
(2016) 06 GAU CK 0021

GAUHATI HIGH COURT

Case No: W.A. 27 of 2015

Dhirendra Chandra Das

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: June 10, 2016

Acts Referred:

- Assam Panchayat Act, 1994 - Section 15, 18, 2(11), 2(12), 6

Citation: (2016) AIR(Gauhati) 138 : (2016) 4 GauLJ 471 : (2016) 6 GauLR 209 : (2016) 4 GauLT 1 : (2016) 4 NEJ 358

Hon'ble Judges: Dr. (Mrs.) Indira Shah and Mr. N. Chaudhury, JJ.

Bench: Division Bench

Advocate: Mr. K.N. Choudhury, Senior Advocate, Mr. M. Khan, Mr. J. Rahman, Mr. M.H. Laskar, Mrs. S. Roy and Mr. B.K. Das, Advocates, for the Appellant; Mr. D. Das, Sr. Advocate, Mr. S.S. Dey, Sr. Advocate, Mr. H.I. Choudhury, Mr. G. Uddin, Mr. S. Banik, Mr. M. Hass

Final Decision: Disposed Off

Judgement

Mr. N. Chaudhury, J.—Whether President of a Gaon Panchayat is a member within the meaning of Section 15 of the Assam Panchayat Act, 1994 is the common question to be answered in these three writ appeals. Although they are based on three different sets of facts but answer to this question shall be the key point in deciding all these three appeals for which they have been listed together.

2. Writ Appeal No. 27/2015 arises out of an interim order granted by Hon'ble Single Judge on 31.01.2015 keeping the proceedings of no confidence motion against President of Nagendra Nagar Gaon Panchayat held on 21.01.2015 relying on an earlier judgment of this court in the case of Fakrun Nessa Choudhury v. State of Assam reported in (2012) 5 GLT 107. As many as 7 members of Nagendra Nagar Gaon Panchayat under Ramkrishna Nagar Anchalik Panchayat in the district of Karimganj made a requisition on 24.12.2014 for a special meeting. The meeting was

not held within the statutory period for which it was referred to the Anchalik Panchayat by the Secretary of the Gaon Panchayat on 08.01.2015. Under the scheme of the Assam Panchayat Act, 1994, the concerned Anchalik Panchayat was supposed to hold the meeting within 15.01.2015 but it was held only on 22.01.2015. Be that as it may, in that special meeting as many as 7 members expressed their want of confidence and the motion of no confidence was passed by a majority of two-third of the total number of members of the Gaon Panchayat. This resolution come under challenge before Hon"ble Single Bench vide WP(C) No. 437/2015, inter alia, on the ground that Gaon Panchayat concerned comprised actually of 11 (eleven) members including the President and so the magic number for unsetting a President cannot be 7 and it must be 8. Since the resolution has been passed on the votes of 7 members only, it was in violation of Section 15 of the Assam Panchayat Act, 1994 (hereinafter referred to as "the Act") and so the same was liable to be set aside. Earlier judgment of this court in the case of Fakrun Nessa Choudhury (supra) was relied on before the Hon"ble Single Judge which held that in addition to the directly elected 10 members of a Gaon Panchayat, President who is also directly elected should be considered to be a member of the Gaon Panchayat and thus, although Gaon Panchayats in Assam comprise of only 10 Wards but there are 11 members including the President. The aforesaid decision arrived at by paragraph 22 of Fakrun Nessa Choudhury (supra) was relied on by the Hon"ble Single Judge for the purpose of granting interim order and accordingly the interim order dated 31.01.2015 was passed thereby considering President of a Gaon Panchayat to be also another member of the Gaon Panchayat in addition to the 10 directly elected members. By preferring the present writ appeal, the aforesaid interim order dated 31.01.2015 has been called in question and so naturally the correctness of the decision of the Hon"ble Single Judge in the earlier judgment in Fakrun Nessa Choudhury (supra) has been argued by the learned counsel of the appellant.

3. The writ appeal No. 373/2014 is preferred against the order dated 03.12.2014 passed by the Hon"ble Single Judge in WP(C) No. 6320/2014. That is an interim order passed by the Hon"ble Single Judge whereby it has been ordered that the impugned resolutions adopted on 26.11.2014 would be subject to the result of the case. The writ petitioner did not get any interim order in their favour and so preferred the present writ appeal. One of the three contentions of the writ petitioner before the Hon"ble Single Judge was that Gaon Panchayat is constituted by 11 members including the President and therefore casting of 7 votes is not two-third of the votes of the Panchayat members and minimum 8 votes can only oust the President/ Vice-President. But in the instant case only 7 votes were cast in favour of no confidence and so, the resolution was invalid for want of required number of votes. Such submission was obviously made in terms of the judgment of this court in case of Fakrun Nessa Choudhury (supra) and that is why this case is also tagged with the present set of appeals. By an order passed on 10.02.2015, a Division Bench of this court granted interim order against resolution dated 26.11.2014. The respondents

challenged the interim order before the Hon"ble Supreme Court by preferring SLP(C) No. 20694/2015. The Hon"ble Supreme Court dismissed the SLP observing that the writ appeal be disposed of by High Court expeditiously.

4. The writ appeal No. 226/2015 has arisen out of the order dated 05.08.2015 passed in WP (C) No. 4282/2015 by the Hon"ble Single Judge refusing to stay the proceedings of no confidence motion already passed on 21.07.2015 by 7 members of Fekamari Gaon Panchayat in the district of Dhubri. Smt. Saheba Begum was elected by the voters of the aforesaid Gaon Panchayat in the election held in the month of February, 2013 along with 10 directly elected members from ten different wards. On 24.06.2015 as many as 7 members out of the total of 10 directly elected members made a requisition for special meeting to discuss no confidence motion against her under section 15 of the Act. As the meeting could not be held within the statutory period, the matter was placed before the Fekamari Anchalik Panchayat and the Executive Officer of the said Anchalik Panchayat issued letter to the President/Vice President on 13.07.2015 in regard thereto. Since the notice was received by the Secretary of the Gaon Panchayat only on 24.06.2015, the statutory period of 15 days expired on 08.07.2015 but 3 days before that the matter was sent to the Anchalik Panchayat on 06.07.2015. Be that as it may, the Anchalik Panchayat held meeting on 21.07.2015 wherein 7 directly elected members supported the no confidence motion and accordingly the motion was passed. The President of the Gaon Panchayat thereafter preferred WP(C) No. 4282/2015 before Hon"ble Single Judge of this court challenging the resolution of the special meeting, inter alia, on the ground that the resolution having been passed by only 7 members, it was not in conformity with the mandate of the provision of section 15 of the Act and so such resolution cannot be sustained. In this case also the writ petition has raised the point that directly elected President of a Gaon Panchayat is also a member of the Gaon Panchayat and so while calculating two-third members of a Gaon Panchayat for the purpose of section 15 of the Act, he should be included and thus minimum of the two-third members would be 8 and not 7. A resolution passed by 7 members of Gaon Panchayat, therefore, cannot be a resolution of two-third members of the Gaon Panchayat in view of such interpretation as given in paragraph 22 of the case of Fakrun Nessa Choudhury (supra). Thus, the writ petitioner prayed that an interim order should be granted in his favour staying the no confidence resolution. The Hon"ble Single Judge did not allow the prayer for interim order holding that as and when the resolution was passed the President stood removed in terms of the provision of section 15 of the Act and so there is no scope to pass an interim order. This order dated 05.08.2015 passed by the Hon"ble Single Judge refusing to grant an interim order has been called in question in the present appeal on the ground that it is contrary to the earlier Single Bench decision in the case of Fakrun Nessa Choudhury (supra). At the time of admitting the writ appeal an interim prayer was accordingly made vide I.A. No. 1245/2015 and the Division Bench granted interim stay. Aggrieved, yet another application has been filed by the 7 members of the

Gaon Panchayat for vacation of this interim order and this is how the correctness of the decision rendered in paragraph 22 of the judgment of Fakrun Nessa Choudhury (supra) come under consideration. Accordingly, this writ appeal has also been listed along with earlier writ appeal.

5. In view of the aforesaid facts situations in three different writ appeals a common question of law exists. Once the question referred at the beginning of the judgment is answered, all the three writ appeals would automatically stand decided. So the task before us is to examine the correctness of the judgment in Fakrun Nessa Choudhury (supra).

6. Fakrun Nessa Choudhury was directly elected President of B.B. Gaon Panchayat, Hailakandi. On 08.02.2010, eight elected members of the Gaon Panchayat gave requisition for special meeting to discuss no confidence against her. The authority did not hold any meeting whereupon they approached this court through WP(C) No. 1953/2010 for appropriate direction which was disposed of on 25.06.2010 directing the Deputy Commissioner, Hailakandi to take steps in terms of the provision of section 15 of the Act. Deputy Commissioner thereafter instructed the Secretary of BB Gaon Panchayat to take actions as per the order of the Court. The meeting was not held for which it was referred to Hailakandi Anchalik Panchayat. The Block Development Officer who was the Executive Officer and Secretary of the Anchalik Panchayat convened the meeting on 07.08.2010 wherein 8 members who had requisitioned the special meeting attended. Ultimately, a resolution was passed on 07.08.2010 expressing no confidence against the writ petitioner for her removal. By filing the aforesaid writ petition the writ petitioner stated that the resolution is bad on two grounds. First, the eight members who had passed the resolution included two members who had earlier resigned on 10.12.2009 and so they ceased to be the members of the Gaon Panchayat and so they were not entitled to attend the meeting or to cast vote. This means that resolution was passed only by 6 members legally and validly which cannot result in removal of the President being less than the magic number. Secondly, it was asserted that section 6 of the Act provides for constitution of Gaon Panchayat by electing 10 members directly by the voters and one President directly by the voters. Gaon Panchayat, therefore, consists of $10 + 1 = 11$ members including the President and so to remove a President under section 15 of the Act, two-third of 11 members have to vote in favour of no confidence motion. Two-third of 11 members comes to 7.4 which should be taken as 8 members in terms of the judgment of this court in the case of Smt. Junali Doley (Borah) and Ors. v. The State of Assam and Ors reported in (2011) 2 GLT 459. This means that at least 8 members must pass resolution of no confidence to remove a President/Vice President. In that case, legally 6 members were entitled to vote and so the resolution was not passed by adequate number of members within the meaning of section 15 of the Act and so removal was illegal. The writ petitioner, therefore, prayed that the no confidence resolution should be quashed and she should be reinstated.

7. The Hon"ble Single Judge in the case of Fakrun Nessa Choudhury (supra) accepted the contention of the writ petitioner and thus adjudged the removal to be illegal. However, in so doing, the following observations were made:-

12. Therefore, in view of the above decisions, the petitioner is right in contending that in the present context of a resolution for motion of No Confidence against the petitioner, the minimum requirement to constitute two-third of the of the total number 10 members would be 7. Therefore, the issue to be decided is whether there were at least seven (7) valid votes against the petitioner in the aforesaid meeting held on 7.8.2010 which was held for considering the No Confidence Motion against the petitioner.

22. The next issue to be decided is to ascertain the total number of members of the BB Gaon Panchayat for the purpose of the No Confidence Motion proceedings undertaken under Section 15 of the Assam Panchayat Act.

Under Section 6 of the Assam Panchayat Act, 1994 the Gaon Panchayat consists of 10 members to be directly elected by the voters of the territorial constituencies of the Gaon Panchayat and the President of the Gaon Panchayat, who will be elected directly by the voters of the territorial constituencies of the Gaon Panchayat area.

As such, the total number of members of a Gaon Panchayat would be eleven i.e., $(10+1 = 11)$.

Under Section 15 of the Assam Panchayat Act, 1994:

"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 numbers of members of the Goan Panchayat."

Thus, the dispute in the present petition revolves round the interpretation of the words, "two third of the total numbers of members of the Goan Panchayat".

The petitioner contends that the total number of the Gaon panchayat would mean the sanctioned strength of the Gaon panchayat and not the existing, irrespective of the fact that some members may have resigned or ceased to be members of the Gaon panchayat.

On the other hand, the Respondents contend that the total number of the Gaon panchayat would mean the existing strength of the Gaon Panchayat since, members who tender their resignation or demit office due to death or otherwise, cease to be members and cannot be counted as members for the purpose of determining the total member of the Gaon Panchayat.

A similar issue arose before this Court (as then High Court of Assam and Nagaland) in "Samiruddin Ahmed v. S.D.O., Mangaldoi and others, reported in AIR 1971 AN 163 in which the Court while interpreting the words "at least a minimum of two-thirds of total number of members" as found in Section 27 (1) (b) of the Assam Panchayat Act,

1959 held as follows:

" The matter, therefore, turns upon the construction of Section 27(1)(b). What is the meaning of the words - "at least a minimum of two-thirds of total number of members" in Section 27(1)(b). It is contended by the petitioner that the total number of members must be the total sanctioned strength of the Gaon Panchayat which is admittedly thirteen. On the other hand, it is submitted by the respondents that two-thirds must have relation to the existing members functioning at the time. Since one member was already dead and another has ceased to be a member of the Gaon Panchayat, the total number of members for the purpose of this section on the material date is eleven and not thirteen. The presence of eight members in the meeting of 3rd June therefore, fulfils the requirement of Section 27(1)(b). We are unable to accept the submission of the respondents. There is no warrant for adding a word "existing" in Section 27 (1) (b) to qualify the words "number of members". Under this section a President immediately ceases to be a President on passing of a motion of no-confidence against him by three-fifth majority of the minimum requisite members present. Such a provision under the law resulting in deprivation of an office has to be strictly construed as it affects the right of an elected office-bearer to continue for the normal span of his office."

24. That in view of the above legal position, we have to examine whether by resorting to literal interpretation of the aforesaid words, it leads to any absurdity or incongruity. Since, by holding that the total number of members would be 11 (eleven), it does not lead to any absurdity, the words, "two third of the total numbers of members of the Goan Panchayat" would mean the total number of Gaon Panchayat and the words "existing" cannot be read into the said provision as to mean only those members who are presently the members. Therefore, there is no need depart from the rule of literal interpretation.

Accordingly, the total numbers of members of the Gaon Panchayat would be 11 as provided under Section 16 of the Act and not the existing members sans the resigned members.

Therefore, at least 7 members would be required to support such a no confidence motion to remove the petitioner.

In present case, since this Court has already held that the two members had already ceased to be members on account of their resignation, their votes are invalid and the valid votes cast in favour of the no confidence motion would be only 6 (six) which falls short of the required number. Accordingly, the said motion is not valid for removing the petitioner from the office of the President of the BB Gaon Panchayat."

8. From three paragraphs quoted above from the judgment in Fakrun Nessa Choudhury (supra), it appears that in paragraph 12, the Hon"ble Single Judge found 7 members to be two-third of the members within the meaning of section 15 of the

Act. The same view is also held in paragraph 24 but while discussing the provision of section 15, it was held that President should be considered to be another member in addition to 10 elected members and calculation of two-third majority should be made taking 11 as the total number of members. This observation is made not only in paragraph 22 but also in the first part of paragraph 24 of the judgment, though in the latter part of the judgment 7 was found to be two-third of total number of members as required under section 15 of the Act. We are basically concerned with the observation made in paragraph 22 of the judgment in Fakrun Nessa Choudhury (supra) where the Hon"ble Single Judge included President as a member of the Gaon Panchayat in addition to the 10 directly elected members.

9. We have heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. M Khan for the appellant in W.A. No. 226/2015. Mr. Choudhury supported the judgment of the Hon"ble Single Judge in Fakrun Nessa Choudhury (supra) and argued that unless at least 8 members passed a resolution for removal, a President or a Vice President of a Gaon Panchayat cannot be removed. Mr. M.H. Laskar has appeared on behalf of the appellant in W.A. 27/2015 and has also independently argued supporting the judgment in Fakrun Nessa Choudhury (supra). On the other hand, the learned senior counsel, Mr. D. Das and Mr. S.S. Dey argued that the decision rendered in Fakrun Nessa Choudhury (supra) is not correct. According to them, the word "member" occurring in section 15 of the Act should be read as Gaon Panchayat member only and there is no necessity for interpreting the word "member" to include the President as the language is plain and clear. Both sides have placed reliance on reported judgments which we have gone through.

10. To understand the question posed before us, it is necessary to have a look at the relevant sections of the Assam Panchayat Act, 1994 which are quoted below:-

"Section 2(11):- "Member" means a member of a Gaon Panchayat or a Anchalik Panchayat or of a Zilla Parishad;

Section 2(12):- "Ex-officio Member" means a member who is appointed to be a member by virtue of his office, and for the purpose of Gaon Panchayat or Anchalik Panchayat or Zilla Parishad and may include local Members of Parliament, local Members of Legislative Assembly, State Government officials, Representative of local Co-operative Societies and representative of local scheduled or non-scheduled banks;

Section 6:- Constitution of Gaon Panchayat. - (1) The Gaon Panchayat shall consist of -

(a) ten members to be directly elected by the voters of the territorial constituencies of the Gaon Panchayat area - one from each constituency in the manner prescribed;

(b) president of the Gaon Panchayat who shall be elected directly by the voters of the territorial constituencies of the Gaon Panchayat area in the manner prescribed.

(2) For the convenience of election, the prescribed authority shall in accordance with such rules as may be prescribed in this behalf by the Government, divide the area of the Gaon Panchayat into ten territorial constituencies and allot one seat for each constituency.

(3) When the Gaon Panchayat is constituted under this Section, the Deputy Commissioner or an officer authorised by the Deputy Commissioner for this purpose shall call a meeting of the Gaon Panchayat (which shall be hereinafter called the first meeting of the Gaon Panchayat) for election of a Vice-President from amongst the members in the manner prescribed.

Section 14:- Resignation and Removal of President and Vice-President. - (1) The president or the Vice President of Gaon Panchayat may resign his office by writing under his hand addressed to the Deputy Commissioner and to the President of the Gaon Panchayat, as the case may be.

(2) Every resignation under sub-section (1) shall take effect on the expiry of fifteen days from the date of its receipt by the authority unless within this period of fifteen days he withdraws such resignation by writing under his hand addressed to the Deputy Commissioner in case of President and to the President of the Gaon Panchayat in respect of Vice-President.

(3) Every President or Vice President shall vacate the office if he ceases to be member of Gaon Panchayat.

Section 15:- No confidence motion against the President and Vice President. - (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 meeting 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 of the 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 (C) 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 (C) 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 non-confidence motion is lost, no such motion shall be allowed in the next six months.

(2) The requisition for such a special meeting under sub section (1) shall be signed by not less than one third of the total number of members of the Gaon Panchayat and shall be delivered to the President or Vice President as the case may, of the concerned Gaon Panchayat with information to the Deputy Commissioner of the District.

(3) Without prejudice to the provision under this Act a President or a Vice President of a Gaon Panchayat may be removed from office by the concerned Anchalik Panchayat with the approval of the Zilla Parishad for misconduct of his/her duties or neglects or incapacity to perform his/her duties or for being persistently remiss in the discharge of or guilty of any disgraceful conduct and President or Vice-President so removed shall not be eligible for re-election as President or Vice President during the remaining term of office either as President or Vice President of such Gaon Panchayat:

Provided that no such President or Vice President of a Gaon Panchayat shall be removed from office unless he is given reasonable opportunity to furnish explanation to the Anchalik Panchayat.

(4) A Vice President so removed from his office under sub section (3) may also be removed from membership of the Gaon Panchayat by the Government after giving "the" member a reasonable opportunity of furnish his explanation.

(5) If, under sub-section (1), the members of the Gaon Panchayat express want of confidence both in the President and Vice-President of the Gaon Panchayat at the same time and issue notices, the Secretary of the Gaon Panchayat, within seven days from the date of receipt of such notices, shall report the matter to the President of the concerned Anchalik Panchayat who shall arrange to convene the meeting within fifteen days from the date of receipt of the intimation, separately, to consider the motion against the President first and to consider the motion against the Vice-President next day and shall preside over both the meetings. The President of the concerned Anchalik Panchayat presiding the meeting shall have no vote.

In case the President of the concerned Anchalik Panchayat does not take action as above, the Secretary of the Gaon Panchayat, within three days after the expiry of the stipulated fifteen days time, shall refer the matter to the concerned Deputy

Commissioner or the Sub-Divisional Officers (C), as the case may be. On receipt of the information, the Deputy Commissioner or the Sub-Divisional Officer as the case may be, shall convene both the meetings in the manner as above, within fifteen days from the date of receipt of the information with intimation to the concerned Anchalik Panchayat and Zilla Parishad and preside over such meetings:

Provided that the concerned Deputy Commissioner or the Sub-Divisional Officer as the case may be, in case of his inability to preside over the meeting, may depute a Gazetted Officer not below the rank of Class - I Gazetted Officer to preside over such meeting:

Provided further 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 motion shall be deemed to have lost, in the event of which no such motion shall be allowed within the next six months.

Section 18: Quorum and Procedure. - (1) The Quorum for a meeting of the Gaon Panchayat shall be one third of the total number of members.

(2) If at the time appointed for the meeting a quorum is not present, the presiding authority shall wait for thirty minutes, and if within such period there is no quorum, the presiding authority shall adjourn the meeting to such time on the following day or such future date as he may fix but not beyond fifteen days from the date of the adjourned meeting. However, the adjourned meeting shall require no quorum.

(3) The business which could not be considered at the meeting so adjourned for want of quorum, shall be brought before and disposed of at the meeting so fixed.

(4) Save as otherwise provided by or under this Act, at every meeting of Gaon Panchayat, the President or in his absence the Vice-President shall preside.

(5) The voting in any meeting of 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.

(6) All questions shall, unless otherwise specially provided, be decided by a majority of votes of the members present. The President/Vice President presiding, as the case may be, unless he refrains from voting, shall give his vote before declaring the number of votes for and against a question and in the case of equality of votes, he may give his casting vote.

(7) No member of a Gaon Panchayat shall vote on, or take part in the discussion of, any question coming up for consideration at a meeting of Gaon Panchayat, if the question is one in which apart from its general application to the public, he has any pecuniary interest, and if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration.

(8) If the person presiding is believed by any member present at the meeting to have any such pecuniary interest in any matter under discussion, and if a motion to that effect be carried, he shall not preside at the meeting during such discussion or vote on or take part in it. Any member of the Gaon Panchayat may be chosen to preside at the meeting during its continuance of such discussion.

Section 32. Constitution of Anchalik Panchayat. - (1) Every Anchalik Panchayat shall consist of-

(a) one member from each Gaon Panchayat to be directly elected from the territorial constituencies of the Gaon Panchayat under the jurisdiction of the Anchalik Panchayat;

(b) the President of the Gaon Panchayat falling within the jurisdiction of the Anchalik Panchayat;

(c) the members of the House of People and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly, the Anchalik Panchayat.

(2) Every member shall have the right to vote whether or not chosen by direct election in the meetings of the Anchalik Panchayat.

43. No confidence motion against the President and the Vice-President of Anchalik Panchayat.

(1) Every President and Vice-President of the Anchalik Panchayat shall be deemed to have vacated his office forth with if by a resolution express want of confidence in him passed by a majority of two-third of total number of the directly elected members of the Anchalik Panchayat. Such a meeting shall be specially convened with the approval of the President of the Anchalik Panchayat. Such meeting shall be presided over by the President if the motion is against the President and the Vice-President if the motion is against the President. In case such a meeting is not convened by the Anchalik Panchayat within a period of fifteen days from the date of receipt of the notice. The Secretary of the Anchalik Panchayat shall refer the matter to the President of the Zilla Parishad with intimation to the Deputy Commissioner. The President of the Zilla Parishad shall then arrange for convening the meeting within fifteen days from the date of receipt of intimation. The Zilla Parishad President shall preside over such meeting but shall have no vote.

(2) (a) In case, the President of the Zilla Parishad does not convene the meeting within fifteen days from the date of receipt of intimation, the Ex-Officio Secretary of the Anchalik Panchayat within three days from the date of expiry of the date of stipulated fifteen days time shall report to the concerned Deputy Commissioner or the Sub-Divisional Officer, as the case may be. On receipt of the information, the Deputy Commissioner or the Sub-Divisional Officer as the case may be, shall convene the meeting within fifteen days from the date of receipt of the information,

with intimation to the Zilla Parishad concerned and also preside over such meeting. In case of his inability to preside over the meeting, the Deputy Commissioner or the Sub-Divisional officer, as the case may be, shall depute an officer under him not below the rank of Class-I Gazetted Officer to preside over such meeting.

(b) If, under sub-section (1) of section 43, the members express want of confidence both in the President and Vice-President of the Anchalik Panchayat at the same time and issue notices, the Ex-Officio Secretary of the concerned Anchalik Panchayat shall report the matter to the President of the concerned Zilla Parishad within three days from the date of receipt of the notice who shall arrange to convene the meeting fifteen days from the date of receipt of the information separately, to consider the motion against the President first and to consider the motion against the Vice-President next day and shall preside over such meeting but shall have no vote.

In case the President of the Zilla Parishad concerned does not take action as above, the Ex-Officio Secretary of the Anchalik Panchayat shall refer the matter to the concerned Deputy Commissioner or the Sub-Divisional Officer, as the case may be within three days from the date of expiry of the date of stipulated fifteen days time. On receipt of the information, the concerned Deputy Commissioner, or the Sub-Divisional Officer, as the case may be, shall convene both the meetings simultaneously within three days from the date of receipt of the information and shall preside over both the meetings.

Provided that the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, in case of his inability to preside over the meeting may depute a Class-1 Gazetted Officer under him to preside over such meeting.

Provided further that if it is not possible to hold the meeting for a situation due to nonattendance of requisite number of members in such meeting or meetings as the case may be, the no-confidence motion automatically stands cancelled and the motion shall be deemed to have lapsed, in the event of which no such notice shall be allowed within the next six months.

(3) The requisition for such a special meeting shall be signed by not less than one-third of the total members of Anchalik Panchayat and shall be delivered to the President of the Zilla Parishad with intimation to the Deputy Commissioner. The President of the Zilla Parishad shall within seven days from the date of receipt of the requisition, convene a special meeting of the Anchalik Panchayat. The meeting shall be held on a date not later than fifteen days from the date of issue of the notice of the meeting.

(4) In the event of removal either of the President or the Vice-President of the Anchalik Panchayat, the Anchalik Panchayat shall elect, from amongst the members in the same manner as under sub-section (2) of section-37 a President or a Vice-President as the case may be:

Provided that such member shall not be eligible for reelection as President or Vice-President during the remaining term of office as members of the Anchalik Panchayat.

(5) Every President or Vice-President of the Anchalik Panchayat shall after an opportunity is afforded for hearing him, be removable from his office as President or Vice-President by the Zilla Parishad with the approval of the Government for misconduct in the discharge of office duties, for being persistently remiss in the discharge of his duties and a President or a Vice-President so removed shall remain in the office of the member.

(6) A President or a Vice-President removed from his office under sub-section (5) may also be removed by the Government from membership of the Anchalik Panchayat.

Section 65. Constitution of Zilla Parishad.

(1) The Zilla Parishad shall consists of:-

(a) The members directly elected from the territorial constituencies of the district.

Provided that the State Government may by notification in the Official Gazette, determine the territorial constituencies in the district keeping in view the overall population of the district at a rate of one member for a population of not less than thirty thousand and that each territorial constituencies shall elect one member to the Zilla Parishad through direct election in the manner prescribed:

Provided further that every Legislative Assembly constituency shall have four territorial constituencies and in case of a part of the Legislative Assembly constituency with a population less than thirty thousand falling within the district, then this part shall form a territorial constituency.

Provided further more that the Legislative Assembly population, constituency included in which has urban Municipality or a Municipal Corporation, as the case may be or under the authority of Town Committee or Sanitary Board or Cantonment area or any notified area deemed to be urban area under any law for the time being in force, may have less than four territorial constituency and if the rural population of the Legislative Assembly constituency is less than thirty thousand, this may form a territorial constituency.

(ii) The Presidents of the Anchalik Panchayats.

(iii) The Members of the House of people and the Members of the State Legislative Assembly representing a part or whole of the district whose constituencies lie within the district.

(2) All the members shall have the right to vote except in the motion of no confidence in which only the directly elected members and the members nominated

by the Government shall exercise such rights.

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

(1) Every President and every Vice-President of Zilla Parishad shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of two thirds of the total number of members elected directly as Zilla Parishad member at a meeting specially convened for this purpose and presided over by the Vice-President if the motion is against the President and the President of the Zilla Parishad shall preside over such meeting if the motion is against the Vice-President.

(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 his inability to preside over, the Deputy Commissioner shall depute one of the officers not below the rank of Add. Deputy Commissioner under his to preside over such meeting.

Provided also that if it is not possible to hold the meeting for a situation due to no-attendance of the requisite number of members in such meeting or meetings as

the case may be, the no confidence motion shall automatically stand cancelled and the motion shall be deemed to have lapsed, in the event of which no such motion shall be allowed within the next six months.

11. As defined in section 2(11) of the Act, a member means a member of a Gaon Panchayat or of an Anchalik Panchayat or of a Zilla Parishad. Ex officio member is defined in section 2(12) who is appointed to be a member by virtue of his office. Similarly, co-opted member means a person co-opted member of a Gaon Panchayat. Section 6 has laid down the constitution of a Gaon Panchayat. It provides that Gaon Panchayat shall consist of :-

(a) 10 members directly appointed by voters of the territorial constituencies one from each constituency; and

(b) President of the Gaon Panchayat.

Thus, section 6 does not say that President is a member of the Gaon Panchayat. It only says that President is one of the constituents of the Gaon Panchayat. A Gaon Panchayat has two types of constituents. One class of constituents is constituted by 10 members from 10 wards of a Gaon Panchayat and the other class of constituent is the President. After constitution of the Gaon Panchayat the Deputy Commissioner or an officer authorised by him calls a meeting of the Gaon Panchayat for election of a Vice President from amongst the members in the manner prescribed. Vice President is one of the 10 members elected from the 10 different wards of a Gaon Panchayat. He is elected by the other 9 members and the President of the Gaon Panchayat has no role to play in the election of the Vice President. Section 15 lays down the provision for no confidence motion against the President and the Vice President. Section 15(1) provides that as and when a resolution expressing want of confidence in a President or a Vice President is passed, he is deemed to have vacated his office forthwith and such motion for want of confidence is to be passed by a majority of two-thirds of total number of members of the Gaon Panchayat. Argument has been put forward by Mr. K.N. Choudhury, learned senior counsel and Mr. M.H. Laskar, learned counsel that the words "by a majority of two-third of the total number of members of the Gaon Panchayat" includes a President as well as he is also one of the constituents of the Gaon Panchayat. But section does not say that the resolution is to be passed by a majority of the two-third of the total number of constituents of the Gaon Panchayat. Importing the word "constituents" in place of "members" would amount to do violence on the section which perhaps would be beyond the jurisdiction of a court and contrary to the intention of the legislature. When a meaning is possible for the clause "by a majority of two-third of the total number of members of the Gaon Panchayat" by taking members as the members of the Gaon Panchayat within the meaning of section 2(11) of the Act, there is no necessity for interpretation thereof to give a different meaning altogether. The words "members of the Gaon Panchayat" occurring at the end of the section 15(1) has to be understood keeping in view the meaning of the word "member" as in

section 2(11) of the Act which has been quoted above and this means the directly elected members alone. Mr. Choudhury strenuously urged that in section 18(6) while laying down provisions of quorum and procedure, it has been provided that the President/Vice President presiding as the case may be unless he refrains from voting shall give his vote before declaring the number of votes for and against a question and in case of equality of votes, he may give his casting vote. By referring to this section, Mr. Choudhury wants to argue that the special meeting held under section 15 is also governed by the procedure laid down in section 18 of the Act which means that President will have a right to vote. If President has a right to vote, in that event, this will be in addition to 10 votes to be given by 10 directly elected members of the Gaon Panchayat and so ultimately the calculation has to be made by taking 11 as the total number of members in the meeting as has been done by this court in the case of Fakrun Nessa Choudhury (supra). The argument of the learned senior counsel appears to be tempting at the first blush. But once the section 18(6) is carefully read, the fallacy inherent in the argument comes out. Section 18(6), as quoted above, would show that in the second sentence the President/Vice President is qualified by the word "presiding" as the case may be. A meeting to discuss no confidence motion against the President under section 15(1) of the Act cannot be presided over by the President. There is a prohibition for so doing in section 15(1) itself. It is provided in the section 15(1) that such meeting 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. So unless the President presides over the meeting he cannot have any right for casting vote as has been indicated in section 18(6) of the Act. The question of casting a vote by the President would arise only in a meeting where he has been presiding. So the argument that President will have a casting vote in a meeting under section 15(1) is clearly unacceptable.

12. A further argument was made by Mr. Choudhury that like section 15 of the Act, there is an identical provision in section 43 and 73 of the Act for removal of Anchalik Panchayat President and Zilla Parishad President. In section 43, it is provided that a President shall be deemed to have vacated his office forthwith if a resolution of no confidence is passed by a majority of "two-third of total number of directly elected members of the Anchalik Panchayat". Referring to section 32 of the Act, Mr. Choudhury would argue that an Anchalik Panchayat is constituted by one member from each Gaon Panchayat directly elected, the Presidents of the Gaon Panchayats falling within the jurisdiction of the Anchalik Panchayat and the members of the House of the People and the members of the Legislative Assembly of the State representing the constituencies which comprise wholly or partly the Anchalik Panchayat. In Section 43, the other two categories, namely, the Presidents of the Gaon Panchayats and the ex officio members who are the members of the House of the People and members of the State Legislative Assemblies have been excluded from taking part in the proceedings involving no confidence motion. While the

legislature did so in case of Anchalik Panchayat President by making a specific provision in section 43, the same has not been done in case of the Gaon Panchayat under section 15(1) of the Act where mention has been made only of the members of the Gaon Panchayat and no directly elected members of the Gaon Panchayat. This argument put forward by the learned senior counsel is also not possible to accept for two reasons. First, it would suffer from self-contradiction. If the President of a Gaon Panchayat is to be construed as a member of the Gaon Panchayat and since he is also directly elected by the voters in that event, even if the word "directly" had been incorporated in section 15(1) before the words "members of the Gaon Panchayat" in that event, the same problem would have arisen as to whether President should be considered as a directly elected member. Secondly, there is no ex officio member in Gaon Panchayat unlike Anchalik Panchayat and Zilla Parishad. An Anchalik Panchayat has three types of constituents as stated above whereas a Gaon Panchayat has only two types of constituents. The Presidents of the constituent of Gaon Panchayats of an Anchalik Panchayat are ex officio members of the Anchalik Panchayat but the members of the House of the People and the members of the State Legislative Assemblies in whose jurisdiction the concerned Anchalik Panchayat is situated are also ex officio constituents. The ex officio members like House of the People and the State Legislative Assemblies as well as the Gaon Panchayat Presidents as ex officio member of the Anchalik Panchayat are also directly elected by the people. They are constituents of the Anchalik Panchayat. They are directly elected by the people but still they are not directly elected members of the Anchalik Panchayat. So, even if sections 32 and 43 are closely studied, it would show that the legislature referred to directly elected persons as members only to be the "directly elected member of Anchalik Panchayat" and not the ex officio members who are also directly elected. All these contradictions cannot arise if the words "member of the Gaon Panchayat" is construed to be as those persons who were elected as members by the voters of the 10 wards. If the words "member of the Gaon Panchayat" occurring in section 15(1) of the Act is understood in its plain meaning, it does not give rise to any ambiguity or contradiction. So, there is no scope for interpretation of these words to incorporate President also as a member of the Gaon Panchayat. The same argument would apply in regard to the analogy drawn with respect to section 65 and 73 of the Act where identical provisions like section 32 and 43 exist.

13. As quoted above from the judgment of Fakrun Nessa Choudhury (supra), the Hon'ble Single Judge relied on an earlier judgment of this court in the case of Samiruddin Ahmed v. SDO, Mangaldoi and others (AIR 1971 Assam & Nagaland 163) in which the provision of section 27(1)(b) of the Assam Panchayat Act, 1959 was involved. Referring to the construction of section 27(1)(b) of the 1959 Act, this court had held in Samiruddin Ahmed (supra) that there is no warrant for adding a word "existing" in the said section to qualify the words "number of members". This was held because an argument was made that two-thirds of the members must have

relation to the existing members functioning at the time. This is because as on the date of meeting, one member had already been died and another had ceased to be a member for which the total number of members for the purpose of section on the material date was 11 and not 13. If existing number of members is taken into consideration which is 11, in that event, presence of 8 members would have fulfilled the requirement of the section. This court did not accept this contention and refused to add a word "existing" before the number of members.

14. Under the Assam Panchayat Act, 1959, section 11 laid down the provision for Gaon Panchayat. The relevant part of section 11 of that Act sans provisos is quoted below:-

"11. Gaon Panchayat:-

(1) Every Gaon Sabha shall elect in the prescribed manner from among its members and the Executive Committee called the Gaon Panchayat a President and a Vice President.

(2) The Gaon Panchayat shall include the President and Vice President consist of 11 members.

Provided that every Gaon Sabha having population over two thousand five hundred shall be entitled to one additional member for the Gaon Panchayat for every additional increase of population of five hundred subject to a maximum of fifteen;

Provided further that the Gaon Panchayat shall co-opt one woman if no woman is elected to the Gaon Panchayat:

Provided also that wherever five per cent or more of the members of a Gaon Sabha are Scheduled Castes, then in case no member belonging to the Scheduled Castes is elected to the Gaon Panchayat, the Gaon Panchayat shall co-opt one such member:

Provided further that wherever five per cent or more of the members of a Gaon Sabha are Scheduled Castes, then in case no member belonging to the Scheduled Castes is elected to the Gaon Panchayat, the Gaon Panchayat shall co-opt one such member:

Provided further that this representation shall continue only as long as special representation for the Scheduled Castes and Scheduled Tribes continues to be provided for in the Constitution of India:

Provided further that such co-opted members shall be in addition to the members provided for in the first proviso of sub section (2) of this section.

(3) The term of the office of the President, the Vice President and members of the Gaon Panchayat shall be three years.

(4) The Gaon Panchayat shall carry out all functions and duties imposed under this Act.

Under the Assam Panchayat Act, 1959, a Gaon Panchayat meant the Executive Committee of a Gaon Sabha established under section 11 of the Act which on turn provided that it shall consist of 11 members including the President and the Vice President. The section 11(2) itself specifically describes President also to be one of the members of the Gaon Panchayat. Under section 27(1)(b) of the aforesaid Act, a President of a Gaon Panchayat would cease to hold Office if by three-fifth majority of votes of members present, a motion of no confidence is passed by them in a meeting of the Gaon Panchayat where at least a minimum of two-thirds of total number of members are present. That section provided for removal of President by holding a meeting wherein at least two-third of the total number of members was required to be present. As pointed out above, section 11 of the same Act included the President as member. Apart from that there were two co-opted members in the concerned Gaon Panchayat making the total number of members 13. In paragraph 4 of this judgment there is discussion as to the membership position and the respective argument put forward on behalf of the learned counsel for the parties. Upon such fact position, the Division Bench of this court held in the aforesaid case that presence of 8 members out of 13 was not the minimum two-thirds under that section. The whole of paragraph 4 is quoted below for understanding the composition of Gaon Panchayat under the erstwhile Act:-

"4. It is admitted that the Gaon Panchayat in this case is constituted of 13 members including the co-opted two. But it is contended by the Respondents that out of these 13 members on the date of the meeting one member was already dead and another member had been elected to the Sipaihar Anchalik Panchayat resulting in his ceasing to be a member of the Gaon Panchayat. Under the second proviso to Section 17(1)(ii). The matter, therefore turns upon the construction of Section 27(1)(b). What is the meaning of the words "at least a minimum of two-thirds of total number of members" in Section 27(1)(b). It is contended by the Petitioner that the total number of members must be the total sanctioned strength of the Gaon Panchayat which is admittedly thirteen.

On the other hand, it is submitted by the Respondents that two-thirds must have relation to the existing members functioning at the time. Since one member was already dead and another has ceased to be a member of the Gaon Panchayat. The total number of members for the purpose of this section on the material date is eleven and not thirteen. The presence of eight members in the meeting of 3rd June therefore, fulfils the requirement of Section 27(1)(b). We are unable to accept the submission of the Respondents. There is no warrant for adding a word "existing" in Section 27(1)(b) to qualify the words "number of members". Under this section a President immediately ceases to be a President on passing of a motion of no-confidence against him by three-fifth majority of the minimum requisite members present. Such a provision under the law resulting in deprivation of an office has to be strictly construed as it affects the right of an elected office-bearer to continue for the normal span of his office."

This judgment of the Division Bench of this court in Samiruddin Ahmed (supra) was relied on in the subsequent Fakrun Nessa Choudhury (supra) case although the latter case was under the Assam Panchayat Act, 1994 which is entirely and substantially different from the Assam Panchayat Act, 1959. Whereas in the 1959 Act President was also a member by way of legal fiction created under section 11(2) of the Act, no such provision is there in the 1994 Act. Even in the Assam Panchayati Raj Act, 1972 while providing for constitution of Gaon Panchayat under section 9, there was no legal fiction so as to include President as yet another member. Section 9 of the Assam Panchayati Raj Act, 1972 is quoted below:-

"9. Constitution of Gaon Panchayat. - (1)(a) For each Gaon Panchayat area declared under section 4 there shall be a local body called Gaon Panchayat consisting of such number of elected members not exceeding 15:

Provided that one member to the Gaon Panchayat shall be elected, in the manner prescribed, by the voters of each constituency of the Gaon Panchayat as published under sub-section (3) of section 6 from amongst themselves.

The voters of a Gaon Panchayat shall elect from amongst themselves one to be a President of the Gaon Panchayat in the manner prescribed.

Any dispute arising out of the election aforesaid shall be dealt within the manner prescribed.

(b) The State Government shall nominate one representative to the Gaon Panchayat from amongst the Chairman of the Co-operative Societies falling within the jurisdiction of such Gaon Panchayat, as ex officio member.

(c) The Counselor of the Mohkuma Parishad representing the area of the Gaon Panchayat shall be an ex officio member of the Gaon Panchayat,

(d) The State Government may appoint any Government Officer as an ex officio member of the Gaon Panchayat.

(e) [Deleted]

(2)(a) when any area is excluded from the territorial jurisdiction of a Gaon Panchayat and if such area includes all or majority of the population of a constituency of the Gaon Panchayat, the Gaon Panchayat member representing such constituency shall cease to remain as member of the Gaon Panchayat.

(b) if the area excluded from the territorial jurisdiction of a Gaon Panchayat under clause (a) of this sub section is included within the territorial jurisdiction of another Gaon Panchayat, the Deputy Commissioner or Sub-Divisional Officer, as the case may be, shall by notification declare the member of the former Gaon Panchayat as a member of the Gaon Panchayat within the jurisdiction of which such area is included, notwithstanding the provision under clause (a) of sub section (1).

(3) Immediately after the elections under sub clause (1)(a), the State Government shall by a notification published the names of the persons elected and the date of publication of the notification shall be treated as the date of constitution of the Gaon Panchayat for the purpose of this Act.

15. As discussed above, there was a legal fiction in the 1959 Act under section 11(2) considering President of a Gaon Panchayat as a member thereof but legislature did not retain this provision either in the Assam Panchayati Raj Act, 1972, or in Assam Panchayat Act, 1986 or 1994. As quoted above, under section 9 of the Assam Panchayati Raj Act, 1972, the voters were required to elect one member from each constituency and also one as President in the manner prescribed. Under Rule 11(2) of the Assam Panchayati Raj (Constitution) Rules, every voter of a Gaon Panchayat constituency had one vote for electing a Gaon Panchayat member from such constituency, one vote for electing a President to the Gaon Panchayat and one vote for electing a Councillor to the Mohkuma Parishad from the Gaon Panchayat area. This shows that even in 1972 Act, the voters of a ward used to not only elect their member but also one President for the Gaon Panchayat and one Councillor for the Gaon Panchayat area to Mohkuma Parishad. The Assam Panchayati Raj Act, 1972 was replaced by the Assam Panchayati Raj Act, 1986 and under section 10 thereof provision for election of member and Gaon Panchayat President was made. According to section 10 of 1986 Act, every Gaon Panchayat was to consist of 10 members to be elected from each ward and one President for the Gaon Panchayat. The 1986 Act was replaced by the Assam Panchayat Act, 1994 wherein section 6 lays down the constitution of Gaon Panchayat. Section 6 has been quoted above to show that 10 members and one President of the Gaon Panchayat are directly elected by the voters. Even in this section the legal fiction as it existed in the 1959 Act so as to consider President as another member does not exist. Thus, since 1972, the legal fiction has ceased to exist. Under such circumstances, there is no reason to import the legal fiction of Assam Panchayat Act, 1959 in the Assam Panchayat Act, 1994. The Hon'ble Single Judge while passing judgment in the case of Fakrun Nessa Choudhury (supra) relied on the earlier Division Bench judgment in Samiruddin Ahmed (supra) which was under the Assam Panchayat Act, 1959 containing the aforesaid legal fiction and thus accepted the discussion made in paragraph 4 of Samiruddin Ahmed (supra). In view of what has been discussed above, we are not persuaded to accept the contention that President is 11th member of Gaon Panchayat constituted under section 6 of the Assam Panchayat Act, 1994. The Hon'ble Single Judge has not considered the legislative history of the Assam Panchayat laws before arriving at the opinion under paragraph 22 of that judgment.

16. The Assam Panchayat Act, 1994 has been made pursuant to constitutional mandate under Article 243C. The clause (2) of Article 243C provides that all seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and each Panchayat area shall be divided into territorial constituencies in such a manner that the ratio between the population of

each constituency and the number of seats allotted to it shall practically remain the same throughout the Panchayat area. In the light of provisions of Article 243C, the Assam Panchayat Act, 1994 has been enacted and promulgated. If the scheme of Assam Panchayat Act, 1994 is examined it would show that if a President is removed under section 15 in that event, the vacancy created by him cannot be filled up by another member but can only be filled up under section 6(1)(b) of the Act in terms of the provision of section 10. But in case of removal of Vice President, the same is to be filled up by any other existing member because a Vice President of a Gaon Panchayat is elected in its first meeting from among the 10 elected members of the Gaon Panchayat. After the election of the Vice President, the President is administered oath by the Deputy Commissioner or by Sub-Divisional Officer or by the Officer authorised by him under section 134 of the Act and thereafter the President would administer oath to the member of the Gaon Panchayat concerned under the same provision. It is thus apparent from Article 243C of the Constitution of India along with section 6, section 15 and proviso to Rule 46 of the Assam Panchayat (Constitution) Rules, 1995, that the President stands on altogether different footing than Vice President or any other member of a Gaon Panchayat. Unlike Vice President, he is not elected from among the members. A President is directly elected by the people. However, President is one of the two constituents of the Gaon Panchayat under the mandate of section 6(1)(b) of the Assam Panchayat Act, 1994. The President though a constituent of a Gaon Panchayat like the members but he is not a member himself unlike the Vice President. In view of our discussions made herein above, we feel persuaded to hold that the President not being a member of the Gaon Panchayat as under the Assam Panchayat Act, 1959, while counting total number of members of the Gaon Panchayat under section 15(1) of the Act, President cannot be counted and it is only the 10 elected members who shall decide the no confidence motion. Thus, two-third of 10 members comes to 7 and not 8. The point for determination in these writ appeals is accordingly decided.

17. Writ Appeal No. 27/2015 has been preferred against interim order granted by the Hon"ble Single Judge on 31.01.2015 thereby staying the no confidence resolution adopted in the meeting held on 21.01.2015 relying on the judgment of Fakrun Nessa Choudhury (supra). As the view taken by the Hon"ble Single Judge in Fakrun Nessa Choudhury (supra) has not been found acceptable to us, this WA No. 27/2015 stands allowed and the impugned interim order dated 31.01.2015 is hereby set aside.

18. Writ Appeal No. 373/2014 was preferred challenging the order dated 03.12.2014 passed by Hon"ble Single Judge in WP(C) No. 6320/2014 as stay order was not granted against the resolution adopted by members of the Gaon Panchayat as to no confidence of the President. Since the aforesaid question has been decided against the writ appellant so, W.A. No. 373/2014 stands dismissed and the order passed by the learned Single Judge on 03.12.2014 is hereby upheld.

19. The Writ Appeal No. 226/2015 was preferred against order dated 05.08.2015 passed by the Hon"ble Single Judge refusing to stay the proceedings of no confidence motion on the ground that the President stood immediately removed from Office upon adoption of the resolution on 21.07.2015. This writ appeal also stands dismissed in view of the decision taken herein above. Interim order passed by the Division Bench of this court in W.A. No. 226/2015 is accordingly vacated.

20. The individual writ petitions shall be decided on their respective merit.