

**(2010) 08 GAU CK 0056**

**Gauhati High Court**

**Case No:** Writ Petition (C) No. 4527 of 2009

Md. Akabbar Ali

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision:** Aug. 3, 2010

**Acts Referred:**

- Assam Panchayat Act, 1994 - Section 15(1)

**Citation:** (2010) 6 GLR 212

**Hon'ble Judges:** B.K. Sharma, J

**Bench:** Single Bench

**Advocate:** A.S. Choudhary, B. Islam, A. Haque and S.A. Choudhury, for the Appellant; R. Chakraborty, G.N. Sahewalla, J. Borah, P. Bora, Md. Aslam, D. Senapati and U. Dutta, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

B.K. Sharma, J.

Heard Mr. A.S. Choudhury, learned senior counsel assisted by Mr. B. Islam, learned Counsel for the Petitioner as well as Mr. G.N. Sahewalla, learned senior counsel assisted by Ms. J. Borah, learned Counsel representing the Respondent Nos. 8 to 14. I have also heard Ms. R. Chakraborty, learned Addl. Senior Government Advocate, Assam.

2. The Petitioner, who was the elected President of the Abhoypukhuri Gaon Panchayat, has filed this writ petition assailing the legality and/ or validity of the No Confidence Motion passed against him in the meeting held on 15.10.2009 as per the requisition for the said meeting placed vide Annexure-3 letter dated 7.10.2009.

3. According to the Petitioner, the No Confidence Motion notice was issued on 8.9.2009 signed by seven members out of ten. Admittedly, the Petitioner did not convene any meeting, which was required to be convened within 15 days as per the provisions of Section 15 of the Assam Panchayat Act, 1994. Thereafter, by operation

of the provisions of said Section 15 of the Act, the Secretary of the Gaon Panchayat, referred the matter to the President of the jurisdictional Anchalik Panchayat, who in turn, convened the meeting to discuss the No Confidence Motion. According to the Petitioner, there was failure on the part of the Secretary of the Gaon Panchayat to refer the matter to the jurisdictional Anchalik Panchayat within 3 days and consequently, there was also failure to convene the meeting to discuss the No Confidence Motion within the time limit prescribed in Section 15 of the Act.

4. Mr. Choudhury, learned Counsel for the Petitioner has placed reliance on the decisions of this Court reported in [Forhana Begum Laskar Vs. State of Assam and Others](#), and [Sita Satnami Vs. State of Assam and Others](#), . In both the decisions, the provisions of Section 15(1) of the Act has been dealt with to answer the question as to whether the stipulations made therein are directory and/ or mandatory in nature.

5. Mr. G.N. Sahewalla, learned senior counsel representing the Respondent Nos. 8 to 14, upon a reference to the counter affidavit filed by the Respondent No. 6, submits that there was no violation of the provisions of Section 15(1) of the Act towards passing the No Confidence Motion resolution against the Petitioner. He submits that the real test is as to whether the Petitioner had lost the confidence of other members of the Gaon Panchayat and not the meticulous adherence to the time limit fixed in the provisions of Section 15(1) of the Act in respect of various stages of passing the No Confidence Motion resolution.

6. Ms. R. Chakraborty, learned Addl. Senior Government Advocate has also submitted in tune with the stand of the Secretary (Ex-Officio) of the jurisdictional Anchalik Panchayat, i.e., the Respondent No. 6 in his counter affidavit.

7. I have considered the rival submissions made by the learned Counsel for the parties and the materials on record. In paragraph 8 of the counter affidavit filed by the Respondent No. 6, the details relating to the factual aspects of the matter have been discussed. It has been stated that seven out of ten members of the Gaon Panchayat gave notice of no confidence to the Petitioner on 8.8.2009, in terms of which he was to convene the meeting within 15 days as per the provisions of Section 15(1) of the Assam Panchayat Act, 1994. Since the meeting was not convened by the Petitioner, who was the President of the Gaon Panchayat, the Secretary informed the same to the Anchalik Panchayat by his letter dated 24.9.2009, which was within 3 days of expiry of 15 days from the No Confidence Motion notice dated 8.8.2009.

8. The stand of the Anchalik Panchayat Secretary in the aforesaid paragraph 8 of the counter affidavit is that the meeting could not be convened immediately due to the intervening holidays and some other unavoidable circumstances and eventually, the intimation furnished to the Anchalik Panchayat President by the Secretary of the Gaon Panchayat was put up on 5.10.2009. Thereafter, the No Confidence Motion was notified to be held on 15.10.2009 and notice was issued on 7.10.2009. Thus, the meeting relating to the No Confidence Motion was held immediately on expiry of 7

days.

9. It is in the above context, the Petitioner has contended that irrespective of the intervening holidays and/or other inconveniences, as per the requirement of Section 15(1) of the Act, the meeting ought to have been held within 7 days from the date of receipt of the information from the Secretary of the Gaon Panchayat about the non-convening of the meeting by the Gaon Panchayat President. According to the Petitioner, since the meeting was to be convened within 7 days, holding of the meeting after expiry of the said stipulated period was fatal to the No Confidence Motion.

10. In [Mumtaz Rana Laskar Vs. State of Assam and Others](#), a Division Bench of this Court interpreting Section 15(1) of the Act 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, 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. The aforesaid decision of the Division Bench came up for consideration before the Full Bench in Forhana Begum Laskar (supra). In paragraph 15 of the judgment, the scheme of Section 15(1) of the Act has been generally discussed. In paragraph 26 of the judgment, it has been stated, thus:

(26) Reading between the lines, it does not transpire to us that the above view rendered by the Division Bench can be construed to denote that the entire scheme of Section 15 in all its essential features has been enunciated to be directory and not mandatory. It rather seems to accentuate that each and every departure from the procedure and the time schedule contained therein, however, miniscule would not impair the exercise so as to decisively annihilate the same. In the contextual facts of the present appeal and the contraventions already noticed hereinabove, which we construe to be sufficient to answer the issues presently raised we do not consider it essential to embark on a rescrutiny of this proposition in the instant proceeding.

11. In paragraph 24 of the judgment, the aforesaid decision in Mumtaz Rana Laskar (supra) has been referred to. Upon detailed discussion of the finding recorded in the said judgment, the Full Bench has made the aforesaid observation.

12. In Sita Satnami (supra), the learned Single Judge of this Court having found that the Secretary of the Gaon Panchayat referred the matter relating to the No Confidence Motion to the President of the Anchalik Panchayat even before the expiry of 15 days from the date of the notice within which the President was to convene the meeting, interfered with the said action of the Secretary. It has been held that since the President of the Gaon Panchayat was to convene the meeting within 15 days of the notice, the Secretary could not have referred the matter to the Anchalik Panchayat, even before expiry of the stipulated period of 15 days recording

failure to convene the meeting by the President.

13. In the instant case, the No Confidence Motion notice was issued on 8.8.2009 and admittedly, the Petitioner did not convene the meeting within the stipulated period of 15 days. It was only after expiry of the said period of 15 days and failure on the part of the Petitioner to convene the meeting, the Secretary of the Gaon Panchayat referred the matter to the Anchalik Panchayat by his letter dated 24.9.2009. Thus, the reference was within the stipulated period of 3 days as per the provisions of Section 15(1) of the Act. Section 15(1) of the Act further provides that the Anchalik Panchayat on receipt of the reference/information shall convene the meeting within 7 days. In the instant case, the meeting could not be held within 7 days due to reason explained in paragraph 8 of the counter affidavit filed by the Respondent No. 6.

14. The question for consideration is as to whether the failure to convene the meeting within 7 days of receipt of information would result in failure of the earlier exercise carried out in terms of the provisions of Section 15(1) of the Act. The Secretary of the Gaon Panchayat did his part and accordingly, due information was furnished to the Anchalik Panchayat by his letter dated 24.9.2009. According to the Respondent No. 6, due to reason furnished in paragraph 8 of the counter affidavit, the meeting could not be convened and eventually, the meeting was notified vide notice dated 5.10.2009 intimating that the same would be held on 15.10.2009. In the meeting dated 15.10.2009, the No Confidence Motion against the Petitioner was passed as per the provisions of Section 15 of the Act.

15. In my considered view, the failure to adhere to the time limit of 7 days to hold the meeting will not be fatal so as to contend that there was violation of the mandatory requirement of the provisions of Section 15(1) of the Act. It is in this context, the Full Bench of this Court made the aforesaid observation in paragraph 26 of the judgment. Each and every deviation in respect of convening the meeting to discuss the No Confidence Motion cannot be said to be fatal towards passing the No Confidence Motion. The test is as to whether the Petitioner had the confidence of the majority of the members. Admittedly, the No Confidence Motion was passed against him by 273rd majority of the members.

16. In view of the above, I am of the considered opinion that there is no infirmity in passing the No Confidence Motion resolution dated 15.10.2009 pursuant to the notice dated 7.10.2009.

17. Consequently, the writ petition is dismissed.