



GAHC010023542021

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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/885/2021**

LUTHFA BEGUM LASKAR  
W/O. ALTAF HUSSAIN LASKAR, VILL. SONABARIGHAT PT. II, P.O.  
SONABARIGHAT, P.S. SILCHAR (SADAR), DIST. CACHAR, ASSAM, PIN-  
788013.

VERSUS

THE STATE OF ASSAM AND 13 ORS  
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,  
PANCHAYAT AND RURAL DEVELOPMENT DEPTT., DISPUR, GUWAHATI-06.

2:THE DY. COMMISSIONER

CACHAR  
SILCHAR  
ASSAM.

3:THE CHIEF EXECUTIVE OFFICER

CACHAR ZILLA PARISHAD  
SILCHAR  
CACHAR  
PIN-788001.

4:THE BLOCK DEVELOPMENT OFFICER (I/C)

SONAI DEVELOPMENT BLOCK  
CUM ASSTT. COMMISSIONER  
P.O. SONAI  
DIST. CACHAR  
ASSAM  
PIN-788119.



5:THE SECRETARY

SONABARIGHAT GAON PANCHAYAT  
P.O. SATKARAKANDI  
DIST. CACHAR  
ASSAM  
PIN-788013.

6:THE PRESIDENT

SONAI ANCHALIK PANCHAYAT  
P.O. SONAI  
DIST. CACHAR  
ASSAM  
PIN788119.

7:NAZIYA SULTANA MAZUMDER

W/O. ABDUL HAMID MAZUMDER  
MEMBER  
GROUP NO.2  
SONABARIGHAT G.P.

8:GULSHONARA BEGAM CHOUDHURY

MEMBER  
GROUP NO.3  
SONABARIGHAT G.P.  
W/O. HAMIDUL HAQUE CHOUDHURY.

9:SAIDA BEGAM

MEMBER  
GROUP NO.1  
SONABARIGHAT G.P.  
W/O. SHIPON AHMED. ABOVE RESPONDENT NOS. 7 TO 9 ARE THE R/O.  
VILL. SONABARIGHAT PT.I  
P.O. SONABARIGHAT  
DIST. CACHAR  
ASSAM  
PIN-788013.

10:SABAN BEGUM BARBHUIYA

MEMBER  
GROUP NO.7  
SONABARIGHAT G.P. W/O. AMINUL HAQUE LASKAR  
VILL. AND P.O. DHONEHARI PT.I  
DIST. CACHAR



ASSAM  
PIN-788013.

11:ALI HAIDAR CHOUDHURY  
MEMBER  
GROUP NO.10  
SONABARIGHAT G.P. S/O. MAZARAF ALI CHOUDHURY  
VILL. DHONEHARI PT.III  
P.O. SONABRIGHAT  
DIST. CACHAR  
ASSAM  
PIN-788013.

12:HUSSAIN AHMED LASKAR  
MEMBER  
GROUP NO.5  
SONABARIGHAT G.P. S/O. DILAWAR ALI LASKAR  
VILL. SONABARIGHAT PT.II  
P.O. SONABRIGHAT  
DIST. CACHAR  
ASSAM

13:SAMINA AKHTAR BARBHUIYA  
  
MEMBER  
GROUP NO.4  
SONABARIGHAT G.P. W/O. ANWARUL HAQUE LASKAR  
VILL. SONABARIGHAT PT.II  
P.O. SONABRIGHAT  
DIST. CACHAR  
ASSAM  
PIN-788013.

14:SAMSUL HAQUE LASKAR  
  
MEMBER  
GROUP NO.9  
SONABARIGHAT G.P. VILL. DHONEHARI PT.III  
P.O. SONABRIGHAT  
DIST. CACHAR  
ASSAM  
PIN-788013



**BEFORE**  
**HON'BLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner : Mr. K.N. Choudhury .... Senior Advocate.  
Mr. N.H. Barbhuiya. ... Advocate

For the respondent nos.1, 3, 4 & 5 : Mr. M. Nath .... SC, P&RD Deptt..

For the respondent no.2 : P.S. Deka .... Sr. GA, Assam

For the respondent no.6 : A.M.S. Mazumder .... Advocate.

For the respondent nos.7 to 14 : Mr. S.K. Talukdar .... Advocate.

Date of hearing & judgment : 17.01.2022

**JUDGMENT AND ORDER**

Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. N.H. Barbhuiya, learned counsel for the petitioner. I have also heard Mr. M. Nath, learned Standing Counsel, P&RD Department, Assam appearing on behalf of the respondent nos.1, 3, 4 and 5 Mr. P.S. Deka, learned Senior Government Advocate appearing on behalf of the respondent no. 2. Mr. A.M.S. Mazumder, learned counsel appears on behalf of the respondent no.6 while Mr. S.K. Talukdar, learned counsel appears on behalf of the respondent nos.7 to 14.

2. The brief facts of the instant case is that the petitioner was elected as the President of Sonabarighat Gaon Panchayat under Cachar District during the Panchayat Election 2018. On 03.07.2020 a requisition notice was submitted by the respondent nos.7 to 14 herein for initiating a special meeting under Section

15 of the Assam Panchayat Act, 1994 ("the Act of 1994") for no-confidence-motion against the petitioner. On 21.08.2020 a resolution of no-confidence-motion was passed against the petitioner. Being aggrieved, the petitioner filed the writ petition i.e. WP(C) 3411/2020 before this Court challenging the resolution dated 21.08.2020. This Court vide an order dated 08.09.2020 at the Motion stage disposed of the said writ petition with the following observations :

*“10. In view of the specific stand of the respondents no. 9 to 17, we are inclined to accept the contention of Mr. P.N. Goswami, and declare the resolution dated 21.08.2020 to be null and void. As the resolution has not been defeated, but is a case where it has not been pressed upon by the respondents, resulting in its withdrawal, we are of the view that the respondents no. 9 to 17 are entitled to proceed in any manner, as they may be advised, under the law against the writ petitioner.*

*11. Writ petition stands closed with the aforesaid declaration and liberty granted to the respondents no. 9 to 17.”*

4. In the order dated 08.09.2020 as this Court granted the liberty to the respondent nos.9 to 17 therein to proceed in a manner as they may be advised under the law against the writ petitioner, on 14.09.2020 the respondent nos.7 to 14 again submitted a requisition for convening a special meeting under Section 15 of the Act of 1994 against the petitioner (the President) for no-confidence-motion. Admittedly the said notice was received on 21.09.2020 by the petitioner as could be seen from Annexure-6 to the writ petition. It may also be relevant herein to mention as contended by the petitioner that in view of the order dated 08.09.2020 the bar contained in the second Proviso to Section 15 of the Act of 1994 would have been applicable and as such sought for legal advice.

5. In view of not convening the meeting of no-confidence the Secretary,



Sonabarighat Gaon Panchayat intimated the President of Sonai Anchalik Panchayat by the communication dated 07.10.2020 stating *inter alia* that as per the provisions of Section 15(1) of the Act of 1994 the period of 15 days had elapsed on 06.10.2020 and as the President did not give any order for fixing the date for convening the special meeting for discussion on the no-confidence-motion, the said Secretary submitted the petition for no-confidence-motion to the Sonai Anchalik Panchayat for doing the needful. The petitioner thereupon filed a writ petition which was registered and numbered as WP(C) 3805/2020 challenging the requisition notice dated 14.09.2020 and the said writ petition was withdrawn vide an order dated 08.01.2021. The petitioner also filed a Review application seeking review of the order dated 08.09.2020 passed in WP(C) 3411/2020. The said review petition was registered and numbered as Review Petition No.91/2020. This Court vide an order dated 15.10.2020 disposed of the said Review petition holding *inter alia* that as the resolution dated 21.08.2020 was held to be null and void it has to be understood the motion was lost and consequently the bar contained in the second Proviso to Section 15(1) of the Act of 1994 would be applicable. Paragraph 4 of the said order dated 15.10.2020 is quoted hereinbelow :

*“4. The respondents No.9 to17 in the writ petition being the members of the Gaon Panchayat who had moved the no confidence against the President conceded to the extent that the requirement of Section 15(1) of the Assam Panchayat Act, 1994 may not have been followed. In the circumstance, the respondent expressed the desire that they may be allowed to withdraw the resolution dated 21.08.2020 by which the President was removed. Upon such statement, the writ petition was closed by allowing the members of the Gaon Panchayat to withdraw the Resolution dated 21.08.2020. But at the same time, we take note of that in paragraph 10 of the order dated 08.09.2020 there was a declaration that the resolution dated 21.08.2020 was null and void. The resolution dated 21.08.2020 was passed pursuant to the motion of no*

*confidence instituted by the members of the Gaon Panchayat and when there is a declaration that the resultant resolution passed in such motion is null and void, it has to be understood that the motion was lost. When the motion was lost, the consequence of the other relevant provisions of law including that of that there cannot be a further no confidence motion again within a period of 6(six) months would also be applicable.”*

6. The respondent nos.7 to 14 being aggrieved by the order dated 15.10.2020 preferred a writ appeal before the Division Bench of this Court which was registered and numbered as Writ Appeal No.152/2020. The Division Bench of this Court vide the judgment and order dated 24.11.2020 allowed the said writ appeal holding *inter alia* that the order dated 15.10.2020 is liable to be set aside by clarifying that since the resolution dated 21.08.2020 passing the no-confidence-motion cannot be said to have been “lost” within the meaning of Section 15(1) of the Act of 1994, the bar in bringing the no-confidence-motion against the President within 6 (six) months thereof will not apply. The relevant portion of the judgment of the Division Bench is quoted hereinbelow :

“24. ....

*In the present case, in fact, there was no “erroneous” decision in view of the decision of the Full Bench of this Court in Forhana (supra). The view taken by the learned Single Judge in the impugned order dated 15.10.2020 cannot be said to be the correct view of the legality of withdrawn resolution of no-confidence motion. In our view, the resolution which was already passed by the overwhelming majority of the members present, though was declared null and void, cannot be said to have been defeated or lost for the purpose of activating the bar in the second proviso to Section 15(1) of the Act. Consequently, if the aforesaid resolution taken on 21.08.2020 cannot be said to have been “lost” within the meaning of Section 15(1) of the Act, the bar on bringing another no-confidence motion within a period of six months cannot apply. We, accordingly, are not able to agree with the clarification made by the Learned Single Judge in the impugned order to the effect that when there is a declaration that the*

*resultant resolution passed in the motion is null and void, it has to be understood that the motion was lost and that when the motion was lost, the consequence of other relevant provisions of law including that there cannot be a further no confidence motion again within six months would also be applicable. Thus, the decision rendered in the review order can be said to be erroneous in law being contrary to the decision in Forhana (supra).|*

*25. Accordingly, for the reasons discussed above, we find merit in the writ appeal and allow the same by setting aside the impugned order dated 15.10.2020 by clarifying that since the resolution dated 21.08.2020 passing the no-confidence motion cannot be said to have been "lost" within the meaning of Section 15 (1) of the Act, the bar in bringing no-confidence motion against the President within six months thereof will not apply."*

7. Thereupon on 01.12.2020 a notice was issued by the President, Sonai Anchalik Panchayat thereby fixing a special meeting on 07.12.2020 for discussion about the no-confidence-motion against the President of No.9, Sonabarighat Gaon Panchayat. Subsequent thereto on 07.12.2020 the special meeting was duly convened and in the said special meeting it was resolved that the no-confidence-motion brought against the President i.e. the petitioner has been approved and the meeting unanimously further resolved to handover all development works of the Gaon Panchayat to the Vice President till any direction comes from the superior authorities. At this stage it may also relevant herein to mention that pursuant to the resolution adopted on 07.12.2020, the petitioner withdrew the writ petition i.e. WP(C) 3805/2020 on 08.01.2021 with a liberty. It is also relevant to take note of that against the order dated 08.09.2020 passed in WP(C) 3411/2020 the petitioner also filed the writ appeal before the Division Bench of this Court which was registered and numbered as Writ Appeal No.200/2020 and the said writ appeal was also dismissed vide a





judgment and order dated 22.01.2021. The instant writ petition thereupon on 08.02.2021 was filed challenging the resolution dated 07.12.2020. At this stage, it may be relevant to mention that from a perusal of the writ petition the ground taken was that the President of Sonai Anchalik Panchayat without jurisdiction after the lapse of the mandatory 15 days time vide notice dated 01.12.2020 convened the special meeting on 07.12.2020 which only the Deputy Commissioner could have convened for which the resolution dated 07.12.2020 was without jurisdiction.

8. This Court vide an order dated 10.02.2021 issued Notice. Pursuant to the issuance of the notice the respondent nos.7 to 14 have filed their affidavit-in-opposition. In the said affidavit-in-opposition it has been the specific stand of the respondent nos.7 to 14 that the entire process of no-confidence-motion passed against the writ petitioner was in strict compliance of the procedure envisaged under Section 15 of the Act of 1994 and the petitioner having lost confidence amongst the members of the Gaon Panchayat the petitioner has no right to remain as the President of the said Gaon Panchayat.

9. I have heard the learned counsels for the parties at length.

10. Mr. K.N. Choudhury, learned Senior Counsel apart from what has been pleaded in the writ petition as above mentioned submitted that by virtue of the order dated 15.10.2020 passed in Review Petition No.91/2020 the order dated 08.09.2020 passed in WP(C) 3411/2020 merged and the interference with the order dated 15.10.2020 by the Division Bench of this Court on 24.11.2020 in Writ Appeal No.152/2020 whereby the said order dated 15.10.2020 was set



aside have also set aside the order dated 08.09.2020 and as such the issuance of notice on 14.09.2020 on the basis of the order dated 08.09.2020 and the subsequent actions taken on the basis of the notice dated 14.09.2020 does not have any authority of law as it is in violation to mandate of Section 15 of the Act of 1994. Mr. Choudhury further submitted alternatively that the petitioner upon receipt of the notice on 21.09.2020 sought for legal advice and as such had not convened the meeting in terms with Section 15(1) of the Act of 1994 as would be apparent from the perusal of the records and thereafter the petitioner filed the review application and vide order dated 15.10.2020 this Court has held that the withdrawal of the said resolution dated 21.08.2020 amounts to the no-confidence-motion having been lost and the said order was set aside only on 24.11.2020 in Writ Appeal No.152/2020 and under such circumstances as the order dated 15.10.2020 dates back to the order dated 08.09.2020 and as such till 24.11.2020, the resolution dated 21.08.2020 would be deemed to have been lost and consequently all actions taken prior to 24.11.2020 were in violation to Section 15(1) of the Act of 1994.

11. On the other hand, Mr. S.K. Talukdar, learned counsel appearing for the respondent nos.7 to 14 submits that the petitioner was duly served the notice on 21.09.2020 and the period of 15 days as mandated in Section 15(1) of the Act of 1994 elapsed on 06.10.2020 and as the petitioner did not avail the opportunity of convening a meeting, the petitioner does not have a right to assail the resolution dated 07.12.2020. He submits that admittedly the petitioner received the notice on 21.09.2020 and the period of 15 days elapsed on 06.10.2020 and thereupon on 07.10.2020 the Secretary of the Sonabarighat Gaon Panchayat had sent the requisition to the President of the Sonai Anchalik



Panchayat to take appropriate action in terms with Section 15(1) of the Act of 1994. In view of order dated 15.10.2020 the further proceedings of the special meeting stood eclipsed till the order dated 24.11.2020 and thereupon the President of the Sonai Anchalik Panchayat had issued a notice on 01.12.2020 thereby fixing 07.12.2020 for convening the special meeting of no-confidence and accordingly on 07.12.2020 the said meeting was duly called for wherein the impugned resolution was duly taken. He therefore submits that the provisions of Section 15(1) of the Act of 1994 have been duly complied with in the instant case. Mr. Talukdar relied upon the judgment of the Division Bench of this Court in the case of *Mosira Bibi vs. State of Assam and Others*, reported in 2006 (4) GLT 460 and more particularly the paragraph 14, 15, 16, 17 and 18. Mr. M. Nath, learned counsel appearing on behalf of the respondent nos.1, 3, 4 and 5 produced the records before this Court and submitted that the order dated 15.10.2020 whereby it was held that the resolution dated 21.08.2020 was lost having been interfered with by the Division Bench of this Court on 24.11.2020 and accordingly the proceeding initiated on the basis of the notice dated 14.09.2020 relegates the matter back to 21.09.2020 on which date the petitioner admittedly received the notice dated 14.09.2020.

12. From the materials on record and the contentions raised by the parties, it appears that the initial resolution adopted on 21.08.2020 of no-confidence against the petitioner was challenged before this Court in the WP(C) No.3411/2020. This Court on the basis of consensus passed the order dated 08.09.2020 thereby declaring that the resolution dated 21.08.2020 to be null and void. It is also relevant herein to take note of that this Court vide the order dated 08.09.2020 also observed that as the resolution has not been defeated,



but is a case where it has not been pressed upon by the respondents, resulting in its withdrawal, the respondent nos.9 to 17 in WP(C) 3411/2020 were given the liberty to proceed in any manner as may be advised under law against the petitioner.

13. Subsequent thereto on the basis of the liberty so granted by this Court in its order dated 08.09.2020, the notice was issued on 14.09.2020 by the respondent nos.7 to 14 herein requesting for a requisition for convening a special meeting under Section 15 of the Act of 1994 against the petitioner (the then President) for no-confidence-motion. This was a subsequent cause of action and the subject matter of both the proceedings were not identical. The petitioner could not have filed the interlocutory application seeking clarification in a disposed of matter and under such circumstances in the guise of a review sought for clarification of the order dated 08.09.2020 as to whether the withdrawal of the resolution dated 21.08.2020 and the declaration given by this Court as null and void would be deemed to be understood as the motion was lost. This Court vide order dated 15.10.2020 without touching on the order dated 08.09.2020 clarified that the declaration given in the order dated 08.09.2020 that the resolution dated 21.08.2020 is null and void has to be understood that the motion was lost and further clarified the effects when the motion is lost. In other words, this Court vide the order dated 15.10.2020 held that the subsequent notice dated 14.09.2020 was barred by the second Proviso to Section 15 (1) of the Act of 1994.

14. The intra Court appeal being Writ Appeal No.152/2020 was challenging the order dated 15.10.2020 passed in Review Petition No.91/2020 and the



Division Bench of this Court vide the judgment and order dated 24.11.2020 also took into consideration in paragraph 24 of the said judgment that the order dated 15.10.2020 was a clarificatory order and accordingly interfered with the order dated 15.10.2020 by clarifying that the resolution dated 21.08.2020 passing the no-confidence-motion cannot be said to have been lost within the meaning of Section 15 (1) of the Act, the bar in bringing no-confidence-motion against the President within six months thereof will not apply. Thus from the facts above it would be seen that the order dated 08.09.2020 was not reviewed by the order dated 15.10.2020. What was done, was a clarification given to the effect of the order dated 08.09.2020 and this clarificatory order dated 15.10.2020 was set aside by the Division Bench of this Court by specifically clarifying that the no-confidence-motion cannot be said to have been lost. At this stage if we take into consideration the submission of the counsel for the petitioner that the order dated 08.09.2020 also was set aside when the order dated 15.10.2020 was set aside, this court is of the view that the said contention is misconceived for two reasons. Firstly, the doctrine of merger does not apply to the order dated 08.09.2020 and 15.10.2020 in as much as the facts leading to the passing of the orders were not identical. The order dated 15.10.2020 being a result of the requisition notice dated 14.09.2020 and decision taken by the petitioner on 21.09.2020 to take legal advice and consequent thereto filing the review application seeking clarification. Secondly if the order dated 08.09.2020 stands automatically set aside, then there is no declaration that resolution dated 21.08.2020 is null and void and without the said declaration nothing remains in the instant proceeding as by virtue of the resolution dated 21.08.2020, the petitioner was already ousted as the President. The submission therefore is self defeating and has no legs to stand.



15. Further to that, from the facts it reveals that the resolution dated 21.08.2020 was declared to be null and void vide the order dated 08.09.2020 thereby granting the liberty to the respondent nos.7 to 14 to take appropriate action as envisaged under law. Thereupon on 14.09.2020 in terms with the order dated 08.09.2020 the respondent nos.7 to 14 again submitted a requisition for holding the special meeting for no-confidence-motion against the petitioner. A perusal of the Section 15(1) of the Act of 1994 stipulates that within 15 days the special meeting is required to be held commences on the date of receipt of notice and admittedly on 21.09.2020 the notice was duly received by the petitioner. The said period elapsed on 06.10.2020 and as such the rights which the petitioner had to call for a meeting and/or convene a meeting elapsed on 06.10.2020.

16. The subsequent order dated 15.10.2020 in Review Petition No.91/2020 do not in any manner extend the period which had already expired on 06.10.2020. What the order dated 15.10.2020 holds is that the no-confidence resolution dated 21.08.2020 having been declared as null and void is deemed to have been "lost" and this order dated 15.10.2020 have been interfered by the Division Bench of this Court on 24.11.2020 holding that the order dated 15.10.2020 was not in conformity with the Full Bench judgment of this Court in *Forhana Begum Laskar vs. State of Assam* reported in 2009 (3) GLT 575 and clarified that the resolution dated 21.08.2020 passing the no-confidence-motion cannot be said to have been lost within the meaning of Section 15 (1) of the Act of 1994. Under such circumstances the contention of the petitioner that the entire action taken pursuant to the order dated 08.09.2020 i.e. the issuance of



the notice dated 14.09.2020 till the passing of the impugned resolution on 07.12.2020 has to be held to be *non est* on the ground that the order dated 15.10.2020 dates back to the order dated 08.09.2020 and the entire period from 08.09.2020 to 24.11.2020 and any action taken during that period is *non est* in the opinion of this Court is totally misconceived for the reasons above mentioned that the order dated 15.10.2020 is a clarificatory order on account of subsequent events after the passing of the order dated 08.09.2020 and the interference with the order dated 15.10.2020 by the Division Bench on 24.11.2020 do not date back to 08.09.2020.

17. As already above mentioned the petitioner had received the notice on 21.09.2020 and by virtue of Section 15 (1) of the Act of 1994 the petitioner was required to hold the meeting on or before 06.10.2020 and there was no order passed whereby the running of the time as stipulated in Section 15 (1) of the Act of 1994 was arrested. Further to that, Section 15 (1) of the Act of 1994 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 petitioner who was the President at that relevant point of time having avoided to fulfil her obligation under Section 15 (1) of the Act of approving the proposal submitted by the Secretary of the Gaon Panchayat to convene the special meeting to discuss the no-confidence-motion waived her right to hold the meeting and consequently the petitioner is not entitled to any relief under Article 226 of the Constitution of India inasmuch as, the writ jurisdiction of the High Court under Article 226 of the Constitution of India is not intended to facilitate the petitioner who has voluntarily avoided to comply with the requirement of law.

18. The further contention of the petitioner that the Anchalik Panchayat did not have the jurisdiction or authority to convene the meeting held on 07.12.2020 after the lapse of the mandatory 15 days time is also misconceived in as much as after the order dated 15.10.2020, the entire process starting from the issuance of notice dated 14.09.2020 stood eclipsed till the order dated 24.11.2020 when the order dated 15.10.2020 was set aside. The process thereupon started with the issuance of the notice dated 01.12.2020 to hold the special meeting on 07.12.2020. The Division Bench judgment of this Court in *Mosira Bibi (supra)* in fact answers the said contention and same can be seen from a perusal of paragraph 15 to 18, which is quoted hereinbelow :

*“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.*

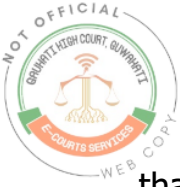
*16. Section 15(1) of the Act requires the President of Anchalik Panchayat to 'convene' the meeting within seven days from the date of receipt of the information from the Secretary of the Gaon Panchayat. This court had the occasion to deal with the said question in Swapna Sen v. State of Assam and Ors. 2006 (2) GLT 14 (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 under Section 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 not conceived in the interest of the public, the question of waiver and/or acquiescence may arise (Ragendra Singh v. State of M.P. and Ors. reported in (1996) 5 SCS 460. The Apex Court in State Bank of Patiala and Ors. v. S.K. Sharma, (1996) 3 SCC 364 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.*

18. *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 under Section 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."*

The paragraphs of the judgment quoted above would show that the requirement to hold the meeting by the Anchalik Panchayat does not mean actually holding the meeting, as "convene" means to cause to assemble to discuss the no-confidence motion is directing to hold the meeting. Further to



that it has also been held that even if it is taken that requirement of convening the meeting is mandatory in nature, interference does not follow as a matter of course, even in violation thereof. The time table given in Section 15(1) of the Act of 1994 is for the interest of the 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 the same can be waived by the President and Vice President. The petitioner in the case having failed to hold the meeting within 06.10.2020 have also waived the requirement of holding the meeting within 7 days by the Anchalik Panchayat.

19. Consequently, there being no merits in the writ petition the same stands dismissed.

**JUDGE**

**Comparing Assistant**