



GAHC010121662021

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

Case No. : **Writ Petition (C) no. 4041/2021**

Smt. Ganga Sobor
W/o Shri Parsuram Sabor,
R/o Khowang T.E. Tinali,
P.O. & P.S. Khowang,
District - Dibrugarh, Assam, PIN – 785675.

.....Petitioner

-Versus-

- 1) The State of Assam
Represented by the Principal Secretary,
To the Government of Assam,
Panchayat and Rural Development Department,
Dispur, Guwahati - 6, Assam.
- 2) The Deputy Commissioner, Dibrugarh,
District – Dibrugarh,
Assam, PIN – 786001.
- 3) The Block Development Officer,
Khowang Development Block, Tiloinagar,
P.O. & P.S. – Khowang,
District – Dibrugarh, Assam, PIN – 785675.



4) The Rangchali Gaon Panchayat,
Represented by the Secretary,
Rangchali Gaon Panchayat,
P.O. Rangchali,
P.S. Khowang, District – Dibrugarh,
Assam, PIN – 785675.

5) The Secretary, Rangchali Gaon Panchayat,
P.O. Rangchali, P.S. Khowang,
District – Dibrugarh, Assam, PIN – 785675.

6) Sri Dharamsai Nunda,
Member, Ward No. 9, Rangchali Gaon Panchayat,
P.O. Rangchali, P.S. Khowang,
District – Dibrugarh, Assam, PIN – 785675.

7) Sri Dipak Guriya,
Vice President & Member, Ward No. 5,
Rangchali Gaon Panchayat,
P.O. Rangchali, P.S. Khowang,
District – Dibrugarh, Assam.

8) Sri Babul Basu,
Member, Ward No. 2,
Rangchali Gaon Panchayat,
P.O. Rangchali, P.S. Khowang,
District – Dibrugarh, Assam, PIN – 785675.

9) Smt. Borsha Gogoi
Member, Ward No. 8,



Rangchali Gaon Panchayat,
P.O. Rangchali, P.S. Khowang,
District – Dibrugarh, Assam, PIN – 785675.

10) Smt. Munia Das,
Member, Ward No. 6,
Rangchali Gaon Panchayat,
P.O. Rangchali, P.S. Khowang,
District – Dibrugarh, Assam, PIN – 785675.

11) Sri Agtus Baunkar,
Member, Ward No. 3,
Rangchali Gaon Panchayat,
P.O. Rangchali, P.S. Khowang,
District – Dibrugarh, Assam, PIN – 785675.

.....Respondents

Advocates :

For the Petitioner

Ms. M. Nirola, Advocate

For the Respondent nos. 1, 3, 4 & 5

Mr. N.K. Deb Nath, Standing Counsel, Panchayat and Rural Development Department

For the Respondent no. 2

Mr. N. Goswami, Junior Government Advocate, Assam

For the Respondent nos. 6 - 11

Mr. M.P. Sharma, Advocate

Date of Hearing and Judgment & Order

23.02.2023



BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

The writ petition under Article 226 of the Constitution of India has been instituted by the petitioner assailing the proceedings, purportedly initiated by a requisition notice submitted by 6 [six] nos. of Ward Members of 79 Rangchali Gaon Panchayat, District – Dibrugarh on 16.06.2021, in its entirety, which proceedings had finally culminated in a special meeting held on 24.06.2021, in the office of 79 Rangchali Gaon Panchayat. In the special meeting held on 24.06.2021, the alleged motion of no confidence initiated against the petitioner for the purpose of removing her from the office of the President, 79 Rangchali Gaon Panchayat was put to secret voting and on counting, 6 [six] votes were found to have cast in favour of the motion of no confidence. By Resolution no. 1 adopted in the said special meeting, the Secretary of 79 Rangchali Gaon Panchayat was given the responsibility to forward the proceedings of the special meeting to the higher authorities stating that 6 [six] nos. of Ward Members had withdrawn their support from the petitioner as the President, 79 Rangchali Gaon Panchayat.

2. In the General Panchayat Election held in the year 2018, the petitioner submitted her nomination for the post of President, 79 Rangchali Gaon Panchayat ['Rangchali Gaon Panchayat', for short]. In the General Panchayat Election so held, the petitioner got herself elected to the post of President, Rangchali Gaon Panchayat, as per the provision of Section 6[1][b] of the Assam Panchayat Act, 1994 ['the Act, 1994', for short]. In the said General Panchayat Election, the respondent nos. 6 – 11 along with 4 [four] others also got elected

as Ward Members of Rangchali Gaon Panchayat. Apart from the directly elected President, Rangchali Gaon Panchayat is consisted of 10 [ten] nos. of Ward Members. After the election, the respondent no. 7 got elected as the Vice-President of Rangchali Gaon Panchayat in terms of the provisions of Section 6[3] of the Act, 1994.

3. The projected case of the petitioner, in brief, is that the petitioner was served a letter by the Secretary of the Rangchali Gaon Panchayat on 16.06.2021 informing that the Block Development Officer, Khowang Development Block had sent a letter dated 16.06.2021. It was informed that 6 [six] nos. of Ward Members of the Rangchali Gaon Panchayat by submitting a complaint had brought a motion of no confidence against the petitioner. The Block Development Officer, Khowang Development Block had, by the letter dated 16.06.2021, asked the Secretary of Rangchali Gaon Panchayat to convene a meeting within a period of 15 [fifteen] days therefrom. The Secretary had, thus, requested the petitioner by his letter dated 16.06.2021 to convene a meeting within a period of 12 [twelve] days to sort out the matter. A copy of the letter dated 16.06.2021 of the Block Development Officer, Khowang Development Block was enclosed by the Secretary of Rangchali Gaon Panchayat with his letter dated 16.06.2021.

3.1. On receipt of the letter dated 16.06.2021 from the Secretary of Rangchali Gaon Panchayat, the petitioner requested the Secretary of Rangchali Gaon Panchayat to forward the complaint allegedly submitted by the respondent nos. 6 – 11 so as to make herself aware of the nature of allegations that the petitioner was required to meet and also to fix a date for holding a meeting. But



to her utter surprise the Secretary of Rangchali Gaon Panchayat instead of providing a copy of the complaint, informed the petitioner on or about 23.06.2021 to be present in a special meeting, scheduled on 24.06.2021, to discuss a motion of no confidence brought against her. According to the petitioner, the petitioner and the Ward Members of Rangchali Gaon Panchayat attended the special meeting on 24.06.2021. Before initiation of the proceedings of the special meeting, the petitioner once again requested the Secretary of Rangchali Gaon Panchayat to provide her a copy of the alleged complaint submitted by 6 [six] nos. of Ward Members of Rangchali Gaon Panchayat i.e. the respondent nos. 6 – 11 and, on being so requested, the petitioner was handed over a copy of the complaint submitted by the respondent nos. 6 – 11. In the complaint submitted by 6 [six] nos. of Ward Members of Rangchali Gaon Panchayat with their signatures and seals, they brought 7 [seven] nos. of allegations against the petitioner for which they had lost confidence in her. According to the petitioner, she came to know about the allegations against her during the course of the proceedings of the special meeting held on 24.06.2021. In the special meeting, after a brief discussion on the allegations, the petitioner was asked to furnish her replies to the allegations and accordingly, the petitioner submitted the replies in writing. After the petitioner gave replies to the allegations, the President chosen for the special meeting to preside over the special meeting i.e. the respondent no. 7 drafted a resolution in favour of the no confidence motion solely on the basis of support expressed by the respondent nos. 6 – 11 in favour of the motion and requested the Secretary of Rangchali Gaon Panchayat to forward the same to the higher authorities to implement the resolution at the earliest. The petitioner had immediately thereafter on 25.06.2021, filed an objection before the respondent no. 2. Aggrieved by the

manner in which the resolution was adopted in the special meeting held on 24.06.2021, the petitioner has instituted the writ petition assailing the proceedings undertaken to remove her from the office of the President, Rangchali Gaon Panchayat.

4. I have heard Ms. M. Nirola, learned counsel for the petitioner; Mr. N.K. Deb Nath, learned Standing Counsel, Panchayat and Rural Development Department for the respondent nos. 1, 3, 4 & 5; Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent no. 2; and Mr. M.P. Sharma, learned counsel for the respondent nos. 6 – 11.

5. Ms. Nirola, learned counsel for the petitioner has submitted that the procedure prescribed under Section 15 and Section 18 of the Assam Panchayat Act, 1994 were not followed in convening the special meeting on 24.06.2021. It is her submission that the motion of no confidence brought against the petitioner had failed as motion was not carried out by more than two-third majority of the total number of Ward Members of Rangchali Gaon Panchayat. She has further submitted that in the special meeting, the process of secret ballots was not resorted to and the purported resolution was passed on the basis of voice votes, which is not a procedure to be adopted to decide a motion of no confidence brought against a directly elected President of a Gaon Panchayat.

6. Mr. Deb Nath, learned Standing Counsel, Panchayat and Rural Development Department has produced the records of the proceedings held on 24.06.2021. He has submitted that after deciding about the fate of the motion

of no confidence in special meeting, the Secretary of Rangchali Gaon Panchayat was given the responsibility to refer the matter to the higher authorities. On receipt of the proceedings of the special meeting, the Block Development Officer, Khowang Development Block referred the matter to the Chief Executive Officer, Dibrugarh Zilla Parishad on 05.07.2021 for his consideration and the Chief Executive Officer, Dibrugarh Zilla Parishad had, in turn, referred the matter to the Commissioner, Panchayat and Rural Development Department on 28.07.2021 seeking clarification from the Commissioner, Panchayat and Rural Development Department. On 03.08.2021, the Chief Executive Officer, Dibrugarh Zilla Parishad wrote to the Block Development Officer, Khowang Development Block directing him to issue a notification in the matter of removal of the petitioner as the President of Rangchali Gaon Panchayat. It was mentioned there that the motion of no confidence initiated against the petitioner as the President of Rangchali Gaon Panchayat, was sustained by majority of Ward Members of Rangchali Gaon Panchayat, as per the provision prescribed in Section 15 of the Act, 1994. Such direction was made on the premise that in the proceedings of the special meeting held on 24.06.2021, convened to discuss the meeting of no confidence, 6 [six] nos. of Ward Members had supported the motion and 3 [three] nos. of Ward Members had opposed the motion, with 1 [one] Ward Member remaining neutral.

7. Mr. Sharma, learned counsel representing the respondent nos. 6 – 11 has also submitted the stand taken by the Chief Executive Officer, Dibrugarh Zilla Parishad in his letter dated 03.08.2021. According to him, the procedure was duly followed in bringing the motion of no confidence against the petitioner. In the special meeting so held, apart from the petitioner, 10 [ten] nos. of Ward

Members of Rangchali Gaon Panchayat took part and exercised their votes either in favour or against the motion.

8. I have considered the submissions advanced by the learned counsel for the parties and have perused the materials on record, brought by the parties through their pleadings. I have also perused the records produced by the learned Standing Counsel, Panchayat and Rural Development Department.

9. From the attendance sheets maintained in respect of the special meeting held on 24.06.2021, it is noticed that the President, Rangchali Gaon Panchayat i.e. the petitioner and 10 [ten] nos. of Ward Members of Rangchali Gaon Panchayat had subscribed their signatures and seals in the attendance sheets indicating thereby that they had attended the special meeting and took part in the proceedings.

10. Section 6 of the Assam Panchayat Act, 1994 has provided for constitution of Gaon Panchayat. Sub-section [1] of Section 6 has provided that 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. Section 6[3] of the Assam Panchayat Act, 1994 has provided that when the Gaon Panchayat is constituted under the Section 6, the Deputy Commissioner or an officer authorized 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.

11. As per Section 15[1] of the Assam Panchayat Act, 1994, a President of a Gaon Panchayat 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. The issue whether the President of a Gaon Panchayat is a member within the meaning of Section 15 of the Act, 1994 came to be considered by a Division Bench of this Court in **Dhirendra Chandra Das and others vs. State of Assam and others**, reported in [2016] 6 GLR 209. After having considered the provisions contained in 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, the Division Bench has held that the President of a Gaon Panchayat stands altogether in different footing than the Vice-President or any other member of a Gaon Panchayat. The President is one of the two constituents of the Gaon Panchayat under the mandate of Section 6[1][b] of the Act, 1994. The President though a constituent of a Gaon Panchayat like the Ward Members but he is not a Ward Member himself unlike the Vice-President. The Division Bench has held that as the President is not a member of the Gaon Panchayat under the Assam Panchayat Act, 1994, while counting the total number of members of the Gaon Panchayat under Section 15[1] of the Act, 1994, the President cannot be counted and it is only the 10 [ten] elected members who shall decide the no confidence motion.

12. It is settled that vote of a person cannot be expressed in fraction. When

computation of a majority comes with fraction of a vote that fraction has to be treated as one vote, because votes cannot be expressed in fraction. In **Dhirendra Chandra Das** [supra], the Division Bench has held that two-third of the total no. of members of the Gaon Panchayat as per the scheme of Section 15 of the Assam Panchayat Act, 1994, comes to 7 [seven].

13. It has been sought to project by the Chief Executive Officer, Dibrugarh Zilla Parishad in his letter dated 03.08.2021 that with 1 [one] Ward Member remaining neutral during the proceedings of the special meeting, thus, neither supporting nor opposing the motion, the motion of no confidence was sustained. With such projection, the Chief Executive Officer, Barpeta Zilla Parishad directed the Block Development Officer to issue notification in the matter of removal. It has been observed by the Hon'ble Supreme Court of India in **Lily Thomas [Ms], Advocate vs. Speaker, Lok Sabha and others**, reported in [1993] 4 [SCC] 234, that voting is formal expression of will or opinion by the person entitled to exercise the right on the subject or issue in question. Right to vote means right to exercise the right in favour of or against the motion or resolution and such a right implies right to remain neutral as well. Conceptually, neutrality to the motion is not aligning with either view. It has been held that when a person entitled to vote on a resolution participates in discussion but abstains from voting, it is neither neutrality nor expression of opinion one way or the other but still it is legitimate and valid. It has been further held that in removal of an elected representative by vote of no confidence neutrality, partial or complete, is not unknown. It has been held that abstaining or refusal to express opinion by casting vote in favour of or against the motion cannot be construed as deemed support for the motion since there is no scope of assumed

voting. The principle which is deducible from the decision in **Lily Thomas** [supra] is that non-exercise of right to vote or abstention from voting by a member, even though present in the course of the proceedings, does not amount to mean that the member has supported the motion of no confidence.

14. The same analogy as has been observed in **Lily Thomas [Ms]** [supra], is found applicable **proprio vigore** in the case in hand. Thus, the vote of the Ward Member who remained neutral, neither supporting the motion nor opposing the motion in the special meeting held on 24.06.2021, cannot be counted in support of the motion of no confidence, thereby, increasing the number of votes in favour of the motion to 7 [seven] by adding 1 [one] vote with the votes of the 6 [six] Ward Members who had voted in favour of the motion.

15. From the records of the proceedings of the special meeting held on 24.06.2021, it is noticed that the process of secret voting was not resorted and the fate of the motion was decided by voice votes. Section 18[5] of the Act, 1994 has prescribed that 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 is to be decided by secret ballot. A full bench of this Court in **Forhana Begum Laskar vs. State of Assam and others**, reported in [2009] 6 GLR 429, has held that in case the process of secret ballot is not resorted to in a special meeting held to decide the issue of no-confidence against the President of a Gaon Panchayat, the proceedings of such a meeting being in contravention of an express legal provision, are liable to be adjudged **non est** in law.



16. In view of the discussions made above and for the reasons assigned, this Court holds that the proceedings of the special meeting are **non est** in law as the process of secret voting was not resorted to in the special meeting held on 24.06.2021. That apart, as only 6 [six] nos. of Ward Members of Rangchali Gaon Panchayat had voted in favour of the motion of no confidence, the motion of no confidence brought against the petitioner to remove her from the office of President, Rangchali Gaon Panchayat did not get the support of requisite more than two-third majority of the total number of Ward Members of Rangchali Gaon Panchayat and, as such, the motion is to be held as lost. It is accordingly held. As a corollary, the petitioner will continue as the President of Rangchali Gaon Panchayat. The writ petition stands allowed to the extent indicated above. The interim order dated 23.08.2021 stands merged with this order. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant