

(2021) 06 GAU CK 0143

Gauhati High Court

Case No: Writ Petition (Civil) No. 3001 Of 2021

Dewan Musharaf
Hussain

APPELLANT

Vs

State Of Assam And
16 Ors

RESPONDENT

Date of Decision: June 24, 2021

Acts Referred:

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

Hon'ble Judges: Kalyan Rai Surana, J

Bench: Single Bench

Advocate: A R Bhuyan

Final Decision: Partly Allowed

Judgement

1) Heard Mr. P. Rahman, learned counsel for the petitioner and also heard Mr. M. Nath, learned Standing Counsel for the respondent nos. 1,2, 4, 5, 6

and 7 and Ms. M. Bhattacharjee, learned Addl. Senior Govt. Advocate appearing for the respondent no.3 and Mr. T.J. Mahanta, learned Senior

Counsel along with his instructing counsel for respondent nos. 8 to 17.

2) Challenging the (i) requisition dated 12.04.2021 made by the private respondent nos. 8 to 17 to hold special meeting to discuss no confidence motion

against the petitioner, who is the President of the 39 No. Madhya Betbari Gaon Panchayat, Kayakuchi, (ii) letter dated 27.04.2021 by the Secretary of

the said Gaon Panchayat (respondent no.7) to the President, Paka Betbari Anchalik Panchayat (respondent no.5), thereby forwarding the matter

relating to non- holding of special meeting to discuss no confidence motion, and (iii) the resolution dated 06.05.2021 in the special meeting convened by the respondent no.5, on the ground of non-service of requisition dated 12.04.2021, the petitioner has filed this writ petition under Article 226 of the Constitution of India.

3) Pursuant to the order dated 08.06.2021, passed in this writ the learned Addl. Senior Govt. Advocate has produced the written instructions received from the respondent no.3, along with photocopy of peon book indicating that in the presence of witness, the petitioner had thrice refused to accept from the respondent no.7 the requisition dated 12.04.2021 regarding no confidence submitted by the private respondent nos. 8 to 17 and other official communications to show that by dint of refusal, the requisition is deemed to be served on the petitioner and that the petitioner had defaulted by not called the special meeting, which was contravention of the provisions of Section 15(1) of the Assam Panchayat Act, 1995 and consequences would follow.

4) Notwithstanding the production of the said instructions by the learned Addl. Senior Government, at the outset, the learned senior counsel for the respondent nos. 8 to 17 has submitted upon instructions that in the interest of an early resolution to this dispute, the respondent nos.8 to 17 are prepared to conditionally concede to the allegations that the requisition was not served on the petitioner in the event under the directions of this Court, the petitioner would take notice of the said requisition dated 12.04.2021 of the respondent nos. 8 to 17 on and from today and call the special meeting as required under Section 15(1) of the Assam Panchayat Act, 1994 within 15 (fifteen) days. The learned standing counsel for the P&RD Department has taken a neutral stand indicating that although the documents produced by the learned Addl. Senior Govt. Advocate discloses that the petitioner had refused to accept the requisition dated 12.04.2021, which was forwarded by the respondent no. 7 through a peon book, but as the respondent nos. 8 to 17 are conditionally conceding to the prayers no. (ii) and (iii) made in the writ petition, he would not stand in the way of a fresh consideration of the said no confidence motion as per requisition dated 12.04.2021 in the Special meeting of the concerned Gaon Panchayat as per procedure prescribed in

Section 15 of the Panchayat Act.

5) At this stage, the learned counsel has submitted that the requisition was not submitted to the petitioner. However, in the opinion of the Court, there is no merit in such submission because it is seen that the petitioner has annexed the copy of the said requisition dated 12.04.2021 as Annexure-1 to his writ petition. The petitioner has not disclosed in this writ petition as to how he got the copy of the same. Therefore, the Court is inclined to observe that once the petitioner has in his custody a copy of such requisition and has produced it in his writ petition, though it can be deemed that on the date of filing of this writ petition, i.e. 31.05.2021, the petitioner was having a copy of the requisition dated 12.04.2021, nonetheless, in order to give a reasonable opportunity to the petitioner, the Court is inclined to deed that at least as on the date of this order, the petitioner has in his hand, a copy of such requisition and accordingly, the plea raised by the learned counsel for the petitioner is rejected.

6) Under such circumstances, and on the debatable point having been conditionally conceded by the learned senior counsel for the respondent nos. 8 to 17, who were the signatories to the said requisition dated 12.04.2021, the Court is of the considered opinion that in the interest of justice it would be just and appropriate to hold that as the respondent nos. 8 to 17 have conceded the point that requisition dated 12.04.2021 was not served on the petitioner, the impugned letter dated 27.04.2021 by the Secretary of the said Gaon Panchayat (respondent no.7) to the President, Paka Betbari Anchalik Panchayat (respondent no.5), thereby forwarding the matter relating to non- holding of special meeting to discuss no confidence motion, and the resolution dated 06.05.2021 in the special meeting convened by the respondent no.5 are both hereby set aside.

7) Nonetheless, and notwithstanding the interference with the herein before referred impugned letter dated 27.04.2021 and the impugned resolution adopted on 06.05.2021, the requisition dated 12.04.2021 is held to have survived. It is made clear that this order shall not be construed to mean that the no confidence motion is lost. Moreover, as the petitioner has annexed the copy of the requisition dated 12.04.2021 for holding special meeting

regarding no confidence motion moved by the respondent nos. 8 to 17 as Annexure-1 to this writ petition, it is provided on and from this day, i.e.

24.06.2021, the petitioner is deemed to have been served with a copy of the said impugned requisition dated 12.04.2021 moved by 9 (nine) Ward

Members.

8) Liberty is granted to the petitioner and all the concerned respondents to scrupulously follow the mandate of the Assam Panchayat Act, 1994 in so far it relates to the provisions of Section 15 of the said Act.

9) This writ petition stands partly allowed to the extent as indicated above.