

GAHC010252832022



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

Writ Petition (Civil) no. 7986/2022

SALIM UDDIN LASKAR
S/O ANSAR UDDIN LASKAR
VILLAGE- KUCHILA GRANT, P.O-KUCHILA BAZAR
P.S AND DISTRICT-HAILAKANDI, ASSAM PIN- 788155

.....Petitioner

-Versus-

- 1) THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI
- 2) THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR, PANJABARI ROAD, JURIPAR, GUWAHATI-37
- 3) THE DEPUTY COMMISSIONER, HAILAKANDI
P.O AND DISTRICT- HAILAKANDI,
ASSAM, PIN- 788151
- 4) THE CHIEF EXECUTIVE OFFICER,
HAILAKANDI ZILLA HAILAKANDI
ASSAM, PIN- 788151
- 5) THE SECRETARY AND EXECUTIVE OFFICER
LALA ANCHALIK PANCHAYAT
MONACHERRA, P.O- MONACHERRA,
DISTRICT- HAILAKANDI, ASSAM, PIN-788164
- 6) THE PRESIDENT, LALA ANCHALIK PANCHAYAT
VILLAGE AND P.O-MONACHERRA,
DISTRICT- HAILAKANDI, ASSAM, PIN-788164
- 7) THE SECRETARY, BORBOND GAON PANCHAYAT
P.O-KUCHILA GRANT, P.O- KUCHILA BAZAR
DISTRICT- HAILAKANDI, ASSAM. PIN- 788155

8) JAHANARA BEGUM MAZARBHUIYA

GROUP MEMBER NO.1 OF BORBOND GAON PANCHAYAT,
W/O LATE SIRAJ UDDIN MAZARBHUIYA
R/O VILLAGE- BORBOND PART-I, P.O-BORBOND PART-I
DISTRICT- HAILAKANDI, ASSAM, PIN- 788164

9) ALIA BEGUM BARBHUIYA

GROUP MEMBER NO.2 OF BORBOND GAON PANCHAYAT,
W/O FARUK AHMED BARBHUIYA R/O VILLAGE- BORBOND PART-I,
P.O- BORBOND PART-I DISTRICT -HAILAKANDI,
ASSAM, PIN- 788164

10) ABUL HUSSAIN BARBHUIYA

GROUP MEMBER NO.3 OF BORBOND GAON PANCHAYAT,
S/O LATE LALU MIA BARBHUIYA R/O VILLAGE- BORBOND PART-I,
P.O-BORBOND PART-I DISTRICT- HAILAKANDI,
ASSAM, PIN- 788164

11) GAURANGA DAS PURKAYASTHA

GROUP MEMBER NO.4 OF BORBOND GAON PANCHAYAT,
S/O LATE GOHINDRA DAS PURKAYASTHA
R/O VILLAGE- BORBOND PART-I,
P.O-BORBOND PART-I DISTRICT- HAILAKANDI,
ASSAM, PIN- 788164

12) DEBOBRATA ROY

GROUP MEMBER NO.5 OF BORBOND GAON PANCHAYAT,
S/O LATE SUKH LAL ROY R/O VILLAGE-KUCHILA GRANT,
P.O-KUCHILA BAZAR, DISTRICT-HAILAKANDI,
ASSAM, PIN- 788155

13) SAFIA BEGUM BARBHUIYA

GROUP MEMBER NO.7 OF BORBOND GAON PANCHAYAT,
W/O SAMS UDDIN BARBHUIYA R/O VILLAGE- KUCHILA GRANT
P.O- KUCHILA BAZAR DISTRICT- HAILAKANDI,
ASSAM PIN- 788155

14) RUKIA BEGUM MAZUMDER

GROUP MEMBER NO.8 OF BORBOND GAON PANCHAYAT,
W/O JALAL UDDIN MAZUMDER R/O VILLAGE-CHANDRAPUR,
P.O- KUCHILA BAZAR, DISTRICT- HAILAKANDI,
ASSAM PIN-788155

15) SALIM UDDIN LASKAR

GROUP MEMBER NO.9 OF BORBOND GAON PANCHAYAT,
S/O SUNDER RAJA LASKAR R/O VILLAGE-CHANDRAPUR,
P.O- KUCHILA BAZAR DISTRICT-HAILAKANDI,
ASSAM PIN- 788155

16) KAMAL UDDIN LASKAR

GROUP MEMBER NO.10 OF BORBOND GAON PANCHAYAT,
S/O SABIR AHMED LASKAR R/O VILLAGE- DUDPUR,
P.O- BALIURRA DISTRICT-HAILAKANDI,
ASSAM PIN 788155

.....Respondents

Advocates :

Petitioner : Mr. S. Muktar, Advocate
Respondent nos. 1, 2, 4, 5, 6 & 7 : Mr. N.K. Dev Nath,
Standing Counsel, P&RD Department
Respondent no. 3 : Ms. M. Barman, Jr. Govt. Advocate
Respondent nos. 6 – 18 : Ms. S.B. Choudhury, Advocate

Date of Hearing and Judgment & Order : 09.03.2023

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

The writ petition under Article 226 of the Constitution of India has been instituted by the petitioner primarily assailing the proceedings, initiated originally by a requisition notice dated 05.09.2022 submitted by 9 [nine] nos. of Ward Members of Borbond Gaon Panchayat, District – Hailakandi, in its entirety, which proceedings had ultimately culminated in a special meeting held, on 29.11.2022, in the office of the Lala Anchalik Panchayat with the passing of a motion of no confidence against the petitioner. In the special meeting held on 29.11.2022, the alleged motion of no confidence initiated against the petitioner for the purpose of removing him from the office of the President, Borbond Gaon Panchayat was stated to have been passed with more than two-third majority since 9 [nine] nos. of Ward Members of Borbond Gaon Panchayat, out of the total 10 [ten] Ward Members, voted against the petitioner in the process of secret ballots. The petitioner has also prayed for a direction in the nature of mandamus to direct the respondent authorities to allow the petitioner to continue as the President, Borbond Gaon Panchayat.

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

2.1. In the General Panchayat Election held in the year 2018, the petitioner submitted his nomination for the post of President, Borbond Gaon Panchayat. In the General Panchayat

Election so held, the petitioner got elected directly to the post of President, Borbond 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 got themselves elected as Ward Members of Borbond Gaon Panchayat. Apart from the directly elected President, Borbond Gaon Panchayat is consisted of 10 [ten] nos. of Ward Members. After constitution of the Gaon Panchayat, the first meeting of the Gaon Panchayat was called in terms of the provision contained in Section 6[3] of the Assam Panchayat Act, 1994 *inter alia* for election of the Vice-President of the Gaon Panchayat. The post of the Vice-President, Borbond Gaon Panchayat was reserved for Scheduled Caste [Woman] category. No Vice-President could be elected in the first meeting as after declaration of results of the General Panchayat Election, no candidate from Scheduled Caste [Woman] category got elected. As a result, the post of Vice-President, Borbond Gaon Panchayat had remained unfilled.

2.2. A requisition notice under the seals and signatures of 9 [nine] nos. of Ward Members, Borbond Gaon Panchayat i.e. the respondent nos. 8 – 16 as requisitionists, came to be submitted on 05.09.2022 to the Secretary, Borbond Gaon Panchayat [the respondent no. 7]. It is not in dispute that the respondent no. 7 on receipt of the requisition notice dated 05.09.2022, placed the same before the petitioner through an office file on the same date [05.09.2022] seeking the petitioner's approval to convene a special meeting in terms of the provisions of the Assam Panchayat Act, 1994 to discuss the motion of no confidence brought against the petitioner. It is also not in dispute that the petitioner had accorded his approval to convene the special meeting on 19.09.2022 to discuss the motion of no confidence brought against him. Upon receipt of the approval, the respondent no. 7 issued notices to all the stakeholders including the Ward Members, Borbond Gaon Panchayat conveying that the special meeting to discuss the motion of no confidence would be held at 11-00 a.m. on 19.09.2022 at the office of the Borbond Gaon Panchayat.

2.3. With the contention that there was no elected Vice-President of Borbond Gaon Panchayat to preside over a special meeting to discuss a motion of no confidence brought against the

President of the Gaon Panchayat in conformity with Section 15 of the Assam Panchayat Act, 1994, the petitioner had, in the meantime, instituted a title suit, Title Suit no. 110/2022 along with an interlocutory application, Misc. Case no. 159/2022 before the Court of learned Munsiff no. 1 –cum- Judicial Magistrate, 1st Class, Hailakandi [‘the trial court’, for short] with a prayer to set aside of the special meeting convened on 19.09.2022 till election to the post of Vice-President of Borbond Gaon Panchayat in terms of Section 6[3] of the Assam Panchayat Act, 1994. The learned trial court though issued notices to the defendants/opposite parties in Title Suit no. 110/2022 and Misc. Case no. 159/2022, did not grant any stay in respect of the special meeting convened on 19.09.2022.

2.4. The respondent no. 7 having learnt that a title suit was instituted by the petitioner, issued a notice on 18.09.2022 informing all the stakeholders that the special meeting scheduled to be held at 11-00 a.m. on 19.09.2022, stood postponed. After issuance of the notice dated 18.09.2022, the respondent no. 7 referred the entire matter to the jurisdictional Anchalik Panchayat, that is, Lala Anchalik Panchayat on 21.09.2022. On receipt of the same, the Secretary & Executive Officer, Anchalik Panchayat issued notices dated 26.09.2022, with the approval of the President of the Anchalik Panchayat, to all the stakeholders to attend a special meeting convened at 01-00 p.m. on 27.09.2022 at the office of the Lala Anchalik Panchayat, to discuss the motion of no confidence brought against the petitioner.

2.5. The special meeting so convened, was accordingly held on 27.09.2022 at the office of the Lala Anchalik Panchayat. The said special meeting was presided over by the President, Lala Anchalik Panchayat [the respondent no. 6] and the same was also attended by the petitioner. In the said special meeting, the motion of no confidence was taken up for discussion and after discussion, a decision was taken to resort to voting by the process of secret ballots. On counting, 9 [nine] nos. of votes were found to have cast in favour of the motion. As the motion was passed by the majority of two-third of the total Ward Members of the Gaon Panchayat, a resolution was adopted to the effect that the petitioner had lost the confidence.

2.6. The resolution adopted in the special meeting held on 27.09.2022 gave rise to the first

round of litigation in the form of a writ petition, W.P.[C] no. 6799/2022, instituted by the present petitioner. The petitioner instituted the said writ petition on the ground that the notice dated 26.09.2022 issued by the Secretary, Lala Anchalik Panchayat convening the special meeting on 27.09.2022 was in conflict with the provision contained in Section 17[3] of the Assam Panchayat Act, 1994 as Section 17[3] had provided that to convene a special meeting to discuss a motion of no confidence, there shall be 3 [three] clear days notice between the date of the notice and the date of the special meeting. Having noticed infraction of the statutory prescription contained in Section 17[3] of the Assam Panchayat Act, 1994, the Court by order dated 04.11.2022, had set aside the notice dated 26.09.2022 issued by the Secretary, Lala Anchalik Panchayat as well as the no confidence motion held on 27.09.2022 and the resolution adopted in the special meeting held on 27.09.2022.

2.7. For the purpose of ready reference, the operative parts of the order dated 04.11.2022 whereby the writ petition, W.P.[C] no. 6799/2022 was disposed of, are extracted hereinbelow :-

“7. Accordingly, the notice dated 26.09.2022 of the Secretary, Lala Anchalik Panchayat as well as the No Confidence motion held on 27.09.2022 and the resolution of the No Confidence dated 27.09.2022 are set aside. We have noticed that it is not a case where the No Confidence motion against the petitioner had failed but a case where there was an aberration of the statutory laws by the Secretary cum Executive Officer of the Lala Anchalik Panchayat resulting in the No Confidence resolution being untenable in law.

8. As both the notice dated 26.09.2022 and the No Confidence motion dated 27.09.2022 as well as the No Confidence resolution dated 27.09.2022 are interfered on the ground of there being an aberration of the statutory laws by the Secretary cum Executive Officer of the Lala Anchalik Panchayat, we provide that the Secretary cum Executive Officer of the Lala Anchalik Panchayat shall now proceed in the matter in accordance with the law and bring the process to its logical end.”

2.8. Subsequent to the order dated 04.11.2022 [supra], the Secretary, Lala Anchalik Panchayat issued a notice dated 16.11.2022 to all the stakeholders including the petitioner, informing that a special meeting to discuss the motion of no confidence against the petitioner would be held at 01-00 p.m. on 29.11.2022 at the office of the Lala Anchalik Panchayat. By the said notice dated 16.11.2022, the stakeholders including the petitioner and the Ward Members of Borbond Gaon Panchayat, were requested to attend the special meeting. In terms of the notice dated 16.11.2022, the special meeting so convened, was accordingly held on 29.11.2022 at the office of the Lala Anchalik Panchayat. The said special meeting was presided over by the President, Lala Anchalik Panchayat [the respondent no. 6] wherein 9 [nine] nos. of Ward Members, Borbond Gaon Panchayat i.e. the respondent nos. 8 – 16 attended. A discussion on the requisition notice dated 05.09.2022 expressing want of confidence in the petitioner in the capacity of President, Borbond Gaon Panchayat was discussed and after discussion, it was unanimously decided to resort to voting by the process of secret ballots. In the voting process, altogether 9 [nine] nos. of Ward Members participated and one Ward Member did not cast vote as he was found absent in the special meeting. After votes were cast by secret ballots, the ballot box was opened by the respondent no. 5. On counting, 9 [nine] nos. of votes were found cast in favour of the motion. Accordingly, a resolution was adopted to the effect that the motion of no confidence brought against the petitioner to continue as the President, Borbond Gaon Panchayat was passed by the majority of two-third of total Ward Members of Borbond Gaon Panchayat and as such, the petitioner had vacated the office of the President, Borbond Gaon Panchayat forthwith.

2.9. Assailing the said resolution adopted in the special meeting held on 29.11.2022, the instant writ petition has been filed by the petitioner, giving rise to the present round of litigation, seeking the relief, mentioned above.

3. I have heard Mr. S. Muktar, learned counsel for the petitioner; Mr. N.K. Dev Nath, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1, 2, 4, 5, 6 & 7; Ms. M. Barman, learned Junior Government Advocate, Assam for the respondent no. 3; and Ms. S.B. Choudhury, learned counsel for the respondent nos. 8 –

16.

4. Mr. Muktar, learned counsel for the petitioner has submitted that by the order dated 04.11.2022 passed in the writ petition, W.P.[C] no. 6799/2022, the Court directed the Secretary, Lala Anchalik Panchayat [the respondent no. 5] to proceed with the matter of no confidence motion against the petitioner in accordance with law and to bring the process to its logical end. But, the respondent no. 5 without following the procedure prescribed in Section 15[1] of the Assam Panchayat Act, 1994, had issued the notice on 16.11.2022 for holding the special meeting on 29.11.2022. As the special meeting dated 29.11.2022 was convened after a gap of 13 [thirteen] days from the notice dated 16.11.2022, there is clear infraction of the time frame prescribed in Section 15[1] of the Assam Panchayat Act, 1994 and as such, the resolution adopted in the special meeting held on 29.11.2022 is not sustainable in law. It is his further submission that the respondent no. 5 had proceeded with the matter on his own by convening the special meeting on 29.11.2022 by the notice dated 16.11.2022 unauthorizedly as the notice dated 16.11.2022 did not reflect that there was any approval from the President, Lala Anchalik Panchayat. In case of such special meeting, it is the President of the jurisdictional Anchalik Panchayat, who can only convene a meeting. Mr. Muktar has further contended that the notice dated 16.11.2022 was never served upon the petitioner at any point of time.

5. Mr. Dev Nath, learned Standing Counsel, P&RD Department has contended that the notice dated 16.11.2022 was sought to be served but the petitioner had refused to accept the notice. When the notice was sent to the petitioner by an office peon of Lala Anchalik Panchayat through a peon book, the petitioner refused to accept the notice and as a result, the notice had to be hanged at a conspicuous part of his residence. In so far as the provision regarding time-line of 7 [seven] days for convening the special meeting as contained in Section 15[1] of the Assam Panchayat Act, 1994 is concerned, Mr. Dev Nath has submitted that the said provision is directory in nature and no prejudice has been caused to the petitioner because of the issuance of the notice dated 16.11.2022 convening the special meeting on 29.11.2022 with 12 [twelve] clear days gap. The notice dated 16.11.2022 was also sent to the petitioner by registered post with A/D but the registered article containing the notice so sent, was returned with an

endorsement 'Refused. Return to sender' dated 22.11.2022 of the postal authority.

6. Ms. Choudhury, learned counsel for the respondent nos. 8 – 16 has also adopted the submissions of the learned Standing Counsel, P&RD Department.

7. I have duly considered the submissions of the learned counsel for the parties and have also perused the materials on record brought by the parties through their pleadings. I have also considered the materials on records of the proceedings leading to the passing of the resolution in the special meeting held on 29.11.2022, as produced by the learned Standing Counsel, P&RD Department, besides the decisions cited at the Bar.

8. In so far as the contention regarding non-receipt of the notice dated 16.11.2022 by the petitioner is concerned, it is noticed that subsequent to the order dated 04.11.2022 [supra] passed in the writ petition, W.P.[C] no. 6799/2022, a decision was taken to send the information of convening the special meeting on 29.11.2022 by registered post with A/D as well as through office peon. The records have revealed that the notice dated 16.11.2022 issued by the respondent no. 5 was sent to the petitioner by registered post with A/D on 16.11.2022 with clear indication that the sender was the respondent no. 5. The registered envelope containing the notice dated 16.11.2022 had returned undelivered on 22.11.2022 with an endorsement, 'Refused. Return to sender'. Thus, it is clearly discernible that the acceptance of the notice dated 16.11.2022 was refused by the petitioner and the registered envelope containing the notice dated 16.11.2022 had returned back to the sender. On refusal, the notice dated 16.11.2022 was also sent to the petitioner through office peon of Lala Anchalik Panchayat by a peon book. When the petitioner refused to accept the notice dated 16.11.2022 sent through the office peon, the same had to be hanged in the wall of the petitioner's residence by the office peon of the Lala Anchalik Panchayat who was accompanied by the office peon of Borbond Gaon Panchayat, on 18.11.2022. The extracts of the peon book reflect the same. The counter affidavit of the respondent nos. 8 – 16 has also asserted about refusal of the notice by the petitioner and hanging of the notice at the residence of the petitioner on 18.11.2022. The said assertion is sought to be denied by the petitioner by taking a plea that such hanging of notice

was with regard to the previous round of litigation. Having noticed the contents of the registered envelope containing the notice dated 16.11.2022, which was sent on 16.11.2022 and returned back on 22.11.2022 after refusal, the plea taken by the petitioner as regards non-service of notice is found unconvincing in the absence of any cogent material in rebuttal in that contention. Thus, this Court holds that the notice dated 16.11.2022 was duly served upon the petitioner and the petitioner had clear knowledge that the special meeting to discuss the motion of no confidence brought against him was convened on 29.11.2022.

9. As the prime contention raised herein that there was infraction of the time period prescribed by Section 15[1] of the Assam Panchayat Act, 1994, it is apposite to quote, at first, the provision of Section 15[1] of the Assam Panchayat Act, 1994 :-

Section 15[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 [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 :

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 meeting :

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

10. As the order dated 04.11.2022 passed in the writ petition, W.P.[C] no. 6799/2022 had attained finality with no sides preferring any appeal against it, the only issue that is left for consideration is as to whether the Secretary, Lala Anchalik Panchayat had proceeded with the matter of holding the special meeting in accordance with law to bring the process to its logical end or not. As the respondent no. 5 was required to proceed from the stage of interference after setting aside of the notice dated 26.09.2022 and the resolution adopted in the special meeting dated 27.09.2022, the respondent no. 5 was required to proceed on the basis of the requisition notice dated 05.09.2022 and from the stage after reference of the requisition notice by the Secretary, Borbond Gaon Panchayat to the jurisdictional Anchalik Panchayat, that is, Lala Anchalik Panchayat.

11. Section 15[1] has *inter alia* provided that after reference of the matter by the Secretary of the Gaon Panchayat to the jurisdictional Anchalik Panchayat, the President of the jurisdictional Anchalik Panchayat is required to convene the meeting within 7 [seven] days from the date of receipt of the information from the Secretary of the Gaon Panchayat and shall preside over such special meeting.

12. The records go to show that after the order dated 04.11.2022 [supra] was passed, the matter was placed by the respondent no. 5 through the office file before the respondent no. 6.

By bringing the order dated 04.11.2022 to the notice of the respondent no. 6, the respondent no. 5 requested the respondent no. 6 to fix a date of the special meeting to be convened for the purpose of discussing the motion of no confidence. The respondent no. 6 had thereafter, by endorsement in the office file requested the respondent no. 5 to convene the special meeting on 29.11.2022. Thus, the action of the respondent no. 5 in signing and sending the notices notifying the date of the special meeting, pursuant to the decision taken by the President to convene the special meeting, is to be considered only a ministerial act. It has been held by a Division Bench of this Court in *Swapna Sen vs. State of Assam*, reported in 2006 [2] GLT 14 that the subsequent action on the part of the Secretary of the Anchalik Panchayat after the President of the Anchalik Panchayat directing him to convene the special meeting on a particular date, in signing and sending the notices intimating all the stakeholders including the President and the Ward Members of the concerned Gaon Panchayat about the date fixed for holding of the special meeting of the Gaon Panchayat is only a ministerial action taken on the basis of the decision of the President of the Anchalik Panchayat. In such situation, it cannot be said that the President of the Anchalik Panchayat did not convene the meeting of the Gaon Panchayat as the Secretary of the Anchalik Panchayat had signed and sent the notices. Upon perusal of the records of the case in hand and following the principle in *Swapna Sen* [supra], this Court finds that the contention of the petitioner regarding the issuance of the notice dated 16.11.2022 as an independent act on the part of the Secretary, Lala Anchalik Panchayat is not merited and is to be rejected.

13. The provision of Section 15[1] of the Assam Panchayat Act, 1994 has required the President to convene the special meeting within a period of 7 [seven] days from the date of receipt of the information, and in case such special meeting within 7 [seven] days is not convened by the Anchalik Panchayat, the matter is to be referred to the Deputy Commissioner/Sub-Divisional Officer [Civil] within 3 [three] days after the expiry of the statutory period of 7 [seven] days time and thereafter, the Anchalik Panchayat would not have any jurisdiction in the matter.

14. The question which had came up for consideration before a Division Bench of this Court

in the case of Mumtaz Rana Laskar and others vs. State of Assam and others, reported in 2006 [1] GLT 46, was whether the procedure as to the time frame prescribed under Section 15[1] of the Assam Panchayat Act, 1994 in the matter of no confidence motion against the President and the Vice-President is a mandatory one or directory in its nature. The question was answered in Mumtaz Rana Laskar [supra] in the following manner :-

“23. As with all controversial subjects interpretation of statutes attract argument both ways. The arguments that the provision may be treated as an imperative one are principled and practical. It will be convenient to note first the major practical difficulties attended upon holding the particular provision with which we are concerned as imperative one. What happens in a given case if the Secretary of the Goan Panchayat on his own accord for whatever reason or at the behest of the vested interest does not act in the matter as is expected even though the requisition given expressing no confidence may be strictly in accordance with the requirement in law ? Will the whole democratic process come to an end ? After all democratic process not only includes choosing one's own representative but also dislodging such elected representatives from their office in accordance with law. The whole democratic process cannot be put at the disposal of an insignificant authority who is required to convene the meeting in accordance with law. The inaction on the part of such authority should not be allowed to result in frustration and subversion of the very scheme of the Act. The practical difficulties are also required to be kept at the back of our minds for interpreting the provisions.

24. On an analysis of the binding precedents referred to above leads us to irresistible conclusion that a mere procedural irregularity in the matter of making the reference by the Secretary of the Goan Panchayat either to President of the Anchalik Panchayat or to the Deputy Commissioner, as the case may be, shall have no bearing whatsoever upon the resolution passed in the specially convened meeting expressing want of confidence in the President or the Vice President of

the Gaon Panchayat, as the case may be. That itself would not result in causing any prejudice to the person against whom the motion is carried out.

15. The decision in Mumtaz Rana Laskar [supra] has been followed by another Division Bench of this Court in the case of Habibur Rahman vs. State of Assam and others, reported in 2006 [Supp] GLT 218, in the following manner :-

“10. A Division Bench of this court, presided over by the Hon'ble Chief Justice, vide judgment and order dated 13.12.05 passed in *Writ Appeal No. 280/05 [2006 (1) GLT 46 : Mumtaz Rana Laskar vs. State of Assam]*, upon consideration of the provision of Section 15 of the 1994 Act has held that the provision contained in sub-section [1] of Section 15 of the said Act is not mandatory but directory and a mere procedural irregularity in the matter of making the reference by the Secretary of the Gaon Panchayat, either to the President of the Anchalik Panchayat or to the Deputy Commissioner, as the case may be, shall have no bearing whatsoever upon the resolution passed in the specially convened meeting expressing want of confidence in the President or the Vice President of the Panchayat, as the case may be, and that itself would not result in causing any prejudice to the person against whom the motion is carried out. It is not the case of the respondent no. 6/writ petitioner that the said decision requires re-consideration and on the other hand, the learned counsel for the said respondent has submitted that the issue relating to non adherence of the time schedule stipulated in sub-section [1] of Section 15 of the 1994 Act has already been decided in the said Writ Appeal and, therefore, the decision of the learned Single judge in so far as the violation of the provisions contained in sub-section [1] of Section 15 the Act cannot be held to be legal and valid. Hence, the finding recorded by the learned Single Judge and the decision based on such finding that the provision of Section 15 [1] of the Act is mandatory and non adherence of the time schedule mentioned therein shall make the no confidence motion adopted against the President illegal, is set aside, in view of the aforesaid

judgment of the Division Bench of this Court in the aforesaid Writ appeal.”

16. One of the questions that was considered by another Division Bench of this Court in *Mosira Bibi vs. State of Assam and others*, reported in 2006 [4] GLT 460 was whether the time schedule given in Section 15[1], for the purpose of convening special meeting for consideration of the motion expressing want of confidence against the President and/or Vice-President of a Gaon Panchayat, is mandatory or directory. After discussing the decisions in *Mumtaz Rana Laskar [supra]* and *Swapna Sen [supra]*, the Division Bench held that from the provision contained in Section 15[1] of the Assam Panchayat Act, 1994, it transpires that a duty is cast on the authorities mentioned therein to convene a special meeting of the Gaon Panchayat to discuss the notice of no confidence given by the Members expressing want of confidence on the President or the Vice-President of such Gaon Panchayat, as the case may be. Such provision is no doubt mandatory, but the subsequent provision relating to the time schedule to be adhered by different authorities in convening such meeting, is procedural in nature, as it has laid down the procedure to be adopted for convening such meeting. Such time schedule given in the said provision cannot be treated as mandatory, as it will defeat the very purpose and object of enacting such provision, because in a given case, the concerned authority may, with a view to defeat the object of such enactment, delay initiation of the proceeding and may not adhere to the time schedule thereby frustrating the very purpose for which such enactment is made. It has been gone on to observe as follows :-

“14. From the aforesaid discussions, it is therefore, evident that the provision relating to the time schedule contained in Section 15[1] is directory in nature, the same being procedural and having not provided for any consequence for its non adherence. By the provision contained in Section 15[1] of the Act although a public duty is imposed on the Secretary as well as on the Anchalik Panchayat to inform the authorities and also to convene the meeting, within a fixed period of time, it has to be treated as directory in nature, as non adherence of such time schedule would results in justice to the persons who brought such no confidence motion, who have no control over those authorities exercising such duty.

Even in case of directory provision, substantial compliance would be enough and unless it is established that violation of directory provision has resulted in loss and/or prejudice to the parties, no interference is warranted. The appellant/writ petitioner could not show any loss or prejudice caused to her even if it is taken that the directory provision of holding the meeting within seven days from the date on which the Secretary of the Gaon Panchayat gave the notice to the Anchalik Panchayat, is violated. On the other hand it is evident from the proceedings of 28.09.2005 that the appellant/writ petitioner in spite of receipt of the notice did not participate in the said special meeting, wherein no confidence motion was passed as 8 [eight] out of the 10 [ten] members voted in favour of the motion expressing want of confidence on the appellant. Therefore, the contention of the appellant cannot be accepted and hence rejected.

15. We shall now proceed to examine as to whether the requirement of convening the special meeting for consideration of the no confidence motion within seven days from the date when the Secretary of the Gaon Panchayat referred the matter to the President of the Anchalik Panchayat, means holding such meeting within the said period of seven days.

16. Section 15[1] of the Act requires the President of Anchalik Panchayat to 'convene' the meeting within seven days from the date of receipt of the information from the Secretary of the Gaon Panchayat. This Court had the occasion to deal with the said question in *Swapna Sen vs. State of Assam and Ors.* [2006 (2) GLT 14] [against which though petition for special leave to appeal filed, the same was dismissed on 24.03.2006] wherein it has been held that the requirement of convening the meeting by Anchalik Panchayat within seven days under Section 15[1] of the Act, does not mean actual holding of such meeting, as 'convene' means to cause to assemble to discuss the no confidence motion i.e. directing to hold such meeting.

Viewed from this angle also, even in case, the provision relating to the adherence

of time schedule given in Section 15[1] of the Act, is taken to be mandatory in nature, in the instant case the appellant is not entitled to any relief, as, it is not her case that the proceeding of the special meeting dated 28.09.2005 is not valid, as the same was not convened by the Anchalik Panchayat, within seven days of referring the matter by the Secretary of the Gaon Panchayat to the President of the Anchalik Panchayat.

17. A Full Bench of this Court in Forhana Begum Laskar vs. State of Assam and others, reported in 2009 [6] GLR 429, has considered the interpretation given to in Section 15[1] of the Assam Panchayat Act, 1994 in Mumtaz Rana Laskar [supra] and has observed in the following manner :-

“24. In *Mumtaz Rana Laskar* [supra], a Division Bench of this court was seized with the task of interpretation of the prescriptions of Section 15 vis-à-vis the procedure and time frame for conducting the process pertaining to a no-confidence motion brought against the President or Vice-President of Gaon Panchayat under the Act. This court on an overall survey of several decisions of the Apex Court and the well accepted norms of interpretation of statutes propounded it to be impermissible to lay down any general rule for determining as to whether a provision is imperative or directory. It was observed that to ascertain the real intention of the Legislature, the court would have to consider, *inter alia*, the nature and design of the statute and the consequences, which would follow from construing it one way or the other, the impact of other provisions on the necessity of complying with the provisions, in question, the circumstances that the statute provides for a contingency of the non-compliance of such provisions, penalty if any, provided by the statute for such non-compliance and whether the object of the legislation would thereby be defeated or furthered. This court noticed that in the facts and circumstances of that case, no prejudice had either been pleaded or explained consequent upon the delay on the part of the secretary of the Gaon Panchayat in making

reference to the Anchalik Panchayat. It was held that a mere procedural irregularity in the matter of making the reference by the secretary of the Gaon Panchayat either to the President of the Anchalik Panchayat or to the Deputy Commissioner, as the case may be, would have no bearing whatsoever upon the resolution passed in the specially convened meeting expressing want of confidence in the President or the Vice-President of the Gaon Panchayat as the case may be and that the same by itself would not result in causing any prejudice to the person against whom the motion is carried out. It was observed that the democratic process envisaged in Section 15 of the Act cannot be put at the disposal of an insignificant authority who is required to convene the meeting in accordance with law and that any inaction on its part ought not to be allowed to result in frustration and subversion of the very scheme of the Act.”

18. Thus, from the above authoritative pronouncements of this Court in Swapna Sen [supra], Mumtaz Rana Laskar [supra], Habibur Rahman [supra], Mosira Bibi [supra] and Forhana Begum Laskar [supra], it is clear that 7 [seven] days time period prescribed in Section 15[1] of the Assam Panchayat Act, 1994 for the President of the Jurisdictional Anchalik Panchayat to convene the special meeting after the matter is referred by the Secretary of the Gaon Panchayat is not mandatory but is directory in nature. The time gap of 12 [twelve] days, as projected by the petitioner, between the date of the notice [16.11.2022] and the date of holding of the special meeting [29.11.2022] has not caused any kind of prejudice to the petitioner and non-adherence to the time-frame prescribed in Section 15[1] cannot be held to have vitiated the proceedings of the special meeting held on 29.11.2022 and the resolution adopted therein. As already noted above, the special meeting held on 29.11.2022 was presided over by the President, Lala Anchalik Panchayat. In the special meeting, the fate of the motion of no confidence was decided by a voting process of secret ballots. On being counted, 9 [nine] nos. of Ward Members were found to have cast their votes in favour of the motion, meaning thereby, the motion of no confidence brought against the petitioner as the President of Borbond Gaon Panchayat was passed by the majority of two-third of the total number of Ward Members of Borbond Gaon Panchayat.

19. In the above fact situation obtaining in the case and for the reasons assigned, this Court is of the unhesitant view that the writ petition is bereft of any merit and the same is liable to be dismissed. It is accordingly dismissed. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant