

GAHC010087412022



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

Case No. : WP(C)/3025/2022

AYAT BANU BEGUM
W/O- LT. ANOWAR HUSSAIN, R/O- PAIKANDARA PART-II, P.O. BAGHMARI,
P.S. BILASIPARAM, DIST.- DHUBRI, ASSAM, PIN- 783345.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, PANCHAYAT
AND RURAL DEVELOPMENT DEPTT., DISPUR, GHY.- 781006.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
GHY.- 781037.

3:THE CHIEF EXECUTIVE OFFICER
DHUBRI ZILLA PARISHAD
ASSAM
PIN- 783335.

4:THE SECRETARY
BAGHMARI GAON PANCHAYAT
P.O. BAGHMARI
P.S. BILASIPARA
DHUBRI
ASSAM
PIN- 783345.

5:THE PRESIDENT
BILASIPARA ANCHALIK PANCHAYAT BILASIPARA
DHUBRI
ASSAM
PIN- 783345.

6:MONJU ARA BIBI
W/O ZAKIR HUSSAIN
R/O KACHU GAON
PART I
P.O- BAGHMARI
P.S- BILASIPARA
DHUBRI
ASSAM
PIN- 783345.

7:MOZMUL HOQUE
MEMBER
S/O KAPIL UDDIN
R/O BAGHMARI PART I
P.O- BAGHMARI
P.S- BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783345.

8:ANIL KUMR NATH
MEMBER
S/O BHABENDRA CHANDRA NATH
R/O BAGHMARI
P.O- BAGHMARI
P.S -BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783345.

9:SOFIQUL HOQUE
MEMBER
S/O ABDUL HAMID
R/O BAGHMARI PART III
P.O- BAGHMARI
P.S- BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783345.

10:ASHOK KUMAR NATH
MEMBER
S/O HARMOHAN NATH
R/O HANDARTARI
P.O- LAKHIGANJ
DIST. DHUBRI
ASSAM
PIN-783345.

11:SUMITRA NATH
MEMBER
W/O UMESH NATH
R/O PAIKANDARA PART I
P.O- BAGHMARI
P.S- BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783345.

12:SABITA DEVI
MEMBER
W/O-NIRANJAN NATH
P.O. AND P.S.- BILASIPARA
DIST-DHUBRI
ASSAM. PIN-783348.

13:TAJINA BIBI
MEMBER
W/O MOINUL HOQUE
R/O KACHUAGAON
PART II
P.O- BAGHMARI
P.S- BILASIPARA
DHUBRI
ASSAM
PIN- 783345.

14:ELIMA KHATUN
MEMBER
S/O-MOSKATIN SHEIKH
R/O BAGHMARI PART- II
P.O- BAGHMARI
P.S -BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783345.

15:DIPTI DEVI
MEMBER
W/O- RUSENDRA CHANDRA NATH
R/O- PAIKANDARA PART II
P.O - BAGHMARI
P.S - BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783345

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : SC, P AND R.D.

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT

Date : 05-01-2024

The instant writ petition under Article 226 of the Constitution of India has been instituted by the petitioner assailing the proceedings of a Special Meeting held on 28.04.2022 in the office of Bilasipara Anchalik Panchayat Raniganj to discuss a motion of no confidence brought against the petitioner as the President of 113 no. Baghmari Gaon Panchayat under the Bilasipara Anchalik Panchayat and the Dhubri Zilla Parishad.

2. The genesis of the Special Meeting, convened on 28.04.2022, is traceable and relatable to a Requisition Notice dated 27.01.2022 submitted by 10 nos. of Ward Members of 113 no. Baghmari Gaon Panchayat expressing want of confidence against the petitioner as the President of the said Gaon Panchayat.

3. In the General Panchayat Election held in the year 2018, the petitioner contested for the post of President of 113 no. Baghmari Gaon Panchayat. In the said Election, the petitioner got elected to the post of President of 113 no. Baghmari Gaon Panchayat [hereinafter also referred to as 'the Gaon Panchayat', at places, for convenience] as per the provisions of Section 6[1][b] of the Assam Panchayat Act, 1994, as amended. In the said General Panchayat Election, the respondent nos. 6 – 15 also got themselves elected as Ward Members of the Gaon Panchayat.

4. As the Requisition Notice dated 27.01.2022 resulted into a litigation in the form of a writ petition, W.P.[C] no. 1512/2022 earlier, it appears necessary to exposit the necessary facts brought by the same parties herein in the writ petition, W.P.[C] no. 1512/2022 to appreciate the issue involved in the present writ petition. The writ petition, W.P.[C] no.

1512/2022 was allowed by an Order dated 21.04.2022 with a number of directions. As the necessary facts mentioned in the Order dated 21.04.2022 are not in dispute, the same can be stated as follows.

4.1. On submission of the Requisition Notice dated 27.01.2022 by the 10 nos. of Ward Members of 113 no. Baghmari Gaon Panchayat, who were impleaded as respondent nos. 7 – 16 in W.P.[C] no. 1512/2022 and are also impleaded as the respondent nos. 6 – 15 in the present writ petition, before the Secretary of the Gaon Panchayat, the Secretary of the Gaon Panchayat on the ground that the petitioner herein as the President of the Gaon Panchayat did not give her approval to convene the Special Meeting, forwarded the matter to the President of the Bilasipara Anachalik Panchayat on 10.02.2022 for the purpose of convening the Special Meeting as per the provisions of Section 15[1] of the Assam Panchayat Act, 1994 by enclosing a copy of the Requisition Notice dated 27.01.2022 submitted by 10 Ward Members of the Gaon Panchayat. On receipt of the Letter dated 10.02.2022 from the Secretary of the Gaon Panchayat along with Requisition Notice dated 27.01.2022, the President of the Bilasipara Anachalik Panchayat decided to convene the Special Meeting on 22.02.2022 to decide on the motion of no confidence brought against the petitioner as the President of 113 no. Baghmari Gaon Panchayat. When the Special Meeting was held on 22.02.2022 subsequent to a Notice dated 15.02.2022, the motion was found to have been passed against the petitioner as the President of 113 no. Baghmari Gaon Panchayat as out of 10 nos. of Ward Members of the Gaon Panchayat, 9 nos. of Ward Members who were present, voted in favour of the motion. As the motion expressing lack of confidence on the petitioner as the President of 113 no. Baghmari Gaon Panchayat was found to have been passed by a majority of two-third of the total number of Ward Members of the Gaon Panchayat, a resolution was passed that the petitioner stood removed from the office of the President of the Gaon Panchayat with immediate effect.

5. The present petitioner was the petitioner in the writ petition, W.P.[C] no. 1512/2022. After appearance of all the parties including the respondent nos. 7 – 16 therein, who are the respondent nos. 6 – 15 herein, the resolution relating the no confidence motion adopted by the respondent nos. 7 – 16 against the President of the Gaon Panchayat, that is, the present

petitioner on 22.02.2022 was set aside and quashed, by the Order dated 21.04.2022, on the ground that the same was in violation of the provisions of Section 15[1] of the Assam Panchayat Act, 1994. While setting aside and quashing the resolution taken in the proceedings of the Special Meeting held on 22.02.2022 by the Order dated 21.04.2022, the Court had observed that one cannot be oblivious of the fact that the resolution expressing want of confidence against the petitioner was passed by the requisite majority, which indicated loss of confidence by the President. Thus, in order to take forward the matter of no confidence, the Court while setting aside and quashing the resolution dated 22.02.2022, had issued a set of directions in the following manner :-

36) Accordingly, the President of the Bilasipara Anchalik Panchayat, Bilasipara, respondent No. 6 is now directed to perform his duty within seven days from today as provided under Section 15(1) of the Assam Panchayat Act, 1994 by convening the said special meeting and/or for taking action for the purpose of holding the special meeting of the Gaon Panchayat to discuss the no-confidence motion against the petitioner pursuant to the information submitted by the Secretary of the said Gaon Panchayat on 10.02.2022 and to preside over the said special meeting.

37) After convening the meeting i.e., fixing the date, time and venue of the Special meeting by the President of Bilasipara Anchalik Panchayat as directed above, the President, Vice President and other members of 113 No. Baghmari Gaon Panchayat shall be duly informed about the same by the President of said Bilasipara Anchalik Panchayat or through the Secretary of the said Anchalik Panchayat or through the Secretary of 113 No. Baghmari Gaon Panchayat.

38) As this order has been passed in presence of the learned counsels for the petitioner and respondent Nos. 7 to 16, elected member of the 113 No. Baghmari Gaon Panchayat, they shall submit a certified copy of this order before the President of Bilasipara Anchalik Panchayat forthwith.

39) It is also clarified that in case the President of the Bilasipara Anchalik Panchayat, Bilasipara, respondent No. 6 does not take action or fails to take action as directed above within the said seven days time, the Secretary of the said 113 No. Baghmari Gaon Panchayat, Baghmari, within three days after the expiry

of the stipulated seven days time, shall refer the matter to the Deputy Commissioner, Dhubri or the Sub-Divisional Officer (Civil), Bilasipara, as the case may be and on receipt of the said information, the Deputy Commissioner, Dhubri or the Sub-Divisional Officer (Civil), Bilasipara as the case may be, shall convene the Special Meeting within seven days from the date of receipt of the said information with intimation to the Zilla Parishad, Dhubri and Bilasipara Anchalik Panchayat and shall preside over the said meeting.

40) In case of any inability on the part of the Deputy Commissioner, Dhubri or the Sub-Divisional Officer (Civil), Bilasipara as the case may be, to preside over the meeting, the authority concern may depute a Gazetted Officer not below the rank of Class-I Gazetted Officer to preside over the said meeting.

41) The interim order passed earlier on 09.03.2022 in this proceeding suspending the resolution dated 22.02.2022 passed by the respondent Nos. 7 to 16 in the said Special Meeting of 'No Confidence Motion' against the Petitioner, the President of 113 No. Baghmari Gaon Panchayat under Bilasipara Anchalik Panchayat of Dhubri Zila Parishad stands merged with this order.

6. After disposal of the writ petition, W.P.[C] no. 1512/2022, the President of the Bilasipara Gaon Panchayat issued a notice on 26.04.2022 informing the stakeholders that the Special Meeting following the directions passed in the Order dated 21.04.2022, would be convened at 10-00 a.m. on 28.04.2022 at the office of the Bilasipara Anchalik Panchayat, Raniganj for the purpose of discussing the motion of confidence brought against the President of 113 no. Baghmari Gaon Panchayat i.e. the petitioner.

7. Subsequent to the Notice dated 26.04.2022, the Special Meeting was accordingly held on 28.04.2022, wherein, all the 10 Ward Members of 113 no. Baghmari Gaon Panchayat, were present and cast their votes through secret ballot papers in favour of the motion, that is, against the petitioner herein, expressing no confidence. The said resolution passed against the petitioner in the Special Meeting dated 28.04.2022 is assailed in the present writ petition.

8. I have heard Mr. M. Sarma, learned counsel for the petitioner; Mr. S. Dutta, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent

nos. 1 – 5; and Mr. A.K. Hussain, learned counsel for the respondent nos. 6 – 15.

9. The issues which have emerged for consideration in the instant writ petition is whether the Notice dated 26.04.2022 was in compliance of the provisions of Section 15 and Section 17 of the Assam Panchayat Act, 1994 and whether the President of the Bilasipara Anchalik Panchayat had to follow the same in view of the above directions made in the Order dated 21.04.2022 [supra].

10. At this stage, it is appropriate to refer to the provisions of Section 15 and Section 17 of the Assam Panchayat Act, 1994.

10.1. Section 15 of the Assam Panchayat Act, 1994 has provided for the matter of no confidence against the President and Vice-President of a Gaon Panchayat. It is provided *inter alia* in sub-section [1] of Section 15 that every President shall be deemed to have vacated his office forthwith when a resolution expressing want of confidence in him is passed by a majority of two-third of the total number of Members of the Gaon Panchayat. As per Section 15[1] of the Assam Panchayat Act, 1994, a special meeting for that purpose, is to be convened by the Secretary of the Gaon Panchayat with approval of the President of the Gaon Panchayat. As per Section 15[2], the requisition notice for such a meeting shall have to be signed by not less than one third of the total number of Members of the Gaon Panchayat and shall be delivered to the President of the concerned Gaon Panchayat with intimation to the Deputy Commissioner of the District. In case such a meeting is not convened by the President within a period of 15 [fifteen] days from the date of receipt of the notice, the Secretary of the Gaon Panchayat shall within 3 [three] days is to refer the matter to the President of the concerned Anchalik Panchayat who shall convene the special meeting within 7 [seven] days from the date of receipt of the information from the Secretary of the Gaon Panchayat and preside over such special meeting. In case the President of the Anchalik Panchayat does not take action as above within the specified seven days time the concerned Gaon Panchayat Secretary shall inform the matter to the Deputy Commissioner/Sub-Divisional Officer [Civil], as the case may be, within 3 [three] days after the expiry of the stipulated 7 [seven] days time and the concerned Deputy Commissioner/Sub-Divisional Officer [Civil] shall convene the

meeting within seven days from the date of receipt of the information with intimation to the Zilla Parishad and the Anchalik Panchayat and preside over the meeting so convened. The first proviso to Section 15[1] has provided that the concerned Deputy Commissioner/Sub-Divisional Officer [Civil], as the case may be, in case of his inability to preside over the meeting, may depute one Gazetted Officer under him not below the rank of Class-I Gazetted Officer to preside over such specially convened meeting. The second proviso to sub-section [1] of Section 15 has laid down to the effect that when a no confidence motion is lost, no such motion shall be allowed in the next six months.

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

10.3. Section 17 of the Assam Panchayat Act, 1994 has provided for meetings of the Gaon Panchayat providing in sub-section [1] about holding of a meeting at least once in two months for transaction of its business. As per Section 17[2], the President of the Gaon Panchyat, whenever he thinks fit, and shall upon the written request of not less than one-third of the total number of Members and on a date within 15 [fifteen] days from the receipt of such request, call a special meeting. Section 17[3] has inter alia provided that three clear days' notice is necessary for a special meeting and such notice has to specify the place, date and time of special meeting and the business to be transacted therein. The Secretary of the Gaon Panchayat has been entrusted to give such notice apart from fixing the notice on the notice board of the Gaon Panchayat office. According to Section 17[4], the officers to whom notice is given under sub-section [3] and other Government officers having jurisdiction over the Gaon Panchayat area or any part thereof shall be entitled to attend every meeting of the Gaon Panchayat and take part in the proceedings but shall not be entitled to vote.

11. From a reading of the provisions contained in Section 17 in its entirety, it is evident

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

12. It is apposite to refer to the following observations made by this court in the Judgment and Order dated 25.05.2023, rendered in a writ petition, W.P.[C] no. 6551/2022 [Smti Bulima Begum vs. the State of Assam and 17 others].

21. The provisions of Section 15 has provided that ordinarily, a motion of no confidence brought against the President of a Gaon Panchayat is to be discussed in a special meeting held in the office of the Gaon Panchayat under the chairmanship of the Vice-President of the same Gaon Panchayat. It is only in the event the special meeting envisaged to be convened and held, at first point of time, in the office of the Gaon Panchayat could not be held due to situation mentioned therein, the proceedings in connection with the no confidence motion stand transferred to the jurisdiction of the Anchalik Panchayat. Once the matter of no confidence motion stands transferred to the jurisdiction of the Anchalik Panchayat, the President of the Anchalik Panchayat has been entrusted with the responsibility to preside over the special meeting to discuss the motion of no confidence. If the special meeting would have been held in the office of the Gaon Panchayat, the President of the jurisdictional Anchalik Panchayat does not have any role to play with regard to the motion of no confidence at the special meeting envisaged to be convened and held at the office of the Gaon Panchayat as the same would have been presided over by the Vice-President of the Gaon Panchayat. Once the matter of no confidence motion stands referred to the jurisdictional Anchalik Panchayat, the President of the Anchalik Panchayat steps into the position of the person with the responsibility of presiding over such a special meeting. On reference of the matter of no confidence to the jurisdictional Anchalik Panchayat in such manner, the matter remains an affair limited to the concerned Gaon Panchayat and it does not

become an affair of the jurisdictional Anchalik Panchayat.

13. The Court in the Order dated 21.04.2022 had clearly observed that the respondent no. 5 herein as the President of the Bilasipara Anchalik Panchayat was under obligation to perform his duty as per the provisions of Section 15 of the Assam Panchayat Act, 1994. The directions included a direction to convene the Special Meeting within a period of 7 [seven] days from 21.04.2022 in compliance of the provisions of Section 15 of the Assam Panchayat Act, 1994 for the purpose of holding the Special Meeting to discuss the no confidence motion against the President of the Gaon Panchayat in terms of the Requisition Notice dated 10.02.2022. The directions also included a direction to duly inform the stakeholders about the date, time and venue of the Special Meeting. The specific challenge to the Notice dated 26.04.2022 is with regard to non-compliance of the provisions contained in sub-section [3] of Section 17 of the Assam Panchayat Act, 1994.

14. Sub-section [3] of Section 17 of the Assam Panchayat Act, 1994 contains the statutory prescription of 3 [three] clear days notice in case a Special Meeting is convened. Sub-section [1] of Section 15 has clearly prescribed that a motion of no confidence against the President of a Gaon Panchayat has to be discussed in a Special Meeting. The Notice issued herein, that is, the Notice dated 26.04.2022 issued by the President Bilasipara Anchalik Panchayat [the respondent no. 5] had mentioned that the Special Meeting would be convened on 28.04.2022. Section 9 of the General Clauses Act, 1897 has prescribed the procedure for counting a time period and a Division Bench of this Court in **Musht Piarun Nessa Tapadar vs. Nizam Uddin Mazumdar**, reported in [2013] 4 GLR 762, has, with reference to Section 9 of the General Clauses Act, 1897, held that the first in a series of days has to be excluded for the purpose of counting a time period prescribed in any statute like the Assam Panchayat Act, 1994. If the period of 3 [three] days is counted in that manner, the notice dated 26.04.2022 did not provide for 3 [three] clear days notice. A Division Bench in **Writ Appeal no. 189/2021 [Hafizur Rahman vs. the State of Assam and 15 others]**, decided on 17.12.2021, has observed that Section 17[3] of the Assam Panchayat Act, 1994 has clearly stipulated that in case of any special meeting [which is a meeting for no confidence motion], 3 [three] days' clear notice has to be given. When such 3 [three] clear days' notice for a special meeting is not found to

be given it has to be held that such notice is in violation of Section 17[3] of the Assam Panchayat Act, 1994. This Court fully subscribes to such view being a decision of a Division Bench of this Court which is binding and, as such, holds that the Notice dated 26.04.2022 stands in violation of the statutory prescription contained in sub-section [3] of Section 17 of the Assam Panchayat Act, 1994.

15. A submission has been advanced on behalf of the respondent nos. 6 – 15 to the effect that when the petitioner was sought to be served with the Notice dated 26.04.2022, the petitioner refused to accept the Notice. Such submission made on behalf of the respondent nos. 6 – 15 has been controverted by the learned counsel for the petitioner by contending that no such Notice was sought to be served upon the petitioner. Even if it is assumed that petitioner was sought to be served with the Notice dated 26.04.2022, in that case also any act of refusal on the part of the petitioner to accept the Notice may not amount to waiver of any right on the part of the petitioner as the Notice dated 26.04.2022 was in violation of the provisions of mandatory prescription contained in Section 17[3] of the Assam Panchayat Act, 1994, meaning thereby, any act of refusal was preceded by a notice which itself was in violation of the provisions of Section 17[3] of the Assam Panchayat Act, 1994.

16. In view of the above discussion and for the reasons assigned therein, as the Notice dated 26.04.2022 is found to be in violation of the mandatory prescription contained Section 17[3] of the Assam Panchayat Act, 1994 and the directions made by this Court in the Order dated 21.04.2022 passed in the writ petition, W.P.[C] no. 1512/2022, the Special Meeting held on 28.04.2022 pursuant thereto and the resolution taken in the said Special Meeting dated 28.04.2022 are found to be not sustainable in law and the same are accordingly set aside and quashed.

17. In the peculiar fact situation obtaining in the case, more particularly, taking into consideration that on two previous occasions, the special meetings were not properly held and on both the occasions, a resolution was passed against the petitioner by more than requisite two-third majority of the total number of Ward Members of a Gaon Panchayat, but interfered with later on, this Court is of the view that a direction is called for in the case in

hand because the motion of no confidence is not lost and still survives. It is, therefore, directed that the President of Anchalik Panchayat shall proceed afresh from the stage of issuing a notice convening a Special Meeting of the Gaon Panchayat to discuss the motion of no confidence against the petitioner strictly in terms of the provisions contained in Section 15, Section 17 and Section 18 of the Assam Panchayat Act, 1994 at the office Bilasipara Gaon Panchayat. Such notice shall be issued within a period of 7 [seven] days from today. In order to ensure a free and fair voting process by way of secret ballots, the Deputy Commissioner, Dhubri shall depute one Gazetted Officer under him not below Class-I Gazetted Officer for supervision. The Secretary of the Bilasipara Anchalik Panchayat shall ensure that the entire proceedings of the special meeting is videographed and there shall be no outsiders other than the petitioner, the Ward Members of the Gaon Panchayat, the President and Secretary of the Bilasipara Anchalik Panchayat and the Gazetted Officer deputed by the Deputy Commissioner, Dhubri to attend such meeting. The petitioner as the President of the Gaon Panchayat and the respondent nos. 6 – 15 as the Ward Members of the Gaon Panchayat are directed to participate in the special meeting, as all of them are parties in the instant writ proceedings.

18. As the proceedings of the Special Meeting dated 28.04.2022 has been interfered with, in the afore-stated manner, it is observed that until the Special meeting to discuss the motion of no confidence against the petitioner is held in terms of the direction made in this order, status quo as on date will continue till then and the matter of continuance of the petitioner in the office of the President of 113 no. Baghmari Gaon Panchayat or otherwise will abide by the outcome of the said Special Meeting.

19. A copy of this order be furnished to Mr. Dutta, learned Standing Counsel, P&RD Department for the purpose of taking necessary steps for compliance from their ends.

JUDGE

Comparing Assistant