

GAHC010054002023



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

1. WRIT APPEAL NO.106 OF 2023

1. Harmila Begum,
Wife of Nazrul Hoque,
Resident of Village: Nitainagar, PO:
Ratabari, District: Karimganj, Assam.

2. Hanif Uddin,
Son of Abdul Jalil,
Resident of Village: Hullashnagar,
PO: Anipur, District: Karimganj, Assam.

3. Jyothna Begum,
Wife Chad Uddin,
Resident of Village-37 Hall,
PO: Anipur, District: Karimganj, Assam.

4. Prithwish Kr. Saha,
Son of Prashanto Kr. Saha,
Resident of Village: Channighat,
PO: Anipur, District: Karimganj, Assam.

5. Alaka Malakar,
Wife of Rahul Malakar,
Resident of Village: Gandharaj Bari,
PO: Ratabari, District: Karimganj,
Assam.

6. Malati Sinha,
Wife of Mohitus Sinha,
Resident of Village: Beratuk,
PO: Anipur, District: Karimganj, Assam.

7. Anupam Saha,
Son of Late Monigopal Saha,

Resident of Village: Amarkhal,
PO: Anipur, District: Karimganj, Assam.

8. Hafiza Begum Laskar,
Wife of Manjur Hussain,
Resident of Village: Bilbari,
PO: Anipur, District: Karimganj, Assam.

9. Sobir Ahmed,
Son of Late Sanuhar Ali,
Resident of Village: Dullavpur,
PO: Anipur, District: Karimganj, Assam.

.....Appellants

-Versus-

1. Ruhul Amin,
Son of Late Eklatur Rahman,
Resident of Village-37 Hall, PO: Anipur,
PS: Ratabari, District: Karimganj,
Assam, PIN – 788734.

2. The State of Assam, represented by
the Commissioner & Secretary to the
Government of Assam, Panchayat &
Rural Development Department,
Dispur, Guwahati - 781006.

3. The Principal Secretary to the
Government of Assam, Panchayat &
Rural Development Department,
Panjabari, Guwahati - 781037.

4. The Deputy Commissioner,
Karimganj, District: Karimganj, Assam,
PIN - 788710.

5. The Chief Executive Officer,
Karimganj Zilla Parishad, PS & District:
Karimganj, Assam.

6. The Block Development Officer,
Dullabcherra, District: Karimganj,
Assam, PIN – 788736.

7. The President, Dullabcherra Anchalik
Panchayat, PO: Dullabcherra, PS:

Ratabari, District: Karimganj, Assam,
PIN – 788736.

8. The Secretary, Anipur Gaon
Panchayat, PS: Ratabari, District:
Karimganj, Assam, PIN – 788734.

.....Respondents

2. WRIT APPEAL NO.72 OF 2023

Ruhul Amin,
Son of Late Eklasur Rahman,
Resident of Village-37 Hall, PO: Anipur,
PS: Ratabari, District: Karimganj,
Assam, PIN – 788734.

.....Appellant

-Versus-

1. The State of Assam, represented by
the Commissioner & Secretary to
Panchayat & Rural Development
Department, Government of Assam,
Dispur, Guwahati - 781006.

2. Government of Assam, Panchayat &
Rural Development Department,
Panjabari, Guwahati - 781037.

3. The Deputy Commissioner,
Karimganj, District: Karimganj, Assam,
PIN - 788710.

4. The Block Development Officer,
Dullabcherra Development Block,
District: Karimganj, PIN – 788736.

5. The President, Dullabcherra Anchalik
Panchayat, PO: Dullabcherra, PS:
Ratabari, District: Karimganj, PIN –
788736.

6. The Secretary, Anipur Gaon
Panchayat, PO & PS: Ratabari, District:
Karimganj, Assam, PIN – 788734.

7. Harmila Begum,
Wife of Nazrul Islam,
Resident of Village: Nitainagar, PO:
Ratabari, District: Hailakandi, Assam,
PIN – 788734.

8. Hanif Uddin,
Son of Abdul Jalil,
Resident of Village: Hullashnagar, PO:
Anipur, District: Karimganj, PIN –
788734.

9. Jyothana Begum,
Wife Chad Uddin,
Resident of Village-37 Hall, PO: Anipur,
District: Karimganj, PIN – 788734.

10. Prithwish Kr. Saha,
Son of Prashanto Kr. Saha,
Resident of Village: Channighat, PO:
Anipur, District: Karimganj, PIN –
788734.

11. Alaka Malakar,
Wife of Rahul Malakar,
Resident of Village: Gandharaj Bari,
PO: Ratabari, District: Karimganj, PIN
– 788734.

12. Malati Sinha,
Wife of Mohitus Sinha,
Resident of Village: Beratuk, PO:
Anipur, District: Karimganj, PIN –
788734.

13. Anupam Saha,
Son of Late Monigopal Saha,
Resident of Village: Amarkhal, PO:
Anipur, District: Karimganj, PIN –
788734.

14. Hafiza Begum Laskar,
Wife of Manjur Hussain,
Resident of Village: Bilbari, PO: Anipur,
District: Karimganj, PIN – 788734.

15. Sobir Ahmed,
 Son of Late Sanuhar Ali,
 Resident of Village: Dullavpur, PO:
 Anipur, District: Karimganj, PIN –
 788734.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

For the Appellants : Mr. S.K. Talukdar, Advocate in
 Writ Appeal No.106/2023.
 : Mr. S.B. Laskar, Advocate in Writ
 Appeal No.72/2023.

For the Respondents : Mr. S.B. Laskar, Advocate for
 respondent No.1 in Writ Appeal
 No.106/2023.
 : Mr. K. Konwar, Standing Counsel,
 Panchayat & Rural Development
 Department.
 : Ms. S. Konwar, Junior Govt.
 Advocate, Assam.
 : Mr. S.K. Talukdar, Advocate for
 respondent Nos.7 to 15 in Writ
 Appeal No.72/2023.

Date of Hearing : 28.04.2023.

Date of Judgment & Order : **1st June, 2023.**

JUDGMENT & ORDER

[Sandeep Mehta, C.J.]

These two appeals take an exception to the judgment & final order dated 07.02.2023 rendered by the learned Single Judge in WP(C) No.6971/2022 (*Ruhul Amin*

-Vs- State of Assam & Ors.), whereby the writ petition under article 226 of the Constitution of India preferred by the writ petitioner (appellant in Writ Appeal No.72/2023), was accepted.

2. The appellant in Writ Appeal No.72/2023, namely, Ruhul Amin, is the elected President of Anipur Gaon Panchayat. The appellants in the connected Writ Appeal No.106/2023 are the 9 (nine) Ward Members (respondent Nos.8 to 16 in the writ petition), who introduced a no-confidence motion against the appellant in Writ Appeal No.72/2023, who is the elected President of the said Gaon Panchayat. It is the claim of the appellant Ruhul Amin that he was assaulted and was hospitalized from 23.09.2022 to 01.10.2022 and thus, no steps pursuant to receiving the requisition notice under Section 15(1) of the Assam Panchayat Act, 1994 (hereinafter referred to as "1994 Act") dated 26.09.2022 could be taken. Thereafter, the Secretary of the Gaon Panchayat referred the matter to the Anchalik Panchayat in accordance with the provisions as contained in Section 15(1) of the 1994 Act. The meeting at the Anchalik Panchayat was convened on 17.10.2022 and the motion was carried through.

3. The appellant Ruhul Amin filed the writ petition, being, WP(C) 6971/2022 alleging *inter alia* that the requisition notice dated 26.09.2022 was never brought to his knowledge by the Secretary of the Gaon Panchayat.

The learned Single Judge held that there was no proof on record to show service of the requisition notice dated 26.09.2022 upon the appellant Ruhul Amin. The respondent No.7 in the writ petition, who is the Secretary of the Anipur Gaon Panchayat, could not have assumed jurisdiction to refer the matter to the Anchalik Panchayat on 12.10.2022, i.e. well before the expiry of 15 (fifteen) days from 01.10.2022. Accordingly, the resolution dated 17.10.2022 was held to have been drawn pursuant to an illegal meeting and thus, the same was quashed. However, the appellant Ruhul Amin being the elected President of the Anipur Gaon Panchayat, was directed to convene a special meeting of the Gaon Panchayat to consider the motion of no-confidence brought against him by 9 (nine) Ward Members by following the procedure prescribed under Section 17(3) of the 1994 Act.

4. The appellant Ruhul Amin has preferred the writ appeal being Writ Appeal No.72/2023 questioning the direction given by the learned Single Judge to convene the special meeting, contending that once the motion of no-confidence is interfered by the High Court while exercising the high prerogative writ jurisdiction, a fresh meeting to consider the motion cannot be convened before expiry of 6(six) months, as mandated by second proviso to Section 15(1) of the 1994 Act.

5. The appellants in Writ Appeal No.106/2023 have challenged the very same order dated 07.02.2023 on the

ground that the view taken by the learned Single Judge, while interfering with the no-confidence motion taken in pursuance of a lawfully convened meeting at the Anchalik Panchayat, is totally unjustified and contrary to the provisions of the 1994 Act. It was contended that notice of the special meeting to be convened at the Anchalik Panchayat was duly served on the appellant/writ petitioner Ruhul Amin and the view taken by the learned Single Judge holding that the notice was not served, amounts to causing interference into the disputed question of facts and hence, the judgment & order passed by the learned Single Judge is liable to be quashed.

6. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned judgment and the material available on record.

7. The learned Single Judge for holding that the notice of the special meeting was not properly served upon the appellant made the discussion in Paragraphs 16, 17 & 17.1, which are reproduced for the sake of ready reference:-

“16. In Habibur Rahman vs. State of Assam and others, reported in 2006 [Supp] GLT 218, a Division Bench of the Hon’ble Court has inter alia observed that as soon as the President of the Gaon Panchayat against whom the no confidence motion is brought, is delivered with a copy of such requisition for special meeting under Section 15[1] of the Assam Panchayat Act, 1994, the provision contained in sub-section [1] of Section 15 is to be held as complied with. The requirement would be substantially complied with if

the Secretary of the Gaon Panchayat delivers a copy of such requisition to the President of the Gaon Panchayat against whom no confidence motion has been brought. There is no dispute to the propositions laid down in Habibur Rahman [supra]. The requisitionists herein i.e. the respondent nos. 8 – 16 had delivered the requisition notice dated 26.09.2022 to the Secretary of Anipur Gaon Panchayat [the respondent no. 7] on 26.09.2022. The issue involved herein is as to whether the respondent no. 7 who was delivered with the requisition notice on 26.09.2022, had brought the same to the knowledge of the President of the Gaon Panchayat in the manner required.

17. When the fact situation presented before the this Court in the case in hand are looked at by keeping into purview the provisions of Section 15[1] of the Panchayat Act and the ratio laid down in Ali Ahmed Mazumdar [supra], this Court finds that there could be two possibilities in the case in hand, firstly, the requisition notice was brought by the Secretary of the Gaon Panchayat to the notice of the President on 01.10.2022 or on any day thereafter; and secondly, the requisition notice was not brought by the Secretary of the Gaon Panchayat to the notice of the President on 01.10.2022 or any day thereafter. Before embarking on any of the two possibilities, it is relevant to note that there is no material on record to indicate that the petitioner had made any endorsement on any official records relatable to the motion of no confidence until 16.10.2022.

17.1. If it is assumed for the sake of argument that the requisition notice was brought to the notice of the petitioner by the respondent no. 7 on 01.10.2022 and in the absence of any endorsement from the petitioner either according or declining approval with regard to convening of the special meeting, the respondent no. 7 could not have assumed jurisdiction to refer the matter to the Anchalik Panchayat on 12.10.2022, which was before expiry of 15 days from 01.10.2022. With regard to the second possibility, neither the official respondents nor the private respondents have

been able to bring any cogent materials to rebut in a prima facie manner the contentions advanced on behalf of the petitioner that the requisition notice dated 26.09.2022 was never brought to his knowledge by the Secretary of the Gaon Panchayat through any official mode till he received the notice dated 13.10.2022 issued from the end of the respondent no. 6 informing that a special meeting was being convened on 17.10.2022, on 16.10.2022. In the factual matrix obtaining in the case, the onus was on the respondents' side to bring cogent materials on record in support of their claim that the requisition notice was brought to the knowledge of the President in the prescribed manner rather than the petitioner who has asserted in a negative manner, that is, the requisition notice was never brought to his knowledge in the proper manner. In the light of the discussion above, this Court has to observe that the Secretary of the Gaon Panchayat did not bring the requisition notice dated 26.09.2022, received by him on 26.09.2022, to the knowledge of the President of the Gaon Panchayat in the manner required. The one-page note-sheet produced by the respondent no. 7 before this Court does not go to show that how he [the respondent no. 7] had delivered or through whom he had delivered the requisition notice to the President of the Gaon Panchayat. The respondent no. 7 has also failed to disclose how the one-page note-sheet along with the requisition notice, had been received back by him on 26.09.2022 or another date thereafter, after the same were allegedly sent to the President of the Gaon Panchayat i.e. the petitioner.”

8. Even if we do not delve into the question whether the Secretary duly informed the elected President of the Anipur Gaon Panchayat, i.e. appellant Ruhul Amin, regarding the special meeting to be convened at the Anchalik Panchayat, the undisputed fact remains that the matter was referred to the Anchalik Panchayat on 12.10.2022, i.e. before the expiry of 15(fifteen) days from

01.10.2022, which is in gross contravention to the prescription of Section 15(1) of the Assam Panchayat Act. The respondents have set up a case that the requisition notice to convene the special meeting was brought to the knowledge of the appellant Ruhul Amin on 01.10.2022, and in such an event, he being the elected President, had the liberty to convene the special meeting within 15(fifteen) days. Hence, the reference made by the Secretary to the Anchalik Panchayat on 12.10.2022 even before the period of 15(fifteen) days had lapsed, was illegal. Thus, the finding recorded by the learned Single Judge that the special meeting convened at the Anchalik Panchayat on 17.10.2022 suffers from procedural defect of being convened before the completion of the mandatory period of 15(fifteen) days, as prescribed in Section 15(1) of the 1994 Act, is based on a correct appreciation of facts and law.

9. Having said so, now we advert to the issue as to whether once the no-confidence motion was quashed/interfered with on account of technical flaw in the procedure, whether the learned Single Judge could have directed convening of the meeting before expiry of the period of 6(six) months, as mandated by second proviso to Section 15(1) of the 1994 Act.

10. In view of the discussion made above, it is apparent that the resolution of no-confidence drawn against the appellant Ruhul Amin was interfered with and

quashed by the learned Single Judge on the technical ground that the meeting was convened before expiry of the period of 15(fifteen) days from the date of service of the requisition notice and thus the same was in contravention to prescription under Section 15(1) of the 1994 Act. Clearly thus, the motion was not lost but was rather interfered with on purely a technical ground.

11. In this background, the law laid down by Full Bench of this Court in the case of ***Forhana Begum Laskar -Vs- State of Assam & Ors.***, reported in **2009 (3) GLT 575** clearly governs the controversy, wherein the Full Bench considered the concept of the motion being lost as is conceived of in second proviso to Section 15(1) of the 1994 Act. The discussion made by the Full Bench in Paragraphs 20, 21 and 22 are reproduced herein below for the sake of ready reference:-

“20. Does, this determination essentially signifies that the no-confidence motion brought against the appellant is lost as is conceived of in the 2nd proviso to section 15(1)?

21. The word ‘loss’ as has been defined in Black's Law Dictionary is:

‘Loss:- Loss is a generic and relative term. It signifies the act of losing or the thing lost; it is not a word of limited, hard and fast meaning and has been held synonymous with, or equivalent to, ‘damages’, ‘damages’, ‘deprivation’, ‘detriment’, ‘injury’. It may mean act of losing, or the thing lost.’

22. The word ‘lost’ appearing in the 2nd proviso to section 15(1), in deference to the fundamental

principles of statutory interpretation, has to be essentially comprehended in the text and the context in which it appears. When so construed and interpreted, it, to start with, seems to signify a rejection of a no-confidence motion on merits following due deliberations in a meeting convened and held in accordance with the procedure prescribed in section 15(1). It cannot be conceived of as an inevitable consequence of any infringement of the prescribed procedural rigour either by a breach of the time frame or unwarranted interference of any authority at any stage of the process or reasons akin thereto. Though, such outrages depending on the nature and extent of the consequential vitiation may render the process illegal, the same per se, would not imply the loss of the no-confidence motion as is contemplated in the 2nd proviso to section 15(1) of the Act. A demonstrably conscious act or omission on the part of those supporting the motion resulting in the rejection of the motion on merits or testifying the abandonment of the pursuit would be essential to conclude such a consequence. The bar against the permissibility of initiation of such a motion within next six months after it is lost in the first venture, in our opinion is decisively redolent of this view. The quintessence of the proviso, according to us, is to sanction a temporary reprieve to the President or the Vice-President of the Gaon Panchayat, in case the no-confidence motion brought against him/her stands defeated on merit so as to relieve him/her of a fresh ordeal of suffering the same exercise in quick successions. The legislative intendment as discernible is thus that a no-confidence motion brought against the President or the Vice-President of the Gaon Panchayat is lost within the meaning of 2nd proviso to section 15(1) of the Act, if either it is rejected on due deliberations in a meeting duly convened as enjoined therein or if the motion fails for cause or causes other than procedural defects or irregularities in convening the meeting be it for the violation of the time frame or uncalled for or unauthorized intervention of any authority not contemplated in the scheme statutorily delineated for adherence. Whereas, such an infringement of the time schedule prescribed for the successive stages, or interferences of authorities not

envisaged depending on the extent and the nature of the impairment caused thereby, may render an ongoing process vitiated thereby, the inescapable consequence thereof need not necessarily be that the motion would be lost as comprehended in the 2nd proviso to section 15(1) of the Act. Such a consequence is also neither discernible nor deductible from section 15(1). We, thus, cannot lend our concurrence to the plea that each and every non-compliance of the procedural essentials for prosecuting the process of no-confidence motion would, inexorably imply that it (motion of no-confidence) would be lost. In the facts and circumstances of the case, having regard to the nature of the contraventions, we are of the unhesitant opinion that though the proceedings of the meeting dated 12.3.2009 are invalid in view of the unauthorised intrusion of the Anchalik Panchayat in the process, it would not connote that the no-confidence motion thereby, had been lost so as to attract the bar against initiation of a fresh pursuit with the same objective within six months thereafter. The process, in our view subsists and is capable of being furthered from the stage of the receipt of the requisition dated 19.2.2009 expressing the no-confidence against the appellant.”

12. The Full Bench laid down a principle that non-compliance of the procedural essentials for prosecuting the process of no-confidence motion would not imply that it would be lost and thus the bar of 6(six) months contained in Section 17(1) of the Act would not in any manner come in the way of re-convening the meeting as per law.

13. As in the case at hand, the no-confidence motion was not interfered on any substantive grounds but was rather quashed on account of a procedural defect, the learned Single Judge committed no error whatsoever in directing that a fresh meeting would be convened by the

appellant Ruhul Amin after complying the requirement of Section 15 of the 1994 Act. We do not find any justifiable cause to interfere with the well reasoned judgment of the learned Single Judge. Hence, both the appeals fail and are dismissed as being devoid of merit.

14. The appellant Ruhul Amin shall comply with the directions given by the learned Single Judge and convene the meeting within a period of 15(fifteen) days from today after complying with the requirements of Section 15 of the 1994 Act for considering the motion of no-confidence brought against him by 9(nine) Ward Members of the Anipur Gaon Panchayat in accordance with the directions given by the learned Single Judge in the impugned judgment & order dated 07.02.2023 passed in WP(C) No.6971/2022.

JUDGE

CHIEF JUSTICE

Comparing Assistant