

(2014) 03 GAU CK 0048

Gauhati High Court

Case No: WP(C) No. 7240 of 2013

Rukia Khatun (Musstt.)

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: March 18, 2014**Acts Referred:**

- Assam Panchayat Act, 1994 - Section 15, 15(1), 15(5)

Citation: (2014) 3 GLD 574 : (2014) 2 GLT 605**Hon'ble Judges:** Biplab Kumar Sharma, J**Bench:** Single Bench**Advocate:** A. Choudhury, S. Islam, A. Ali and M. Konch, Advocate for the Appellant; D.C. Borah, K. Lahkar, D. Barman and M. Das, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Biplab Kumar Sharma, J.

Heard Mr. A. Choudhury, learned counsel for the petitioner. Also heard Mr. B.J. Ghosh, learned State Counsel. I have also heard Mr. D.C. Borah, learned counsel representing respondent Nos. 8 to 15. By means of this writ petition, the petitioner, who is the President of Gaglamari Gaon Panchayat in the district of Morigaon, has challenged the No Confidence Motion that has been brought against her. Be it stated here that Gaon Panchayat consists of 10 Members out of which 8 have brought the No Confidence Motion against the petitioner.

It is an admitted position that the No Confidence Motion that was brought against the petitioner by Annexure-B requisition dated 18.11.2013 has not been acted upon by her by convening the special meeting of the GP. She was reminded of the same by the Secretary of the GP vide the Annexure-C letter dated 20.11.2013 followed by further representation of the 8 members of the GP on 25.11.2013.

2. According to the petitioner, the No Confidence Motion initiated vide the requisition dated 18.11.2013 having been defeated, the members i.e. the private

respondents are precluded from bringing another No Confidence Motion vide the aforesaid requisition dated 21.11.2013. In this connection, Mr. A. Choudhury, learned counsel for the petitioner has referred to the provisions of Section 15 of the Assam Panchayat Act, 1994, more particularly the second proviso to Section 15(5).

3. On the other hand, Mr. D.C. Borah, learned counsel for the private respondents referring to the stand taken in MC 494/2014 by which vacation of the interim order dated 11.12.2013 has been prayed for, submits that the petitioner herself being responsible for non-holding of the special meeting cannot take the plea that the first No Confidence Motion got defeated by efflux of time.

4. I have considered the submissions made by the learned counsel for the parties and have also perused the entire materials on record. Section 15 of the Act provides for No Confidence Motion against the President and Vice President. As per the procedure laid down therein, in case of failure on the part of the President to hold the meeting to discuss the No Confidence Motion, the Anchalik Panchayat should be moved by the Secretary of the GP. As per the 2nd proviso to Section 15(5), when a No Confidence Motion is lost, no such motion shall be allowed in the next six months. In the instant case, the No Confidence Motion is yet to be discussed and thus there is no question of the No Confidence Motion having spent its force debarring further bringing of No Confidence Motion in the next six months.

5. The 2nd Proviso to Section 15(5) provides that if it is not possible to hold the meeting for a situation due to non-attendance of requisite number of members in such meeting, the No Confidence Motion shall be deemed to have lost. In such an event also, no such motion shall be allowed within next six months. In the instant case, it is not a case that the motion having spent its force due to non-attendance of requisite number of members in the meeting. As the meeting has not been convened by the petitioner, she cannot be allowed to play with the provisions of said Section 15 by not adhering to the procedure laid down therein. When the No Confidence Motion requisition was placed before her, it was incumbent on her part to hold the meeting. She having failed to hold the meetings, she cannot take the plea of emergence of the situation as envisaged u/s 15(1) (2nd proviso) and Section 15(5) (2nd proviso).

6. As has been brought out in the MC 494/2014, that upon failure of the petitioner to convene the meeting, the Secretary of the GP has already moved the Anchalik Panchayat vide the representation dated 6.12.2013 (Annexure-4). Now it is the duty of the AP to convene the special meeting to discuss the No Confidence Motion. In view of the above, I do not find any merit in the writ petition and accordingly it is dismissed. The interim order passed on 11.12.2013 stands vacated. The respondents are directed to proceed with the matter strictly in accordance with law and Section 15 of the Act, within the prescribed stipulated period of time.

There shall be no order as to costs.