

(2006) 09 GAU CK 0055**Gauhati High Court****Case No:** None

Must. Mosira Bibi

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Sept. 28, 2006**Acts Referred:**

- Constitution of India, 1950 - Article 226

Citation: (2007) 1 GLR 417 : (2006) 4 GLT 460**Hon'ble Judges:** B. Sudershan Reddy, C.J; B.P. Katakey, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

B.P. Katakey, J.

The appellant, who was the elected President of Jhagrarpur Gaon Panchayat under Gauripur Anchalik Panchayat, filed the writ petition being W.P.(C) No. 7278 of 2005 challenging the resolution dated 28.9.2005, adopted in the special meeting of the said Gaon Panchayat expressing no confidence on her, on the ground of violation of the provision contained in Sub-section 1 of Section 15 of Assam Panchayat Act, 1994 ("the Act"), insofar as it relates to the time schedule given in the said provision of law for the purpose of holding the special meeting for consideration of no confidence motion brought against the President and Vice-President of a Gaon Panchayat. A notice of no confidence by eight out of ten members of the said Gaon Panchayat was given on 29.8.2005 expressing want of confidence on the appellant. The Secretary of the Gaon Panchayat on receipt of such notice placed the same before the appellant on 30.8.2005 seeking her approval to convene a special meeting for consideration of the said no confidence motion. However, the appellant refused to accord approval for holding such special meeting, for which the Secretary of the Gaon Panchayat on 16.9.2005 forwarded the matter to the Anchalik Panchayat intimating the refusal of the appellant to approve the proposal for holding the special meeting and also for a direction to hold such special meeting for

consideration of such no confidence motion. Accordingly, as per direction of the President of the Anchalik Panchayat, the special meeting was held on 28.9.2005, wherein the resolution expressing no confidence against the appellant was adopted as eight out of the ten members voted in favour of the resolution expressing want of confidence on the appellant. The Secretary of the Gaon Panchayat intimated the Deputy Commissioner on 29.9.2005 about adoption of such resolution. The learned Single Judge relying on the Division Bench judgment of this court in Mumtaz Rana Laskar and Ors. v. State of Assam and Ors. reported in 2006 (1) GLT 46 has dismissed the writ petition by holding that the procedure prescribed in Section 15(1) of the Act is only directory and not mandatory and, therefore, non-adhering the time schedule given in the said provision will not make the resolution, adopted in the special meeting of the Gaon Panchayat, invalid in law. Hence, the present appeal.

2. We have heard Mr. A. B. Chowdhury, learned senior counsel appearing on behalf of the appellant and Mrs. Goyal, learned State counsel appearing on behalf of the State respondents as well as Mr. D.A. Kaiyum, learned Counsel for the respondent No. 7, Vice-President of the Gaon Panchayat.

3. Mr. Chowdhury, the learned senior counsel for the appellant referring to the provision of Sub-section 1 of Section 15 of the Act has submitted that under the said provision, in case the President of the Gaon Panchayat against whom notice of no confidence is given, refused to approve the proposal of the Secretary of the Gaon Panchayat to hold the special meeting for consideration of such motion, the Secretary of the Gaon Panchayat is required to refer the matter to the President of the Anchalik Panchayat within three days from the date of expiry of 15 days of notice, and the Anchalik Panchayat is to convene the meeting within seven days from the date of such information. It has further been submitted that in case such meeting within such seven days is not convened by the Anchalik Panchayat, the Secretary of the Gaon Panchayat is required to inform the Deputy Commissioner/Sub-Divisional Officer (Civil) within three days after the expiry of the said stipulated seven days time and in that case it is the Deputy Commissioner/Sub-Divisional Officer (Civil) who has to convene the meeting within seven days from the date of receipt of such information and such meeting is required to be presided over by the Deputy Commissioner/Sub-Divisional Officer (Civil) or by Gazetted Officer deputed by him not below the rank of Class-I Gazetted Officer. According to the learned senior counsel in the instant case admittedly the Secretary of the Anchalik Panchayat on 16.9.2005 referred the matter to the Anchalik Panchayat concerned, on refusal by the appellant to accord approval to hold the meeting, but the meeting having been held only on 28.9.2005, i.e., after 12 (twelve) days, the resolution adopted in such meeting cannot be held to be valid, as the time schedule of seven days within which the Anchalik Panchayat is required to convene the meeting having been expired on 23.9.2005. According to the Mr. Chowdhury it is the Deputy Commissioner/Sub-Divisional Officer, as the case may be, who can convene such meeting after expiry of such time schedule of seven days.

Mr. Chowdhury submits that as the provision contained Sub-section (1) of Section 15 is substantive provision, it is mandatory in nature and hence non-compliance of the same will render the subsequent action, namely, the resolution dated 28.9.2005 adopted in the special meeting of the Gaon Panchayat expressing want of confidence on the appellant, invalid. ,

4. Mr. Chowdhury, referring to the Division Bench Judgment in Mumtaz Rana Laskar (supra) has submitted that in the said decision the Division Bench has only considered the question as to whether the requirement on the part of the Secretary of the Gaon Panchayat to inform the President of Anchalik Panchayat or the Deputy Commissioner/Sub-Divisional Officer (Civil) within the time schedule given in Section 15(1) of the Act was mandatory or directory and hence the ratio laid down in the said decision is not applicable in the present case, as in this case the question is whether the Anchalik Panchayat can hold the meeting beyond seven days from the date when the Secretary of the Gaon Panchayat referred the matter to the Anchalik Panchayat for the purpose of holding such special meeting for consideration of no confidence motion. According to the learned senior counsel the requirement of holding the meeting within seven days by the Anchalik Panchayat as stipulated in Section 15(1) of the Act is mandatory.

5. Mrs. Goyal, learned State counsel appearing on behalf of the State respondents on the other hand has submitted that the time schedule given in Sub-section (1) of Section 15 of the Act is procedural in nature and, therefore, it cannot be held to be mandatory. According to the learned State counsel the purpose for which Section 15(1) has been enacted would be defeated if the time schedule given in Section 15(1) of the Act is held to be mandatory, as in a given case the President or the Vice-President, against whom notice expressing want of confidence is given, can avoid giving approval of such meeting and the Secretary of the Gaon Panchayat also in a given case may with a view to frustrate the no confidence motion against the President or the Vice-President tactfully withheld referring the matter to the Anchalik Panchayat or to the Deputy Commissioner/Sub-Divisional Officer (Civil) within the time frame given in the said provision. Therefore, taking into account the Scheme of the Act, it cannot be said that the time schedule given in the said provision is mandatory, more so, when it is only the procedure prescribed "for convening a special meeting for the purpose of consideration of no confidence motion, submitted by the learned State counsel, Mrs. Goyal has further submitted that even assuming, the time schedule given in the said provision is mandatory, the appellant having refused to approve the proposal submitted by the Secretary of the Gaon Panchayat to convene the special meeting for consideration of such no confidence motion, waived such requirement by her action.

6. Mr. Kaiyum, learned Counsel appearing on behalf of the respondent No. 7 has also submitted that time schedule given in Section 15(1) is not mandatory but directory, the same being procedural in nature. It has further been submitted that

the issue raised by the appellant in the present appeal has already been answered by a Division Bench of this court in Mumtaz Rana Laskar case (supra), wherein, it has been held that the action on the part of any of the authorities mentioned in the said provision of law for holding the meeting should not be allowed to result in frustration arid subversion of the very scheme of the Act, which requires consideration of the no confidence motion brought either against the President or the Vice-President of the Gaon Panchayat. It has further been submitted that if such provision is held to be mandatory it would frustrate the purpose for which Section 15(1) has been incorporated in the Act. Mr. Kaiyum has further submitted that even if the time schedule given in Section 15(1) is taken to be mandatory, what required to be done by the President of the Anchalik Panchayat under the said provision of law is to "convene" the meeting within seven days from the date of receipt of the information from the secretary of the Gaon Panchayat, therefore, it is not the requirement of law that the such meeting has to be held within seven days. In the instant case, according to the learned Counsel, the appellant-writ petitioner in the writ petition has not stated the date when the Anchalik Panchayat directed holding of such meeting, on the basis of which the meeting was held on 28.9.2005. Mr. Kaiyum has further submitted that an inadvertent error relating to the factual aspect has crept in the order dated 10.8.2006 passed by the learned Single Judge in mentioning that the notice convening the meeting on 28.9.2005 was issued by the President of the Anchalik Panchayat on 29.9.2005, though on the said date i.e. on 29.9.2005, the Secretary of the Gaon Panchayat informed the Deputy Commissioner about adoption of the resolution by the Anchalik Panchayat on 28.9.2005 expressing want of confidence on the appellant.

7. The facts narrated above are not in dispute. The appellant-writ petitioner in the writ petition has not stated anything about the date when the President of the Anchalik Panchayat directed holding of the special meeting for the purpose of consideration of the notice of no confidence brought against the appellant. What has been stated in the writ petition as well as in the memorandum of appeal is that on 16.9.2005, the Secretary of the Gaon Panchayat referred the matter to the Anchalik Panchayat, when the appellant refused to approve the proposal for holding the special meeting, as well as holding of such meeting on 28.9.2005 presided over by the President of Anchalik Panchayat.

8. The first question which requires the consideration of this court is -whether the time schedule given in Section 15(1), for the purpose of convening special meeting for, consideration of the motion expressing want of confidence against the President and/or Vice-President of a Gaon Panchayat, is mandatory or directory.

9. For better appreciation Sub-section (1) of Section 15 of the Act is quoted below:

15.(1) Every President or Vice-President shall be deemed to have vacated his office forthwith when 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.

Such a meeting shall be specially convened by the Secretary of the Gaon Panchayat with approval of the President of the Gaon Panchayat. Such meet shall be presided over by the President if the motion is against the Vice-President, and by the Vice-President if the motion is against the President. In case such a meeting is not convened within a period of fifteen days from the date of receipt of notice, the Secretary Gaon Panchayat shall within three days, refer the matter to the President of the concerned Anchalik Panchayat, who shall convene the meeting within seven days from the date of receipt of the information from the Secretary of the Gaon Panchayat and preside over such 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 three days after the expiry of the stipulated seven days time and the concerned Deputy Commissioner/Sub-Divisional Officer (Civil) shall convene the meeting within seven days from the date of the receipt of the information with intimation to the Zilla Parishad and the Anchalik Panchayat and preside over the meeting so convened:

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 meeting:

Provided further that when a no confidence motion is lost, no such motion shall be allowed in the next six months.

10. Whether a provision of law is mandatory or directory depends upon the language couched in the statute under consideration as well as its object, purpose and effect. There are several tests to determine whether a provision is mandatory or directory in nature. The Apex Court in The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyay, has held that when a statute uses the word "shall", *prima facie*, it is mandatory, but the court may ascertain the real intention of the Legislature by carefully attending to the whole scope of the statute. It has further been held that for ascertaining the real intention of the Legislature, the court may consider, *inter alia*, the nature and the design of the statute, and the consequences, which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provision is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and above all, whether the object of the legislation will be defeated or furthered.

11. In Rai Vimal Krishna and Others Vs. State of Bihar and Others, the Apex Court has observed that it is an elementary principle of interpretation that words in statutory provisions take their colour from their context and object, keeping pace with the time when the word is being construed. In a recent judgment, the Apex Court, in M/s. Dove Investments (P.) Dove Investments Pvt. Ltd. and Others Vs. Gujarat Industrial Inv. Corporation Ltd. and Another, referring to the decision in P.T. Rajan Vs. T.P.M. Sahir and Others, has held that whether a statute would be directory or mandatory will depend upon the scheme thereof and ordinarily a procedural provision would not be mandatory even if the word "shall" is employed therein, unless a prejudice is caused. Relying on the decision in U.P. SEB v. Shiv Mohan Singh reported in AIR 2004 SCW 5623 it has further been observed that ordinarily, although the word "shall" is considered to be imperative in nature, but it has to be interpreted as directory if the context or the intention otherwise demands.

12. A Division Bench of this court in Mumtaz Rana Laskar (supra), referring to the various decisions of the Apex Court including the decision in State of U.P v. Manmohan Lal Srivastava, State of U.P. v. Babu Ram Upadhyay, P.T. Rajan v. T.P.M. Sahir and Ors. has held that the prescription of Section 15(1) vis-a-vis the procedure and the time schedule relatable to the date suggested thereof are directory in nature, keeping in view the scheme of the Act as well as the object of enactment of the said provision in the Act. The relevant portion of the said judgment is quoted below:

23. As with all controversial subjects interpretation of statutes attract argument both ways. The arguments that the provision may be treated as an imperative one are principled and practical. It will be convenient to note first the practical. It will be convenient to note first the major practical difficulties attended upon holding the particular provision with which we are concerned as imperative one. What happens in a given case if the Secretary of the Gaon Panchayat on his own accord for whatever reason or at the behest of the vested interest does not act in the matter as is expected even though the requisition given expressing no confidence may be strictly in accordance with the requirement in law? Will the whole democratic process come to an end ? After all democratic process not only includes choosing one's own representative but also dislodging such elected representatives from their office in accordance with law. The whole democratic process cannot be put at the disposal of an insignificant authority who is required to convene the meeting in accordance with law : The inaction on the part of such authority should not be allowed to result in frustration and subversion of the very scheme of the Act. The practical difficulties are also required to be kept at the back of our minds for interpreting the provisions.

24. On an analysis of the binding precedents referred to above leads us to irresistible conclusion that a mere procedural irregularity in the matter of making the reference by the Secretary of the Gaon Panchayat either to 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. That itself would not result in causing any prejudice to the person against whom the motion is carried out.

The decision of this court, therefore, not only relatable to the action of the Secretary of the Gaon Panchayat alone but also in respect of the action of the authorities, mentioned in Sub-section (1) of Section 15 of the Act, regarding the procedure as well as the time table to be adhered to, which has been held to be directory and not mandatory. We are in complete agreement with the views expressed in the said judgment, which was though taken to the Apex Court by way of a petition for Special Leave to appeal being numbered as 3052 of 2006, the same has been dismissed on 20.2.2006.

13. It appears from the provision contained in Sub-section (1) of Section 15 of the Act that a duty is cast on the authorities mentioned therein to convene a special meeting of the Gaon Panchayat to discuss the notice of no confidence given by the members expressing want of confidence on the President or the Vice-President of such Gaon Panchayat, as the case may be. Such provision is no doubt mandatory, but the subsequent provision relating to the time schedule to be adhered by different authorities in convening such meeting, is procedural in nature, as it has laid down the procedure to be adopted for convening such meeting. Such time schedule given in the said provision cannot be treated as mandatory, as it will defeat the very purpose and object of enacting such provision, because in a given case, the concerned authority may, with a view to defeat the object of such enactment, delayed initiation of the proceeding and may not adhere to the time schedule thereby frustrating the very purpose for which such enactment is made.

14. From the aforesaid discussions, it is, therefore, evident that the provision relating to the time schedule contained in Section 15(1) is directory in nature, the same being procedural and having not provided for any consequence for its non-adherence. By the provision contained in Section 15(1) of the Act although a public duty is imposed on the Secretary as well as on the Anchalik Panchayat to inform the authorities and also to convene the meeting, within a fixed period of time, it has to be treated as directory in nature, as non-adherence of such time schedule would results in justice to the persons who brought such no confidence motion, who have no control over those authorities exercising such duty.

Even in case of directory provision, substantial compliance would be enough and unless it is established that violation of directory provision has resulted in loss and/or prejudice to the parties, no interference is warranted. The appellant-writ petitioner could not show any loss or prejudice caused to her even if it is taken that the directory provision of holding the meeting within seven days from the date on which the Secretary of the Gaon Panchayat gave the notice to the Anchalik

Panchayat, is violated. On the other hand it is evident from the proceedings of 28.9.2005 that the appellant-writ petitioner in spite of receipt of the notice did not participate in the said special meeting, wherein no confidence motion was passed as 8 (eight) out of the 10 (ten) members voted in favour of the motion expressing want of confidence on the appellant. Therefore, the contention of the appellant cannot be accepted and hence rejected.

15. We shall now proceed to examine as to whether the requirement of convening the special meeting for consideration of the no confidence motion within seven days from the date when the Secretary of the Gaon Panchayat referred the matter to the President of the Anchalik Panchayat, means holding such meeting within the said period of seven days.

16. Section 15(1) of the Act requires the President of Anchalik Panchayat to "convene" the meeting within seven days from the date of receipt of the information from the Secretary of the Gaon Panchayat. This court had the occasion to deal with the said question in *Swapna Sen v. State of Assam and Ors.* 2006 (2) GLT 14 : (2006) 3 GLR 523. (against which though petition for special leave to appeal filed, the same was dismissed on 24.3.2006) wherein it has been held that the requirement of convening the meeting by Anchalik Panchayat within seven days u/s 15(1) of the Act, does not mean actual holding of such meeting, as "convene" means to cause to assemble to discuss the no confidence motion, i.e., directing to hold such meeting.

Viewed from this angle also, even in case, the provision relating to the adherence of time schedule given in Section 15(1) of the Act, is taken to be mandatory in nature, in the instant case the appellant is not entitled to any relief, as , it is not her case that the proceeding of the special meeting dated 28.9.2005 is not valid, as the same was not convened by the Anchalik Panchayat, within seven days of referring the matter by the Secretary of the Gaon Panchayat to the President of the Anchalik Panchayat.

17. Another aspect of this case is that the appellant-writ petitioner refused to approve the proposal submitted by the Secretary of the Gaon Panchayat to convene the special meeting to discuss the notice of no confidence brought by the members, as required under the Section 15(1) of the Act. The Secretary on the failure of the appellant-writ petitioner to approve the proposal for holding such meeting referred the matter to the Anchalik Panchayat. Even if, it is taken that, the requirement of convening the meeting by the Anchalik Panchayat within seven days is mandatory in nature, interference does not follow as a matter of course, even in case of violation thereof. A mandatory provision conceived in the interest of a party can be waived by that party, Whereas a mandatory provision conceived in the interest of the public cannot be waived by him. Wherever a complaint of violation of a mandatory provision is made, the court should enquire in whose interest is the provision conceived. If it is hot conceived in the interest of the public, the question of waiver and/or acquiescence may arise *Rajendra Singh Vs. State of Madhya Pradesh and*

others,

The Apex Court in [State Bank of Patiala and others Vs. S.K. Sharma](#), has also held that even a mandatory requirement can be waived by a person concerned if such mandatory provision is conceived in his interest and not in public interest.

19. The time table given in Section 15(1) of the Act is in the interest of President and/or Vice-President as the case may be, of the Gaon Panchayat against whom the notice of no confidence is given and hence it could be waived by such President and Vice-President. The appellant having avoided to fulfil its obligation u/s 15(1) of approving the proposal submitted by the Secretary of the Gaon Panchayat to convene the special meeting to discuss the no confidence motion, waived the requirement of holding the meeting within seven days by the Anchalik Panchayat, even if such requirement is treated as mandatory in nature. The writ jurisdiction of the High Court under Article 226 of the Constitution is not intended to facilitate the appellant, who has voluntarily avoided to comply with the requirement of law.

20. In view of the aforesaid discussions we are of the view that the learned Single Judge has rightly dismissed the writ petition. The order passed by the learned Single Judge does not suffer from any infirmity requiring interference of this court. Hence, the appeal filed by the appellant is dismissed, however, without any order as to costs.