



GAHC010104272022

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

Case No. : WP(C)/3661/2022

NIBHA PATHAK
W/O- BINOD PATHAK
R/O- VILLAGE-RAMPUR
MOUZA - PAKA
P.S- SARTHEBARI
DIST- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 9 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT , DISPUR,
ASSAM, GUWAHATI -06.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
JURIPAR
GUWAHATI-37
ASSAM.

3:THE CHIEF EXECUTIVE OFFICER
BARPETA ZILLA PARISHAD
BARPETA
ASSAM

4:THE CHIEF EXECUTIVE OFFICER
BHAWANIPUR ANCHALIK PANCHAYAT

SARUPETA
ASSAM



5:THE DEPUTY COMMISSIONER
BAJALI
BARPETA
ASSAM

6:GOLAPI BHUIYA
MEMBER
NO.-9 PUB PAKA

GAON PANCHAYAT
WARD NO- 6
BARPETA

7:MEENA BASUMATARY
MEMBER
NO.-9 PUB PAKA

GAON PANCHAYAT
WARD NO- 8
BARPETA

8:NIBEDITA BORO
MEMBER
NO.-9 PUB PAKA

GAON PANCHAYAT
WARD NO- 1
BARPETA

9:TAPAN TALUKDAR
MEMBER
NO.-9 PUB PAKA

GAON PANCHAYAT
WARD NO- 2
BARPETA

10:THE BLOCK DEVELOPMENT OFFCER
BHAWANIPUR DEVELOPMENT BLOCK
BARPET

Advocate for the Petitioner : MS. S B CHOUDHURY

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 06-12-2022

Heard Ms. S.B. Choudhury, learned counsel for the petitioner and Mr. N.K. Dev Nath, learned counsel for the respondents No. 1 to 4, being the authorities under the P&RD of the Government of Assam. Also heard Mr. H. Sarma, learned Addl. Senior Government Advocate for the respondents No. 5 and 10, respectively being the Deputy Commissioner, Barpeta and the Block Development Officer, Bhawanipur Development Block and Mr. M. Sarania, learned counsel for the private respondents No. 6 to 9 being the members of the No. 9 Pub Paka Gaon Panchayat.

2. The petitioner is the President of No. 9 Pub Paka Gaon Panchayat under the Bhawanipur Anchalik Panchayat. Eight members of the said Gaon Panchayat made a requisition for a special meeting of No-Confidence on 24.01.2022 under Section 15(1) of the Assam Panchayat Act, 1994 (for short 'the Act of 1994'). A stand is taken that subsequently two of the members out of the eight who had given requisition for the special meeting had withdrawn as per the letter dated 21.03.2022. Be that as it may, as the petitioner President did not approve the convening of the said special meeting for No-Confidence, the Secretary of the No. 9 Pub Paka Gaon Panchayat by his communication dated 08.02.2022 requested the President of the Barpeta Anchalik Panchayat to convene the meeting.

3. Accordingly, the President of Barpeta Anchalik Panchayat by the letter dated 09.02.2022 made to the President of No. 9 Pub Paka Gaon Panchayat and

its Vice President and other members informed that the special meeting for No-Confidence had been fixed on 14.02.2022. By another communication dated 11.02.2022, the Executive Officer, Barpeta Anchalik Panchayat made to the Executive Officer, Bhawanipur Anchalik Panchayat informed that in the meantime, the No. 9 Pub Paka Gaon Panchayat had been transferred to be under the Bhawanipur Anchalik Panchayat and accordingly, requested that appropriate steps be taken for convening the special meeting for No-Confidence inasmuch as, the Barpeta Anchalik Panchayat would be unable to hold the meeting on 14.02.2022 as fixed earlier.

4. Because of the aforesaid circumstance as the special meeting for No-Confidence could not be held, the Secretary of No. 9 Pub Paka Gaon Panchayat by his communication dated 21.02.2022 informed the Deputy Commissioner, Bajali, of the requirement to hold the special meeting for No-Confidence. By another communication dated 24.02.2022, the Executive Officer, Bhawanipur Anchalik Panchayat also made a request to the Deputy Commissioner, Bajali, that as the special meeting for No-Confidence could not be held by the Barpeta Anchalik Panchayat on 14.02.2022 because of change of administrative jurisdiction of the Gaon Panchayat, therefore necessary action be taken. In response thereof, the Deputy Commissioner, Bajali by his order dated 22.04.2022 had convened and fixed the special meeting for No-Confidence on 28.04.2022. In the meeting held on 28.04.2022, a resolution was taken whereby the petitioner President was removed from office where seven members voted in favour of the removal and three in favour of the petitioner President. Being aggrieved the present writ petition is instituted.

5. One of the grounds urged upon by Ms. S.B. Choudhury, learned counsel for the petitioner is that under Section 15(1) of the Act of 1994, the Deputy

Commissioner/Sub-Divisional Officer (Civil) shall convene the meeting within seven days from the date of receipt of information from the Secretary of the Gaon Panchayat that the President of the Anchalik Panchayat had failed to convene the special meeting for No-Confidence. Accordingly, it is contended that the Secretary of the Gaon Panchayat had informed the Deputy Commissioner, Bajali about the inability of the President of the Anchalik Panchayat to convene the meeting by the communication dated 21.02.2022 which again was fortified by another communication dated 24.02.2022 from the Executive Officer, Bhawanipur Anchalik Panchayat.

6. Even if we take note of the later communication dated 24.02.2022, the Deputy Commissioner, Bajali had convened the meeting on 28.04.2022 i.e. after a period of two months. Accordingly, it is the contention that although Section 15(1) of the Act of 1994 provides for a period of seven days for the Deputy Commissioner to convene the meeting after being informed by the Secretary of the Gaon Panchayat about the inability of the President of Anchalik Panchayat to hold the meeting but in the instant case, the Deputy Commissioner had done the needful after two months.

7. According to Ms. S.B. Choudhury, learned counsel for the petitioner, the delay itself is fatal inasmuch as, Section 15(1) of the Act of 1994 provides that the Deputy Commissioner shall convene the meeting within seven days meaning thereby, it is mandatory on the part of the Deputy Commissioner to hold it within seven days of such communication.

8. Mr. M. Sarania, learned counsel for the private respondents No. 6 to 9 places on record a judgment of the Full Bench of this Court rendered in *Forhana Begum Laskar Vs. State of Assam & Ors.*, reported in 2009 (3) GLT 575, wherein according to the learned counsel, it had been held that although the word 'shall'

appears in Section 15(1) of the Act of 1994, the period of seven days prescribed therein is a directory provision and not mandatory.

9. In order to appreciate the rival contentions, we examine the provisions of paragraphs 24 and 26 of the judgment of the Full Bench of the Court in *Forhana Begum Laskar (supra)*, which is extracted as below:

“(24) In Mumtaz Rana Laskar and Ors.(supra), a Division Bench of this Court was seized with the task of interpretation of the prescriptions of Section 15 vis-à-vis the procedure and time frame for conducting the process pertaining to a no-confidence motion brought against the President or Vice President of Gaon Panchayat under the Act. This Court on an overall survey of several decisions of the Apex Court and the well accepted norms of interpretation of statutes propounded it to be impermissible to lay down any general rule for determining as to whether a provision is imperative or directory.

It was observed that to ascertain the real intention of the Legislature, the Court would have to consider, inter alia, the nature and design of the statute and the consequences, which would follow from construing it one way or the other, the impact of other provisions on the necessity of complying with the provisions, in question, the circumstances that the statute provides for a contingency of the non-compliance of such provisions, penalty if any, provided by the statute for such non-compliance and whether the object of the legislation would thereby be defeated or furthered. This Court noticed that in the facts and circumstances of that case, no prejudice had either been pleaded or explained consequent upon the delay on the part of the Secretary of the Gaon Panchayat in making reference to the Anchalik Panchayat. It was held that a mere procedural irregularity in the matter of making the reference by the Secretary of the Gaon Panchayat either to the President of the Anchalik Panchayat or to the Deputy Commissioner, as the case may be, would have no bearing whatsoever upon the resolution passed in the specially convened meeting expressing want of confidence in the Preseident or Vice President of the Gaon Panchayat as the case may be and that the same by itself would not result in causing any prejudice to the same person against whom the motion is carried out. It was observed that the democratic process envisaged in Section 15 of the Act cannot be put at the disposal of an insignificant authority who is required to convene the meeting in accordance with law and that any inaction on its part ought not to be allowed to result in frustration and subversion of the very scheme of the Act.

(26) Reading between the lines, it does not transpire to us that the above view rendered by the Division Bench can be constructed to denote that the entire scheme of Section 15 in all its essential features has been enunciated to be directory and not mandatory. It rather seems to accentuate that each and every departure from the procedure and the time schedule contained therein,

however, miniscule would not impair the exercise so as to decisively annihilate the same. In the contextual facts of the present appeal and the contraventions already noticed hereinabove, which we construe to be sufficient to answer the issues presently raised we do not consider it essential to embark on a rescrutiny of this proposition in the instant proceeding."

10. A reading of the provisions of paragraph 24 makes it discernible that the Full Bench took note of the pronouncement of the Division Bench in *Mumtaz Rana Laskar & Ors. Vs. State of Assam & Ors.*, reported in 2006 (1) GLT 46. In *Mumtaz Rana Laskar (supra)*, it had been held that in order to arrive at a conclusion as to whether the provision of Section 15(1) of the Act of 1994 is directory or mandatory, in order to ascertain the real intention of the legislature, the Court would have to consider inter alia, the nature and design of the statute and the consequences which would follow from construing it one way or the other and the impact of other provisions on the necessity of complying with the provisions in question. In paragraph 26, it had been provided that reading between the lines, it does not transpire that the view rendered by the Division Bench in *Aleya Khatun & Ors. Vs. State of Assam & Ors.*, reported in 2004 (3) GLT 361 and *Basanti Das Vs. State of Assam & Ors.*, reported in 2004 (Supp) GLT 717, can be construed to denote that the entire scheme of Section 15 in all its essential features has been enunciated to be directory and not mandatory. A reading of the aforesaid provisions in paragraph 26 of *Forhana Begum Laskar (supra)*, makes it discernible that the Full Bench had rendered that the entire provisions of Section 15 of the Act of 1994 cannot be said to be directory and not mandatory. Paragraph 26 further provided that any departure from the time schedule contained therein, however miniscule, would not impair the exercise so as to decisively annihilate any proceeding that may have been initiated with such departure.

11. We take note of the expression 'miniscule' which would mean that a minor deviation here and there may not render the proceeding to be annihilated because of a departure from the time frame. In the instant case, we notice that the Deputy Commissioner instead of doing the needful within seven days as prescribed under Section 15(1) of the Act of 1994 had convene the special meeting after a period of two months. From such point of view, a question would arise whether by convening the meeting after two months from the communication of the Secretary of the Gaon Panchayat, where there is a requirement to do within seven days, would be a miniscule departure or it would be a departure of some significance.

12. To answer the aforesaid issue, we refer to the provisions of paragraph 24 of *Forhana Begum Laskar (supra)*, wherein it is provided that to ascertain the real intention of legislature, the Court would have to consider inter alia, the nature and design of the statute and the consequence which would follow from construing it one way or the other. Accordingly, if we now construe that the period of more than two months taken by the Deputy Commissioner instead of seven days as prescribed would have its own consequence or not, we will have to also give a thought that in view of the delay of beyond two months, instead of doing it within seven days, whether the position of the respective parties i.e. the President and the members may have also been subjected to a change which may have a bearing on the consequence of the outcome.

13. In the absence of any material as to whether the political equations between the parties had any change because of the time taken to convene the special meeting was more than two months, it will be difficult for the Court to answer as to what may have been the consequence of the delay, or in other words to take the view that there was no consequence of any kind.



14. From the aforesaid point of view, we interfere with the order dated 22.04.2022 of the Deputy Commissioner, Bajali fixing the meeting on 28.04.2022 in a circumstance, where the Deputy Commissioner was intimated on 21.02.2022 and 24.02.2022. As we have interfered with the order dated 22.04.2022, the consequential resolution dated 28.04.2022 by which the petitioner was removed as the President is also interfered. Accordingly, we provide that the petitioner would now continue as the President of the No. 9 Pub Paka Gaon Panchayat. But, however, as interference is made at a stage on 22.04.2022 when the Deputy Commissioner had deviated from the procedure which may have had some consequence, we accordingly declare that the No-Confidence motion sought to be made against the petitioner was lost on 22.04.2022 meaning thereby, that the embargo not to requisition a subsequent No-Confidence motion up to a period of six months after having lost the earlier one would no longer be applicable, as six months period is over in the meantime.

Writ petition stands disposed of as indicated above.

All interim orders, if any stand vacated.

JUDGE

Comparing Assistant