

(2006) 09 GAU CK 0056

Gauhati High Court

Case No: None

Nagen Barthakur

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Sept. 16, 2006

Acts Referred:

- Assam Panchayat Act, 1994 - Section 103, 15, 15(1), 73, 73(2)

Citation: (2007) 1 GLR 404

Hon'ble Judges: B. Sudershan Reddy, C.J; H.N. Sharma, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

H.N. Sarma, J.

The unsuccessful writ petition has yet attempted to salvage his grievance by resorting to the appellate jurisdiction of this court challenging the Judgment and Order passed by the learned Single Judge in WP(C) No. 7060/2005.

2. We have heard Mr. P.G. Baruah, learned senior advocate for the appellant, Mr. G.N. Sahewala, learned senior advocate for the respondent No. 3 and Ms. B. Goyal, learned GA, Assam.

3. The necessary facts relevant for the purpose of disposal of this appeal are that the appellant was elected as the President of Dibrugarh Zilla Parishad and his term of office was continued from 29.5.2005. While the appellant was holding the said office, on 15.9.2005, 16 members of the Zilla Parishad out of total 23 directly elected members raised a No Confidence Motion against the appellant in exercise of powers u/s 73 of the Assam Panchayat Raj Act, 1994, expressing their no confidence against the appellant as President of the Dibrugarh Zilla Parishad. On the basis of the said motion, a notice dated 15.9.2005 was issued by the Chief Executive Officer of the Zilla Parishad convening a special meeting to consider the said No Confidence Motion fixing 23.9.2005. Accordingly, on 23.9.2005, 16 members of the Zilla Parishad

having supported the motion in the aforesaid meeting, 7 against the motion, the motion was carried through. Challenging the resolution dated 23.9.2005 by which the No Confidence Motion against the petitioner was passed, more particularly, the procedural aspect in carrying out the motion which according to petitioner is violative of the provisions of Section 73 of the Act, he filed the aforesaid writ petition. The respondent Nos. 3 and 5 submitting counter affidavit resisted the writ petition alleging, inter alia, that the notice of the special meeting to discuss the issue of No Confidence Motion was issued by the Chief Executive Officer on 15.9.2005 convening the meeting on 23.9.2005 as per the direction of the appellant/petitioner himself as he was the President at that point of time. It is specifically pleaded at paragraph 8 of the writ petition that the notice expressing No Confidence against the petitioner was placed before the appellant/petitioner on or about 12.9.2005 who received the same. But later on by way of an affidavit in reply the appellant/petitioner, the said fact of receiving the notice by him, explained to be inglorious one and stated therein that the notice of No Confidence was received by the Chief Executive Officer in his office, which was put up before him in a file as usual on 15.9.2005. It is also admitted that the petitioner asked the Chief Executive Officer to convene a meeting to discuss the No Confidence Motion.

4. The main grievance of the appellant that emerges from the pleadings as well as the submissions made by the learned senior counsel in passing the said No Confidence Motion against the appellant resulting in his ouster from the office of the President of the Zilla Parishad are that the No Confidence resolution itself indicative of the fact that it was held before the mandatory date prescribed for convening the meeting by the President and the provisions of Section 18(5) is inapplicable in case of considering such resolution in respect of the Zilla Parishad is concerned; that it is violative of the provisions of Section 73 of the Act as it is the President to whom the requisition is to be sent for convening the meeting. The learned Single Judge meticulously considered the stand taken by the appellant/petitioner in the writ petition as well as the stand in the counter affidavit of the Chief Executive Officer, Dibrugarh Zilla Parishad as well as the respondent No. 3 and the learned Single Judge while analyzing Section 73 of the Act considered the ratio decision referred by the Division Bench of this court in [Mumtaz Rana Laskar Vs. State of Assam and Others](#), ., dismissed the writ petition having held that there is no infraction u/s 73 of the Act or in any other related provisions of the Assam Panchayat Raj Act, 1994, in carrying through No Confidence Motion against the appellant/petitioner.

5. In this appeal Mr. P.G. Baruah, learned senior counsel has reiterated in his submissions that in terms of Section 73(2) of the Assam Panchayat Act, 1994, it is obligatory upon 1/3 of the total number of members of the Zilla Parishad to deliver the signed notice for such No Confidence Motion to the President himself personally and on receipt of the same, the President is required to convene a meeting within seven days from the date of receipt of the said notice. Referring to the said provisions of Section 73(2) of the Act, the learned senior counsel submits that in the

instant case the notice has not been delivered to the petitioner but after the same having been delivered to the Chief Executive Officer of the Zilla Parishad contravened the mandatory provisions of Section 73(2) of the Act and such all subsequent actions thereto including passing of the No Confidence Motion against him are void ab initio. In order to appreciate the contentions of the learned senior counsel, Section 73(2) of the Act is quoted herein below:

73. No confidence in the office of the President and Vice-President of Zilla Parishad. -

(1)...

(2) If there is no Vice-President the members present shall choose one from among them to preside over such meeting:

Provided that one-third of the total number of members shall sign the notice for such a motion and deliver it to the President and the President shall convene the meeting within seven days from the date of receipt of the notice. The meeting shall be held on a day not later than fifteen days from the date of issue of the notice of the meeting. If the President fails to convene the meeting within the specified time, the members shall request the Deputy Commissioner for the purpose, who shall direct the Chief Executive Officer of the Zilla Parishad to convene the meeting.

Provided further that the Deputy Commissioner shall direct the Chief Executive Officer to convene the meeting within seven days from the date of receipt of the request of the members and the Chief Executive Officer shall convene the meeting within fifteen days from the date of receipt of the direction. The Deputy Commissioner shall preside over such meeting. In case of his inability, the Deputy Commissioner shall depute one of the officers not below the rank of Additional Deputy Commissioner to preside over such meeting.

If under Sub-section (1), the members express want of confidence both in the President and the Vice-President of the Zilla Parishad at the same time and issue notices, the Chief Executive Officer of the Zilla Parishad shall report the matter to the concerned Deputy Commissioner within three days from the date of receipt of the notices and the concerned Deputy Commissioner shall direct the Chief Executive Officer of the Zilla Parishad to convene the meeting within fifteen days from the date of receipt of the direction, separately, to consider the motion against the President first and to consider the motion against the Vice-President next day and preside over such meetings. In case of the inability to preside over, the Deputy Commissioner shall depute one of the officers not below the rank of Additional Deputy Commissioner under him to preside over such meeting:

Provided also that if it is not possible to hold the meeting for a situation due to non-attendance of the requisite number of members in such meeting or meetings as the case may be the no-confidence motion shall automatically stands cancelled and, the motion shall be deemed to have lost, in the event of which no such motion

shall be allowed within the next six months.

6. Section 73 of the Act includes the power and authority of 2/3rd members of the total members elected directly as members of the Zilla Parishad adopt necessary resolution for removal of the President and Vice-President of the Zilla Parishad as well as the procedure for issuing the notice of no confidence motion against such officials and the methodology to be adopted thereof are prescribed. Thus, in the said section both the power and procedure for removal of the President and Vice-President of the Zilla Parishad for want of confidence by specific number of members of Zilla Parishad has been fully structured. A bare reading of the first proviso to Section 73(2) of the Act discloses that 1/3rd of the elected members of the Zilla Parishad are entitled to sign a notice for such No Confidence Motion and deliver it to the President and the President is to convene a meeting within seven days from the date of receipt of the notice. The said provision nowhere provided that such notice is to be delivered to the President personally. If we are to accept the submissions of Mr. Baruah in that event the word "personally" is to be prefixed before the word "delivery" as contained therein. It is one of the basic principles of interpretation of the statutory provisions that the statute to be interpreted as it is provided that the meaning of it is clear and unambiguous and the judicial authority is not entitled to prefix or suffix any word or sentence in a statute which the Legislature in its wisdom has omitted. Acceptance of such argument of the learned senior counsel would amount to restrict and limit the mode of delivery of such notice upon the President which the Legislature has not intended to. Thus, interpreting the said provision as it is the argument of the learned senior counsel cannot be accepted that delivery of the notice of No Confidence Motion should be personally delivered to the President himself. The learned Single Judge has rightly decided the issue.

7. Mr. Baruah finally submits that the Secretary or the Chief Executive Officer of the Zilla Parishad not having delegated or empowered by the Act to receive such a notice, the acceptance of such notice by such authorities will not validate the action. In this connection, the learned senior counsel referred to the provisions of Sections 77, 86 and 103 of the Act and reiterated that no such power of the President to receive such a notice has been delegated to the Secretary or the Chief Executive Officer. This argument would be plausible if for the purpose of procedural methodology one is required to travel beyond the provisions of Section 73 to examine as to how such notice to deliver. But a bare reading of Section 73 itself disclose that such provision is already provided in Section 73(2) of the Act and such being the legislative provision made in the enactment it is not necessary to go to the other provisions for hunting as to how such a notice is to be delivered to the President of the Zilla Parishad. Section 73(2) itself being full answer to the issue, the submissions of Mr. Baruah is not acceptable to us.

8. A Division Bench of this court in Momtaz Rana (supra) interpreted similar provision as contained in Section 15(1) of the Act which relates to passing of no confidence motion against the President and Vice-President of the Gaon Panchayat, held the said provision to be a directory one, thus, resolving conflict of opinion as contained in it contrary to the decisions of learned Single Judges. The provisions of Sections 15 and 73 are identical in nature. The interpretation of Section 15(1) as interpreted in the case of Momtaz Rana (supra) can safely be brought into operation in Section 73 also. Following the same principle we hold that Section 73 of the Act is not mandatory but a directory.

8. The learned Single Judge further held that the irreconcilable departure from the initial pleadings in the writ petition as is discernible from the reply affidavit is deserved to be strongly disapproved. Holding such stand not only to be inconsistent his shifting from original pleadings reflecting bona fide of the petitioner. Accordingly, it must be held that in terms of the statements made by the writ petitioner at para 8 admitting the fact that the writ petitioner received the letter calling for a meeting for no confidence motion on 12.9.2005 is the real fact and on accepting the said stand we do not find any room for accepting the argument advanced in this appeal contrary to the admitted fact. The no confidence motion having been carried out against the petitioner by a majority of 1/3rd elected members of the Zilla Parishad, The appellant has deemed to have vacated the said office from the date of the resolution. The provisions of Section 73 of the Act being directory in nature, any non-compliance on such trivial aspect will not invalidate the decision of the majority of the elected members who expressed their no confidence against the President.

9. In view of the aforesaid discussions, we do not find any merit in this appeal to interfere with the decision of the learned Single Judge and hence stands dismissed.