

(2009) 03 GAU CK 0035

Gauhati High Court

Case No: None

Forhana Begum Laskar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: March 30, 2009

Acts Referred:

- Assam Panchayat Act, 1994 - Section 15, 15(1), 18, 18(5), 35
- Constitution of India, 1950 - Article 226

Citation: (2009) 5 GLR 39 : (2009) 3 GLT 451

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

Bench: Single Bench

Final Decision: Dismissed

Judgement

B.K. Sharma, J.

Both the writ petitions filed by the same petitioner are connected to each other and, thus, have been heard, analogously and are being disposed of by this common judgment and order.

2. The matter relates to the procedure adopted towards processing and finalizing the No Confidence Motion against the petitioner who is the President of the particular Gaon Panchayat.

3. The petitioner contested the Panchayat election held in the year 2007 and was elected as President of the Gaon Panchayat, called Nitainagar Gaon Panchayat under Hailakandi Anchalik Panchayat in the District of Hailakandi.

4. Out of the 10 (ten) members of the Gaon Panchayat, 8 (eight) members of the Gaon Panchayat submitted a requisition notice dated 19.2.2009 to the secretary of the Gaon Panchayat requesting him to convene a meeting to discuss the No Confidence Motion against the petitioner. The meeting was so convened by the secretary of the Gaon Panchayat on 6.3.2009 and the same was notified by his

notice dated 4.3.2009. However, the meeting was not held on 6.3.2009 as the same was cancelled by the secretary of the Gaon Panchayat by his notice issued on the same date. In the notice, it was stated that the No Confidence Motion against the petitioner has been cancelled as per the direction of the president and secretary of Hailakandi Anchalik Panchayat. On the same date, i.e., 6.3.2009, the Secretary-cum-Executive Officer, Hailakandi Anchalik Panchayat, issued notice fixing the date of the meeting to discuss about the No-confidence Motion against the petitioner on 12.3.2009.

5. In the first writ petition, the aforesaid notices dated 6.3.2009, one canceling the No Confidence Motion and the other re-convening the same on 12.3.2009 are under challenge. The writ petition was entertained by order dated 9.3.2009 and interim order was passed providing that while the meeting convened on 12.3.2009 would be held as scheduled but the result of the No Confidence Motion should not, without leave of the court, be acted upon until 18.3.2009. The matter was taken up on 18.3.2009 and it appears that the interim order passed earlier was not extended.

6. In the mean time, the petitioner filed the second writ petition challenging the legality and validity of the resolution adopted in the meeting held on 12.3.2009 approving the No Confidence Motion against the petitioner. The further challenge made is the letter dated 12.3.2009 addressed to the Deputy Commissioner, Hailakandi by the Secretary-cum-Executive Officer, Hailakandi Anchalik Panchayat, forwarding the copy of the No Confidence Motion resolution against the petitioner adopted on 12.3.2009.

7. I have heard Mr. A.M. Mazumdar, learned senior Counsel assisted by Dr. B. Ahmed, learned Counsel for the petitioner in both the writ petitions. I have also heard Mr. B.C. Das, learned senior Counsel assisted by Mr. P.K. Deka, learned Counsel representing the private respondents at whose behest the No Confidence Motion has been passed. I have also heard Ms. R. Chakraborty, learned Additional Senior Government Advocate.

8. The only issue involved in the writ petitions is as to whether the procedure envisaged under Sections 15 and 18 of the Assam Panchayat Act, 1994 towards processing and finalizing the No Confidence Motion against the petitioner has been violated or not. While answering the issue, the further issue which necessarily arises is as to whether the said procedure prescribed in Sections 15 and 18 of the Act is mandatory in nature or only directory.

9. While Mr. Mazumdar, learned Counsel for the petitioner upon a reference to three decisions of this Court reported in *Basanti Das v. State of Assam and Ors.* 2004 (Supp.) GLT 717, *Aleya Khatun and Ors. v. State of Assam and Ors.* 2004 (3) GLT 361 and *Mumtaz Rana Laskar and Ors. v. State of Assam and Ors.* 2006 (1) GLT 46 submitted that the procedure envisaged towards processing and adopting a No Confidence Motion is mandatory in nature, Mr. B.C. Das, learned senior Counsel

representing the private respondents argued that said procedure is only directory. He has also placed reliance on the decision in *Mumtaz Rana Laskar (supra)* and the one reported in *Abul Hussain and Ors. v. State of Assam and Ors. (2006) 2 GLR 83*. He further submitted that whatever may be the procedure, unless any prejudice is shown by the petitioner, any minor variation of such procedure cannot frustrate the resolution adopted by the majority of the members towards passing the No Confidence Motion against the petitioner.

10. In the instant case, the requisition dated 19.2.2009 by 8(eight) out of 10(ten) members of the Gaon Panchayat was acted upon and the meeting was notified to be held on 8.3.2009 by letter dated 4.3.2009. However, the meeting was cancelled on 6.3.2009 as per the direction of the Anchalik Panchayat. Thereafter the Anchalik Panchayat issued another notice on the same date i.e., 6.3.2009 notifying the meeting to be held on 12.3.2009 to discuss the No Confidence Motion. On 12.3.2009, the No Confidence Motion against the petitioner was discussed and all the eight members who placed the requisition adopted the resolution expressing their No Confidence against the petitioner.

11. Section 15(1) of the Act, requires convening of the meeting by the secretary of the Gaon Panchayat and in case the meeting is not convened 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, refer the matter to the Anchalik Panchayat, who shall convene the meeting within 7(seven) days from the date of receipt of the information from the secretary of the Gaon Panchayat.

12. In the instant case, the first part of the requirement of Section 15 was duly complied with and the meeting was convened within 15 days from the date of receipt of the No-confidence requisition notice. However, the meeting was cancelled and could not be held on 6.3.2009 and thereafter on the same date, the Anchalik Panchayat notified the meeting to be held on 12.3.2009. If a very technical view of the matter is taken, i.e., only in case of meeting being not convened within a period of 15 days from the date of receipt of the notice, only then the jurisdiction falls with the Anchalik Panchayat and not otherwise, only then, the jurisdiction exercised by the Anchalik Panchayat can be said to be irregular, However, it will have to be borne in mind that such jurisdictional affair is only procedural.

13. Duo to some reasons, the meeting could not be held on the notified date, i.e., 6.3.2009 and it was of that account, the Anchalik Panchayat assumed its Jurisdiction to notify the meeting to discuss the No Confidence Motion and the meeting was held on 12.3.2009. It is an admitted position that on 12.3.2009, the No Confidence Motion against the petitioner was discussed and all the eight members who placed the requisition, adopted resolution to pass the motion against the petitioner. In that kind of situation, it cannot be said to be a case of wholesome juri dictional error so as to contend that the action on the part of the Anchalik Panchayat was not within jurisdiction and/or the Anchalik Panchayat assumed the jurisdiction not vested in it.

14. It is in the above context Mr. Das, learned Counsel for the private respondents has placed reliance on the Division Bench decision of this Court in Mumtaz Rana Laskar (supra). By the said decision, the view expressed by the learned Single Judge in Aleya Khatun and Ors. (supra) has been overruled and the view expressed by the learned Single Judge in Mumtaz Rana Laskar [supra) has been upheld. While in Basanti Das (supra), the view taken was that the procedure laid down in Section 15 of the Act is mandatory in nature but in Mumtaz Rana Laskar (supra), the view taken by the Division Bench was that procedure envisaged is only directory. The view adopted in Aleya Kkatun (supra) was also the view adopted in Basanti Das (supra).

15. The Division Bench of this Court in the aforesaid decision in Mumtaz Rana Laskar has held that the procedure prescribed in Section 15 is only directory. Although Mr. Mazumdar, learned Counsel for the petitioner strenuously argued that the said case will have to be understood in the context in which it was delivered but on a total reading of the details and even otherwise also I am of the considered opinion that strict adherence to the procedure laid down in Section 15, which is also not substantive cannot defeat the ultimate result of the process of No Confidence Motion.

16. According to the petitioner, the No Confidence Motion meeting convened on 6.3.2009 could not have been cancelled on 6.3.2009 and re-convened on 12.3.2009 by the Anchalik Panchayat. If the same could have been done by the Gaon Panchayat, I see no reason as to why the higher authority, i.e., the Anchalik Panchayat could not do so, more particularly, when it is not a case that the Anchalik Panchayat is not authorized and empowered to do so. Section 15(1) of the Act itself provides that if the meeting is not held within the stipulated period, the Anchalik Panchayat will hold the same. It is an admitted position that, whatever may be the reason, the meeting could not be held on 6.3.2009. In such a situation, if the Anchalik Panchayat assumed the jurisdiction as per the provision of Section 15(1) and in absence of any prejudice being shown, it cannot be said to be a case of any injustice to the petitioner.

17. Apart from the aforesaid purported procedural irregularity, the petitioner has not projected any other ground. It is not her case that had the meeting not been cancelled by the Gaon Panchayat and thereafter convened by the Anchalik Panchayat, the No Confidence Motion against her would have been defeated.

18. We have to look into what actual prejudice has been caused to the petitioner in processing and finalizing the No Confidence Motion. It is not the case of the petitioner that any particular right has been denied to her. Where on the admitted or indisputable fact, under the scheme of the Assam Panchayat Act, 1994, only one conclusion is permissible, i.e., the No Confidence Motion has been passed against the petitioner, the writ court exercising its power of judicial review under Article 226 of the Constitution of India, may not issue its writ as has been prayed for by the petitioner.

19. The basic concept is fair play in action, administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon particular facts if there be any, between the parties. In the instant case, it is not even the case of the petitioner that it is a case of any foul play and or deviation from fair play. The objective of the procedural mandate in Section 15 and 18 of the Act is to ensure a fair deal to the person whose rights are going to be affected.

20. In [Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others](#), the Apex Court observed, thus:

Where the court acts without inherent jurisdiction, a party affected cannot by waiver confer jurisdiction on it, which it has not. Where such jurisdiction is not wanting, a directory provision can obviously be conceived in the public interests, but in the interests of the party that waives it. In the present case the executing court had inherent jurisdiction to sell the property. We have assumed that Section 35 of the Act is a mandatory provision. If so, the question is whether the said provision is conceived in the interests of the public or in the interests of the person affected by the non-observance of the provision. It is true that many provisions of the Act were conceived in the interests of the public, but the same cannot be said of Section 35 of the Act, which is really intended to protect the interests of a judgment-debtor and to see that a larger extent of his property than is necessary to discharge the debt is not sold. Many situation may be visualized when the judgment-debtor does not seek to take advantage of the benefit conferred on him u/s 35 of the Act.

21. Now coming to the case in hand, the question is, whether setting aside the impugned orders, resolution/on the alleged ground of violation of the procedure envisaged under Sections 15 and 18 of the Act be in the interest of justice or would be its negation. In my respectful opinion, it would be the later. Justice means justice between both the parties. The interest of justice equally demand that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Particulars of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.

22. In [State Bank of Patiala and others Vs. S.K. Sharma](#), the Apex Court dealing with the tussle between the mandatory/substantive provision and procedural provision observed, thus:

An order passed imposing a punishment of an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The court or the tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial

compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

While applying the rule of *audi alteram partem* (the primary principle of natural justice) the court/tribunal/authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situation that arise before them.

20. It was argued by Mr. Mazumdar, learned Counsel for the petitioner that since the No Confidence Motion has been passed in violation of Section 18 of the Act, same is not tenable in law. As per Section 18(5) of the Act, the voting in any meeting of the Gaon Panchayat, if required, shall be by raising of hands, except in the meeting where No Confidence Motion is discussed, where the matter will be decided by secret ballot. According to Mr. Mazumdar, since the secret ballot procedure was not followed, the entire exercise towards passing the resolution is vitiated. The question of secret ballot will come if there is division of votes. When all the eight requisitionists favoured the resolution of No Confidence against the petitioner, there was no question of going for any secret ballot. None of the requisitionists has made any grievance against the procedure adopted. Since all the members present supported the resolution adopted in the No Confidence Motion against the petitioner, there was no occasion to arrive at a decision by secret ballot. Thus, on this count also, the plea of the petitioner fails.

23. For all the aforesaid reasons, I do not find any merit in the writ petitions. Both the writ petitions are dismissed without, however, any order as to costs.