

PADMINI SINGHA

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v.

THE STATE OF ASSAM & OTHERS

(Civil Appeal No. 4677 of 2018)

SEPTEMBER 27, 2018

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**[DIPAK MISRA, CJI, A.M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]**

Assam Panchayat Act, 1994– s.15(1)– Mandatory provision– Waiver of – No Confidence Motion passed against respondent no. 6, President of the concerned Panchayat in a meeting presided over by the Block Development Officer (BDO) – Respondent no. 6 lost her Presidentship and the appellant, Vice President, was directed to function as incharge President of the concerned Panchayat for the time being– Writ petition filed by respondent no.6 challenging the legal acceptability and validity of the resolution expressing want of confidence against her, allowed– Held: On a plain reading of the s.15(1), it is clear that the meeting has to be convened by the Deputy Commissioner within a stipulated time and the said authority has also been conferred the power to depute one Gazetted Officer under him not below the rank of Class I Gazetted Officer to preside over the meeting – A mandatory provision of law requires strict compliance but there are situations where even if a provision is mandatory, non-compliance would not result in nullification of the act – One such exception is, if a certain requirement or condition is provided in a statute for the benefit or interest of a particular person, the same can be waived by him if no public interest is involved – In the present case, respondent no. 6 who was a beneficiary attended the meeting wherein voting had taken place and no public interest was affected – Further, the BDO presided over the meeting and everyone including respondent no.6 knew that the meeting was called for passing a resolution either in favour of or against the No Confidence Motion – After losing in the voting process, the procedure of calling the meeting was assailed – Having participated, respondent no. 6 waived the condition precedent – Resolution passed against respondent no. 6 valid – Waiver.

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A Allowing the appeal, the Court

HELD: 1.1 On a plain reading of the Section 15(1), Assam Panchayat Act, 1994 it is crystal clear that the meeting has to be convened by the Deputy Commissioner within a stipulated time and the said authority has also been conferred the power to depute one Gazetted Officer under him not below the rank of Class I Gazetted Officer to preside over the meeting. The said situation comes into existence after the Deputy Commissioner is informed to convene the meeting. [Para 9] [240-G]

1.2 The resolution passed in the meeting on 31.03.2014 records that the respondent no. 6 was present in the meeting and signed. The meeting was held to discuss the Motion of No-Confidence. The respondent no. 6 who was a beneficiary attended the meeting and voting had taken place. It is well settled in law that a mandatory provision of law requires strict compliance but there are situations where even if a provision is mandatory, non-compliance would not result in nullification of the act. There are certain exceptions. One such exception is, if a certain requirement or condition is provided in a statute for the benefit or interest of a particular person, the same can be waived by him if no public interest is involved. The ultimate result would be valid even if the requirement or condition is not performed. In the obtaining fact situation, no public interest was affected. The Block Development Officer (BDO) presided over the meeting and every one knew that the meeting was called for passing a resolution either in favour of or against the No Confidence Motion. The respondent no. 6 knowing fully well participated in the meeting and the resolution was passed against her. After losing in the voting process, the assail was made to the procedure of calling the meeting. Had the respondent no.6 not participated in the meeting, the matter would have been absolutely different. Having participated, it has to be held that the respondent no. 6 had waived the condition precedent. The orders passed by the Single Judge as well as the Division Bench are set aside. The resolution passed against the respondent no. 6 is treated as valid. [Paras 11, 13 and 14] [241-F-G; 242-D-H; 243-A]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4677 of 2018. A

From the Judgment and Order dated 24.11.2017 of the Gauhati High Court in Writ Appeal No. 310 of 2016.

Pijush Kanti Roy, Mrs. Kakali Roy (for Rajan K. Chourasia), Advs. for the Appellant. B

The Judgment of the Court was delivered by

DIPAK MISRA, CJI. 1. On 30.01.2014, the appellant along with seven members of Masughat Gaon Panchayat submitted a No Confidence Motion against the President, respondent no. 6 herein, and for requisition of a special meeting to prove the majority of Gaon Panchayat President as per Section 15(1) of the Assam Panchayat Act, 1994 (for brevity, 'the Act'). On 15.02.2014, the Secretary, Masughat Gaon Panchayat forwarded the said requisition to the President, Borkhola Anchalik Panchayat stating therein that the matter had already been put up before the President, Masughat Gaon Panchayat on 07.02.2014 for taking necessary action but she asked to wait due to some legal complications. Since the stipulated period of calling a special meeting was over, the petition was being referred for taking necessary action as per provisions of the Act. By virtue of letter dated 26.02.2014, the Block Development Officer (BDO), Borkhola Development Block referred the matter to the Deputy Commissioner, Cachar, Silchar stating that he had already put the matter before the President of the concerned Panchayat on 20.02.2014; that she stated to wait and that since the stipulated period for calling a special meeting was over, the matter was being referred to him for taking necessary action as per the Act. C
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2. On 17.03.2014, the Additional Deputy Commissioner, Cachar, Silchar sent a communication to the BDO, Borkhola Development Block which is as follows:- F

"No. CDO.1/2014/11 Dated, Silchar,

the 17th March, 2014 G

To,

The Block Development Officer,
Borkhola Development Block.

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A Sub. Special Meeting of No Confidence Motion against the President Masughat GP.

Ref.BDE/E-11/92-98/Pt.II/AP
Establishment, Dated
26-02-2014

B I am to return herewith the proposal submitted by you for convening a special meeting of No Confidence Motion against the G.P. President Masughat G.P. and request you to take necessary action as per provision laid down in the Assam Panchayat Raj Act, 1994 Sec. 15(1).

C The extract copy of relevant portion of the said Act Sec. 15(1) is enclosed herewith for favour of your kind necessary action.

D Encl: As stated above A.R. Sheikh, ACS
Addl. Deputy Commissioner (Dev.)
Chchar, Silchar”

E 3. In compliance of the above communication, on 21.03.2014, the BDO wrote to the President, Masughat Gaon Panchayat informing her to attend the special meeting of No Confidence to be convened on 31.03.2014 at 12:30 p.m. in the office of the BDO. On 31.03.2014, the meeting was presided over by BDO. In the meeting, nine members cast their votes in favour of the No Confidence Motion and one member cast vote against the No Confidence Motion. Thus, the President, respondent no. 6 herein, lost her Presidentship and the Vice President, appellant F herein, was directed to function as incharge President of the concerned Panchayat for the time being.

G 4. Being aggrieved by the passing of the No Confidence Motion against her, the respondent no. 6 herein filed a writ petition, being Writ Petition (Civil) No. 2051 of 2014, before the Gauhati High Court. In the writ petition, she challenged the legal acceptability and validity of the resolution expressing want of confidence against her in a special meeting held on 31.03.2014. The learned single Judge of the High Court, vide judgment and order dated 09.08.2016, allowed the writ petition on the ground that vide letter dated 17.03.2014, the Deputy Commissioner, H instead of taking action in the matter, merely wrote back to the BDO to

take steps in accordance with Section 15 of the Act and there was no delegation of authority to the BDO to preside over the meeting. No document had been produced showing delegation of authority. It was the Deputy Commissioner who ought to have taken steps in terms of the provisions of the Act by convening a meeting. A meeting convened and presided over by an authority alien to the mandate postulated in Section 15 of the Act could not sanctify the proceeding of a meeting. On this foundation, the resolution adopted expressing no confidence against the President was set aside and declared null and void.

5. Being grieved by the judgment and order of the learned single Judge, the appellant filed Writ Appeal (Civil) No. 310 of 2016 before the Division Bench of the High Court which, by the impugned judgment and order dated 24.11.2017, dismissed the Writ Appeal. The Division Bench held that it is only the Deputy Commissioner who can convene the meeting within seven days from the date of receipt of the information and Section 15 does not authorize the Deputy Commissioner to delegate his power of convening the meeting to the BDO. The BDO can preside over the meeting being a Gazetted officer only when the Deputy Commissioner is unable to preside over the meeting and it is so conveyed by him. The appellate Bench opined that as per Section 15 of the Act, the meeting was to be convened by the Deputy Commissioner and no one else and when law provides to do a certain thing in a certain way, the thing must be done in that way or not at all. Being of this view, it concurred with the opinion expressed by the learned single Judge and dismissed the intra court appeal.

6. In the present appeal by special leave, the appellant has assailed the correctness of the impugned judgment.

7. Despite service of notice, there has been no appearance. We have heard Mr. Pijush Kanti Roy, learned counsel for the appellant.

8. The relevant part of Section 15 reads as follows:-

“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.

A 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.

C 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 :

E 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:

F Provided further that when a non-confidence motion is lost, no such motion shall be allowed in the next six months.”

G 9. On a plain reading of the said provision, it is crystal clear that the meeting has to be convened by the Deputy Commissioner within a stipulated time and the said authority has also been conferred the power to depute one Gazetted Officer under him not below the rank of Class I Gazetted Officer to preside over the meeting. The said situation comes into existence after the Deputy Commissioner is informed to convene the meeting. The Division Bench has observed, placing reliance on the communication of the Deputy Commissioner that he has not really

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convened the meeting and that apart, he has not delegated the power or authority to the BDO to preside over the meeting. It has been further held that the BDO at the most could have presided over the meeting when the Deputy Commissioner was unable to preside over the meeting so convened by him. But as the meeting was not convened, the whole thing was illegal.

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10. It may be noted that a ground has been taken in this appeal before us that the beneficiary, namely, the respondent no. 6, had attended the meeting. On a perusal of the judgment of the learned single Judge, we do not notice that any such assertion was made. The entire discussion, as we find, relates to what is meant by the Deputy Commissioner by his communication dated 17.02.2014 and further, regarding the delegation of authority to the BDO to preside over the meeting. The ultimate conclusion that has been recorded by the learned single Judge is expressed in para 22 of the judgment which reads thus:-

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“22. In view of the above discussions, the resolution adopted expressing no confidence against the petitioner is set aside and declared null and void. But the matter does not rest here. This Court cannot remain oblivious of the fact that a requisition for No Confidence Motion was given against the petitioner and expression of no confidence was negatived for procedural irregularities as mentioned above and, therefore, this Court will be failing in its duty in exercising power under Article 226 of the Constitution of India if this Court does not direct the petitioner to hold a meeting to decide the No Confidence Motion brought against her.”

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11. Interpreting Section 15 of the Act, the Division Bench opined that the Deputy Commissioner has not acted as provided under Section 15. The resolution passed on 31.03.2014 which has been brought on record as Annexure P-6 records that the respondent no. 6 was present in the meeting and signed. In such a situation, the issue that emerges for consideration is whether the ultimate resolution of the meeting could have been discarded.

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12. To appreciate the said aspect, it is appropriate to reproduce the content of the resolution. It reads thus:-

“The meeting is presided over by Shri Kishore Baruah, BDO, Borkhola Development Block as per Assam Panchayat Act, 1994.

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A At the outset of the meeting BDO asked the Members any opinion if they have. They replied that they want voting then by secret ballot voting is done. Ballot box is open at 1.30 p.m. After opening the Ballot Box as found 9 G.P. Members casted their votes for No-Confidence motion and 1 G.P. Member caste vote against the No-Confidence Motion. As per Assam Panchayat Act 2/3rd B (section 15) majority of the total G.P. members should caste votes either in support of No-Confidence motion or against the No-Confidence motion. In this connection 2/3rd i.e., 7 members out of 10 members required. But after opening Ballot Box, it is C found that 9 G.P. Members casted vote in favour of No-Confidence Motion and 1 G.P. Member casted vote against the No-Confidence Motion. As a result of which Rita Rani Dusad, President, Masughat G.P. lost her Presidentship and as per Act, Vice President Masughat G.P. will act and perform and function as i/c, President, Masughat G.P. for the time being.”

D 13. From the foregoing, it is quite vivid that the meeting was held to discuss the Motion of No-Confidence. The respondent no. 6 who was a beneficiary attended the meeting and voting had taken place. It is well settled in law that a mandatory provision of law requires strict compliance but there are situations where even if a provision is mandatory, non-compliance would not result in nullification of the act. There are certain E exceptions. One such exception is, if a certain requirement or condition is provided in a statute for the benefit or interest of a particular person, the same can be waived by him if no public interest is involved. The ultimate result would be valid even if the requirement or condition is not performed. We are disposed to think that in the obtaining fact situation, F no public interest was affected. The BDO presided over the meeting and every one knew that the meeting was called for passing a resolution either in favour of or against the No Confidence Motion. The respondent no. 6 knowing fully well participated in the meeting and the resolution was passed against her. After losing in the voting process, the assail was made to the procedure of calling the meeting. We are inclined to G think, had the respondent no. 6 not participated in the meeting, the matter would have been absolutely different. Having participated, it has to be held that the respondent no. 6 had waived the condition precedent.

H 14. In view of the aforesaid premises, the appeal is allowed and the orders passed by the learned single Judge as well as the Division

PADMINI SINGHA v. STATE OF ASSAM & OTHERS
[DIPAK MISRA, CJI]

243

Bench are set aside. The resolution passed against the respondent no. 6 A
is treated as valid. The competent authority is directed to carry out the
consequences of the resolution. In the facts and circumstances of the
case, there shall be no order as to costs.

Divya Pandey

Appeal allowed.