.10.2022 or on any day thereafter; and **secondly**, the requisition notice was not brought by the Secretary of the Gaon Panchayat to the notice of the President on 01.10.2022 or any day thereafter. Before embarking on any of the two possibilities, it is relevant to note that there is no material on record to indicate that the petitioner had made any endorsement on any official records relatable to the motion of no confidence until 16.10.2022.

17.1. If it is assumed for the sake of argument that the requisition notice was brought to the notice of the petitioner by the respondent no. 7 on 01.10.2022 and in the absence of any endorsement from the petitioner either according or declining approval with regard to convening of the special meeting, the respondent no. 7 could not have assumed jurisdiction to refer the matter to the Anchalik Panchayat on 12.10.2022, which was before expiry of 15 days from 01.10.2022. With regard to the second possibility, neither the official respondents nor the private respondents have been able to bring any cogent materials to rebut in a **prima facie** manner the contentions advanced on behalf of the petitioner that the requisition notice dated 26.09.2022 was never brought to his knowledge by the Secretary of the Gaon Panchayat through any official

mode till he received the notice dated 13.10.2022 issued from the end of the respondent no. 6 informing that a special meeting was being convened on 17.10.2022, on 16.10.2022. In the factual matrix obtaining in the case, the onus was on the respondents' side to bring cogent materials on record in support of their claim that the requisition notice was brought to the knowledge of the President in the prescribed manner rather than the petitioner who has asserted in a negative manner, that is, the requisition notice was never brought to his knowledge in the proper manner. In the light of the discussion above, this Court has to observe that the Secretary of the Gaon Panchayat did not bring the requisition notice dated 26.09.2022, received by him on 26.09.2022, to the knowledge of the President of the Gaon Panchayat in the manner required. The one-page note-sheet produced by the respondent no. 7 before this Court does not go to show that how he [the respondent no. 7] had delivered or through whom he had delivered the requisition notice to the President of the Gaon Panchayat. The respondent no. 7 has also failed to disclose how the one-page note-sheet along with the requisition notice, had been received back by him on 26.09.2022 or another date thereafter, after the same were allegedly sent to the President of the Gaon Panchayat i.e. the petitioner.

18. Having discussed the aspects in relation to both the possible situations, this Court is of the considered view that the procedure prescribed by Section 15[1] of the Assam Panchayat Act, 1994 as regards the manner of bringing the requisition notice expressing want of confidence in the petitioner as the President of Anipur Gaon Panchayat within a period of 15 days was not followed in the case in hand. As a consequence, this Court holds that the proceedings of the special meeting held in the office of the Anchalik Panchayat on 17.10.2022 cannot receive judicial imprimatur. As a consequence, the motion of no

confidence passed against the petitioner in the said special meeting is held to be bad in law and the same is accordingly set aside.

19. There is one further aspect associated with the case in hand and the same cannot be overlooked in the fact situation obtaining in the case. It has been observed in **Ashish Nath** [supra] that the concept of tenure of an elected office-bearer of any Panchayati Raj Institution, governed by democratic principles, is controlled by a limitation of no confidence and the fixed tenure provided in the governing statute, that is, the Assam Panchayat Act, 1994 can get shortened due to removal from loss of confidence in such elected office-bearer, as provided for in the statute. This 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.

20. Reverting back to the facts of the case, it is noticed that the requisition notice dated 26.09.2022 was submitted by 9 [nine] nos. of Ward Members out of total 10 nos. of Ward Members of Anipur Gaon Panchayat and in the special

meeting held on 17.10.2022, 9 [nine] nos. of Ward Members attended and cast their votes by secret ballots against the petitioner. As the proceedings of the special meeting has been interfered with on the premise that there was non-adherence of the procedure required to be followed to bring the requisition notice to the knowledge of the petitioner in the manner recognized, the motion of no confidence, brought against the petitioner, cannot be held to have been lost. Thus, having regard to the entire conspectus of background fact situation obtaining in the case in hand, this Court is of the considered view that the motion of no confidence, brought against the petitioner, shall continue from the stage at which it has been interfered with.

21. Taking a cue from the direction made by a Division Bench of this Court in **Karun Kanti Malakar and others, vs. Nosir Ahmed Mazumdar and others**; reported in **2010 [3] GLT 415**, **Rita Rani Dushad vs. State of Assam**, reported in **2016 [4] GLT 905**; and **Mocklishur Rahman vs. the State of Assam**, reported in **2017 [4] GLT 933**; this Court is of the view that a similar direction is called for in the case in hand also because the motion of no confidence is not lost and still survives in view of the fact that it was taken up for consideration in an illegally convened special meeting on 17.10.2022. It is, therefore, directed that the petitioner as the President of Anipur Gaon Panchayat shall convene a special meeting within 15 days from today [07.02.2023] for considering the motion of no confidence brought against him by 9 [nine] Ward Members of Anipur Gaon Panchayat. The petitioner while convening the special meeting, shall serve requisite notices by mentioning the time, date and venue of such special meeting in compliance of the aspects prescribed in Section 17[3] of Assam Panchayat Act, 1994, upon all the stakeholders including the respondent nos. 8 – 16, to attend the special

meeting. In order to ensure that the proceedings of such special meeting are carried out properly, the Deputy Commissioner, District – Karimganj shall depute one Gazette Officer, not below the rank of Class-I Gazetted Officer, as an observer for the purpose of the special meeting.

22. As the proceedings of the special meeting has been interfered with, as a corollary, the petitioner is restored to the position of President of Anipur Gaon Panchayat. At the same time, it is observed that until the special meeting to discuss the no confidence motion against the petitioner is held and the no confidence motion is decided, the petitioner will continue to function as the President of Anipur Gaon Panchayat discharging its day to day functions but he shall not take any major decision in respect of financial matters.

23. The writ petition is allowed to the extent indicated above, with the aforementioned observations and directions. There shall, however, be no order as to cost.

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

JUDGE

Comparing Assistant