(2010) 02 GAU CK 0039

Gauhati High Court

Case No: Writ Petition (C) No. 1298 of 2010

Mrs. Rohima Begum		APPELLANT
	Vs	
State of Assam and Others		RESPONDENT

Date of Decision: Feb. 24, 2010

Acts Referred:

- Assam Panchayat Act, 1994 - Section 15, 15(2)
- Constitution of India, 1950 - Article 226

Citation: (2010) 2 GLD 429

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: N.C. Das and P. Gogoi, for the Appellant; V.L. Sinha, Government Advocate and B. Ahmed, for the Respondent

Judgement

I.A. Ansari, J.

I have heard Mr. N.C. Das, learned senior counsel, for the petitioner, and Ms. V.L. Sinha, learned Govt. Advocate, appearing on behalf of the respondent Nos. 1, 3, 4 and 5. I have also heard Dr. B. Ahmed, learned Counsel, for the respondent Nos. 6 to 14.

2. The petitioner is the President of Tinthengia Gaon Panchayat. Aggrieved by the fact that out of ten elected members of the said Gaon Panchayat, as many as nine members have given to her a requisition, dated 15.2.2010 (Annexure 1 to the writ petition), expressing their "want of confidence" in her as President and also apprehending that if the meeting is commenced to discuss the motion of "no confidence", the majority of the members being against her, the Motion of "no confidence" would be passed against her, the petitioner has filed this writ petition, under Article 226 of the Constitution of India, impugning the grounds on which the majority of the members of the said Gaon Panchayat have expressed their no

confidence in her.

3. The right to contest election, and/or the right to remain in office to which a person is elected, does not fall within any of the fundamental rights nor does it fall under common law rights. Election to, or removal from, any office is governed by the law, which may have been made in this regard. Unless, therefore, the law specifies the grounds, on which ''want of confidence'' can be expressed, correctness or justification of the grounds, on which removal of an elected person is sought by expressing ''want of confidence'', cannot be challenged by way of a writ petition inasmuch as it is not permissible for the Court, in exercise of its powers under Article 226, to judicially review the grounds, based on which ''want of confidence'' is expressed.

4. Situated thus, it is clear that unless the scheme of the Assam Panchayat Act and/or the Rules framed thereunder provides the grounds on which ''want of confidence'' can be expressed by the members in an elected President of a Gaon Panchayat, it is not possible for the Court to judicially review if the grounds, on which ''want of confidence'' rests, is or is not justified. The scheme of the Assam Panchayat Act and the Rules framed thereunder is that if one third of the members give a requisition for convening a ''special meeting'' to discuss a motion of ''no confidence'' against the President or the Vice President, as the case may be, such a meeting shall be convened by the Secretary of the Gaon Panchayat with the approval of the President of the Gaon Panchayat and if the President does not convene the meeting within a period of 15 days from the date of receipt of the notice, the Secretary is duty bound, within three days thereafter, to refer the matter to the President of the concerned Anchalik Panchayat, who, in turn, shall convene the meeting within seven days from the date of receipt of the information from the Secretary of the Gaon Panchayat and if the President of the Anchalik Panchayat too fails to take any action in this regard, the Secretary remains duty bound to inform the matter to the Deputy Commissioner/Sub-Divisional Officer (Civil), as the case may be, within a period of three days after expiry of the period within which the meeting shall be called by the President of the Anchalik Panchayat, and, then, the concerned Deputy Commissioner/Sub-Divisional Officer (Civil), as the case may be, shall convene the meeting within seven days from the date of receipt of the information from the Secretary of the Gaon Panchayat with an intimation to the Zilla Parishad or the Anchalik Panchayat.

5. Thus, there is nothing in the said Act and or the Rules framed thereunder showing that only on some specified grounds, ''want of confidence'' can be expressed by the members in the President or the Vice-President, as the case may be, of a Gaon Panchayat. In order to express ''want of confidence'' in the President or Vice-President, as the case may be, when the grounds have not been provided by the Legislature, while enacting the law, it would not be open to the Court to examine the grounds, on which ''want of confidence'' is expressed by the members, for the

purpose of satisfying itself if the ''want of confidence'', expressed by the members, is, in a given case, justified or not. It is enough, for the purpose of attracting the provisions of Section 15, if a requisition, calling for special meeting to discuss the motion of ''no confidence'' is signed by the requisite number of members of the Gaon Panchayat and, in terms of the provisions of Sub-section (2) of Section 15, delivered to the President or the Vice-President, as the case may be, of the concerned Gaon Panchayat with information to the Deputy Commissioner of the district.

6. What crystallizes from the above discussion is that the petitioner cannot invoke this Court''s extra-ordinary jurisdiction, under Article 226, to examine as to whether the grounds, based on which the want of confidence is expressed by the majority of the members of the said Gaon Panchayat, are or are not justified. Such examination being not permissible in law, the remedy of the petitioner lies in either quitting the office to which she has been elected or face the no confidence motion and if any illegality is committed, while conducting the process of removal, the petitioner has the liberty to take recourse to appropriate provisions of law.

7. With the above observations and directions, this writ petition shall stand disposed of.

8. No costs.