

(2021) 06 GAU CK 0134

Gauhati High Court

Case No: Writ Petition (Civil) No. 3133 Of 2021

Pinki Moran

APPELLANT

Vs

State Of Assam And
13 Ors

RESPONDENT

Date of Decision: June 23, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Assam Panchayat Act, 1994 - Section 15(1)

Hon'ble Judges: Kalyan Rai Surana, J

Bench: Single Bench

Advocate: U K Nair

Judgement

1) Heard Mr. U.K. Niar, learned senior counsel, assisted by Mr. M.P. Sarma, learned counsel for the petitioner and also heard Mr. M. Nath, learned

standing counsel for respondent nos. 1, 2, 4, 5, 6 and 7 and Ms. M. Barman, learned Government Advocate for the respondent no.3.

2) The petitioner was elected as the President of 20 No. Borhapan Gaon Panchayat in December, 2018, and the first meeting of the newly constituted

Panchayat was held on 04.02.2019. On 20.05.2021, the Vice President of the said Gaon Panchayat along with 7 (seven) Gaon Panchayat Ward

members submit their joint application before the Block Development Officer, seeking to move a no confidence motion against the petitioner.

Accordingly, a special meeting was convened under the Chairmanship of the President, Hapjan Anchalik Panchayat (respondent no.5) to consider the

said no confidence motion against the petitioner. By a resolution adopted in the said meeting, the no confidence motion was carried through. On

27.05.2021, the Executive Officer, Hapjan Anchalik Panchayat (respondent no.6) had issued an order for removal of the petitioner from the post of

President and allowed Sri Bulbul Bora, Vice President (respondent no.8) to function as the President of the said Gaon Panchayat. On 01.06.2021,

notice was issued by the Chief Executive Officer, Tinsukia Zilla Parishad for convening a meeting of all stake holders on 03.06.2021 for deciding

future course of action pursuant to the resolution dated 27.05.2021. It is projected that although the petitioner attended the proposed meeting, but no

meeting was held in terms of notice dated 01.06.2021. These actions have been challenged in the present writ petition filed under Article 226 of the

Constitution of India.

3) In this regard, referring to the provisions of Section 15(1) of the Assam Panchayat Act, 1994 (hereinafter referred to as the "Panchayat Act"),

it is submitted by the learned senior counsel for the petitioner that for the purpose of convening of meeting of no confidence, the period of 15 days

must be counted from the date the notice is put up before the President and that if no meeting is held within 15 days from the date of receipt of notice,

thereafter, within 3 (three) days the matter is required to be referred to the Anchalik Panchayat. It was submitted that the Secretary of the Gaon

Panchayat was only authorised to count the period of 15 (fifteen) days from the date of placing the notice of no confidence or bringing it to the

knowledge of the President. Accordingly, it is submitted that the meeting held and resolution adopted by the Anchalik Panchayat for removing the

President of Gaon Panchayat was liable to be set aside. It is also submitted that 15 (fifteen) days period under Section 15(1) of the Panchayat Act is

to be calculated from the date of receipt of notice of no confidence by the President.

5) Accordingly, let a notice returnable on 04.08.2021 be issued.

6) As the learned Standing Counsel and the learned Govt. Advocate accepts notice on behalf of respondent nos. 1 to 7, the learned counsel for the

petitioner shall serve requisite additional copies of the writ petition to them within 2 (two) days. The petitioner shall take steps for service of notice on

the private respondent nos. 6 to 14 by registered post within 2 (two) days.

7) From Annexure-1 to the writ petition, it is seen that the respondent nos. 8 to 14 had submitted their letter dated 20.05.2021 regarding no confidence

against the petitioner not before the petitioner or the Secretary of 20 No. Barhapjan Gaon Panchayat, but before the Block Development Officer,

Hapjan Development Block. Thus, it appears that there is a strong prima facie case in favour of the petitioner. The balance of convenience also tilts in

favour of the petitioner and in favour of grant of ad-interim order. The petitioner is found to suffer irreparable loss and injury if no interim order is

passed. Therefore, as the meeting convened by the Hapjan Anchalik Panchayat on 27.05.2021 was without ensuring compliance of the mandate of

Section 15(1) of the Panchayat Act and that the said meeting was called on a representation submitted before the Block Development Officer and

that the said meeting was not called pursuant to Secretary of the Gaon Panchayat moving the President of the Anchalik Panchayat as per the

provision of Section 15(1) of the Panchayat Act, the Court is inclined to stay the operation of (i) the resolution of no confidence motion against the

petitioner as adopted by the Hapjan Anchalik Panchayat (respondent no.5) on 27.05.2021, (ii) the order under Memo no. HAP/188/ Misc/2019-

20/5651 dated 27.05.2021 issued by the Executive Officer, Hapjan Anchalik Panchayat, (iii) the notice no. TZP/209/2020-21/191 dated 01.06.2021

issued by the Chief Executive Officer, Tinsukia Zilla Parishad, and (iv) consequential actions pursuant to the above including appointment of the

respondent no. 8.

8) Having noted that the no confidence motion was not addressed to the petitioner, the Court is inclined to further provide that in the event the

respondent nos. 8 to 14 accepts this interim order and accept the restoration of the status of the petitioner as President of the 20 No. Barhapjan Gaon

Panchayat, in such event, the pendency of this writ petition shall not be a bar for the respondent nos. 8 to 14 to submit their request for no confidence

motion against the petitioner in accordance with law and thereupon the legal obligation would commence to hold the meeting to decide the no

confidence motion in a meeting to be convened by the Secretary of the 20 No. Borhapjan Gaon Panchayat with the approval of the petitioner as

President in accordance with Section 15(1) of the Panchayat Act, 1994.

9) As this order has been passed prior to issuance of notice upon the respondent nos. 8 to 14, liberty is granted to them to apply for modification/

variation of the order, if so advised.