

IN THE GAUHATI HIGH COURT

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

ITANAGAR PERMANENT BENCH

WP(C) No. 230 (AP) OF 2014

PETITIONER:

SMTI. YURA YALLONG,
WIFE OF SHRI YURA KAHA,
VILLAGE-LODOKARE, P.O. TALI, P.S. SANGRM,
DISTRICT-KURUNG KUMEY, ARUNACHAL PRADESH.

By Advocates :

Mr. BL Singh,
Mr. Gedo Kato,
Mr. Sorang Tashik.

RESPONDENTS :

1. THE STATE OF ARUNACHAL PRADESH,
REPRESENTED BY THE SECRETARY TO THE
GOVERNMENT OF ARUNACHAL PRADESH,
PANCHAYAT DEPARTMENT, ITANAGAR.
2. THE DEPUTY COMMISSIONER,
KURUNG KUMEY DISTRICT, KOLORIANG.
3. THE CIRCLE OFFICER-CUM-MEMBER SECRETARY,
12 TALI ANCHAL SAMITY BLOCK, TALI.
4. SMTI NIAPU YAKR,
W/O NAIPU TARI,
VILL-TAMOK, P.O. TALI,
P.S. SANGRAM, DISTRICT-KURUNG KUMEY, ARUNACHAL PRADESH.

By Advocates:

Mr. RH Nabum, Sr. Government Advocate, A.P.
Mr. M Pertin, Sr. counsel, Mr. K Dabi, Respondent No. 4.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

Date of judgment and order : 27th of March, 2017.

JUDGMENT AND ORDER

Heard Mr. BL Singh, learned counsel, appearing for the petitioner. Also heard Mr. RH Nabum, learned Senior Government Advocate for the respondent Nos. 1 to 3 and Mr. Muk Partin, learned senior counsel, assisted by Mr. Karyom Dabi, learned counsel appearing for the newly impleaded respondent No. 4.

2] The petitioner, an indigenous tribe of Arunachal Pradesh and permanent resident of Lodokare of Tali in Kurung Kumey District of Arunachal Pradesh was elected as an *Anchal Samity* Member (in short, 'ASM') in June, 2013 as Indian National Congress candidate from 136 Lodokare Segment of 12 Tali constituency. The 12 Tali *Anchal Samity* Block of Kurung Kumey District of Arunachal Pradesh altogether consists of 16 *Anchal Samity* segments and on being elected as ASM, the petitioner was subsequently elected as the Chairperson of said 12 Tali *Anchal Samity* Block as per the provisions of Arunachal Pradesh *Panchayat Raj* (Conduct of Election) Rules, 2002 (hereinafter referred to as '2002 Rules').

3] Eight elected ASMs out of sixteen elected ASMs of said 12 Tali *Anchal Samity* Block on 16-06-2014 submitted a written application before the Member Secretary of said *Anchal Samity* to requisition meeting to move

a No Confidence Motion against the petitioner, the Chairperson of the concerned *Samity*, alleging incompetency and that she lost the confidence and support of the 2/3rd ASMs out of total 16 elected ASMs of the *Samity* to continue as its Chairperson. The Member Secretary of said *Samity*, who is also the Circle Officer in the Office of the Additional Deputy Commissioner, Tali, Kurung Kumey District, on 16-06-2014 itself issued a circular under the provisions of the Section 63 of the Arunachal Pradesh *Panchayat Raj* Act, 1997 ('1997 Act'), as amended, informing all concerned including all the *Anchal Samity* Members of 12 Tali *Anchal Samity* Block regarding holding of the General Meeting on 25-06-2014 at Palin Inspection Bungalow around 11.00 a.m.

4] On 26-06-2014, the said Member Secretary of 12 Tali *Anchal Samity* issued a circular that with reference to Section 63 read with Section 56 of the said *Panchayat Raj* Act, on the basis of a written application submitted by 1/3rd of total members of directly elected members of the 12 Tali *Anchal Samity* Block to move a No Confidence Motion against the petitioner, a meeting was held on 25-06-2014 at Palin IB, where the said motion was successfully moved by 2/3rd majority of total numbers of directly elected members of the 12 Tali *Anchal Samity* Block present and voting, pursuant to which the petitioner ceased to hold the office of Chairperson of said 12 Tali *Anchal Samity* with immediate effect and in her place the House concerned with 2/3rd majority elected the respondent No. 4, ASM of 125 Tamuk Segment as their new Chairman of 12 Tali *Anchal Samity* Block with immediate effect.

5] Being aggrieved with the same, the petitioner preferred this writ petition stating that as required under the provisions of Section 63 of the said *Panchayat Raj* Act of Arunachal Pradesh, no meeting of the ASMs of

12 *Tali Anchal Samity* Block was held on 25-06-2014 as required for necessary discussion to move the motion of no confidence and it is the Member Secretary of the said *Samity*, who has no function and authority to act except issuance of such notice to hold meeting and though it is the ASMs of the concerned *Samity* to take a decision in the proceeding of the meeting; but without any authority, power and jurisdiction, the said Member Secretary of the *Samity*, illegally passed the impugned circular dated 26-06-2014, without there being any such meeting being held and decision of the elected ASMs of the concerned *Anchal Samity* being taken in it with respect to such No Confidence Motion. The petitioner also urged that the said Member Secretary of the *Samity* acted arbitrarily on the date of the meeting on 25-06-2014 and collected the signatures of all the *Anchal Samity* Members present at Palin IB including the petitioner and asked the nine of the ASMs present, who were supporting the motion against the petitioner, to give their signatures on the that were filled up by one of the ASMs.

6] The petitioner submitted that she obtained necessary information and also procured the copies of relevant documents and those nine alleged ballot papers, through RTI, and contended that the nine such supporting ASMs in favour of alleged No Confidence Motion against her does not constitute the 2/3rd majority of total 16 elected ASMs of said 12 *Tali Anchal Samity* Block, which is much less than it, as required under the provisions of Section 63 of said *Panchayat Raj* Act, 1997, as amended. It is also contended that the alleged nine ballot papers do not reflect anything against the petitioner and the same reflect that those nine ASMs supported the respondent No. 4 only.

7] According to the petitioner, as per the procedure, on the date fixed for moving the No Confidence Motion against the Chairman of an

Anchal Samity, the Members of the *Samity* present in it should propose another person to preside over the meeting, which is to be seconded by other Member(s) present in the meeting, since the Chairperson, against whom such motion is moved, cannot preside over the said meeting and the President so selected for the said meeting, after taking the Chair, should proceed to hold discussion in the meeting regarding the said No Confidence Motion amongst the Members present and in the said meeting, the Chairperson against whom such motion is moved, should be allowed to take part in the proceeding of said meeting enabling him/her to place her position in that aspect. It is submitted that only thereafter a resolution is adopted in the meeting as to where motion is to be carried out or not and if it is decided to carry out the motion, then to decide whether voting is to be carried out by raising hands or by secret ballot and after obtaining such votes for the motion and against the same in the said meeting, thereafter it is to be determine whether there is 2/3rd majority of total elected ASMs or not and such decision taken in the meeting, should contain the signature(s) of the Members present in the meeting on the given date.

8] It is contended by the petitioner that no such procedure was followed in the meeting, allegedly held on 25-06-2014 with regard to the No Confidence Motion for removing her from the Chairmanship of said *12 Tali Anchal Samity* Block. As no meeting was held at all for the said purpose and the Member Secretary of the said *Samity* illegally passed the impugned circular dated 26-06-2014, the same accordingly needs to be set aside and quashed.

9] Mr. BL Singh, learned counsel for the petitioner relied on the Full Bench Judgment of this Court in the case of *Forhana Begum Laskar -Vs- State of Assam & Others*, reported in 2009 (3) GLT 575.

10] Respondent No. 4 has filed her affidavit in the matter. Appearing on behalf of the impleaded respondent No. 4, who was alleged to have been elected as the Chairperson of *12 Tali Anchal Samity* Block in the meeting held on 25-06-2014 ousting the petitioner, Mr. Partin submitted that the petitioner earlier preferred WP(C) No. 206 (AP) 2014, challenging the Circular dated 16-06-2014 by which the Circle Officer-cum-Member Secretary of *12 Tali Anchal Samity* Block gave notice for the meeting of No Confidence Motion against the petitioner on 25-06-2014 at Palin IB to and that this Hon'ble Court by the judgment and order dated 23-06-2014 opined that the said Member Secretary has not violated any mandate of the Section 63 of the Arunachal Pradesh *Panchayat Raj Act* and by the said impugned circular dated 16-06-2014, all concerned were duly notified as to the date, time and venue of the meeting of No Confidence Motion, which is in consonance with the principle of natural justice rather than being frustrated and accordingly, said writ petition of the petitioner, being devoid of any merit, was dismissed. Mr. Partin, learned counsel submits that the petitioner suppressed this material fact before Court in the writ petition.

11] Mr. Nabam, learned Senior Government Advocate placed the records of the case. It is seen from the record that sixteen ASMs of the *12 Tali Anchal Samity* Block signed the register regarding their presence in Palin IB on 25-06-2014, including the petitioner and the respondent No. 4 and found 9 such documents, in original, supporting the respondent No. 4. The records also disclosed that the Circle Officer-cum-Member Secretary of *12 Tali Anchal Samity* Block on 26-06-2014 lodged an FIR before the Officer-in-Charge of Palin Police Station of Kurung Kumey district informing that by virtue being the Member Secretary of *12 Tali Anchal Samity* Block a meeting was called on 25.06.2014 at Palin IB to discuss No Confidence Motion moved against the petitioner by one third of the total members of directly

elected members of *12 Tali Anchal Samity* Block and on being asked to vote eleven members out of sixteen present had voted for the respondent No. 4, ASM of 125-Tamuk Segment as their new *Anchal Samity* Chairperson for *12 Tali Anchal Samity* Block, but at the time of packing the votes, unknown mob snatched and destroyed two numbers of votes casted and therefore, requested the authority to register an FIR and to book the culprit at the earliest.

12] From the record it is also seen that with regard to the alleged No Confidence Motion dated 25-06-2014, against the petitioner and the impugned circular dated 26-06-2014 of the Circle Officer-cum-Member Secretary of *12 Tali Anchal Samity* Block, the Deputy Commissioner, Kurung Kumey, Koloriang by his letter No. KK/PR/NOCONF.2014/830 dated 21-07-2014, sought for a verification report from the Additional Deputy Commissioner, Kurung Kumey, Tali and the Additional Deputy Commissioner, Tali, on 04-08-2014 vide letter No. TL/PR-1/2014 informed the former that pursuant to the eight ASMs of *12 Tali Anchal Samity* Block constituting 1/3rd of the total number of elected members on 16-06-2014 had moved a No Confidence Motion against the petitioner, Chairperson of the said Samity and accordingly Member Secretary conducted the meeting at Palin PWD IB and casting of votes was conducted, where the respondent No. 4 was declared elected as new *Anchal Samity* Chairperson of said *12 Tali Anchal Samity* Block, but even after that the petitioner filed a case in the High Court and accordingly judgment was passed in favour of the Member Secretary of *12 Tali Anchal Samity* upholding the decision and that in the enquiry undertaken against the said Member Secretary of *12 Tali Anchal Samity* it is found that he had acted as per the provisions of the Arunachal Pradesh *Panchayat* Raj Act, 2002 for the conduct of the No Confidence Motion and did not find any wrong whatsoever against him.

13] In the present case, it is seen that eight i.e. 1/3rd of the elected ASMs, out of sixteen elected ASMs of the said *Anchal Samity* on 16-06-2016 submitted a written application before the Member Secretary of the said *Samity* to move No Confidence Motion against the petitioner. It is also seen that on 16-06-2014 itself, the concerned Member Secretary of the *Samity* issued a circular informing all concerned that 25-06-2014 is the date fixed for the meeting to move said No Confidence Motion against the petitioner at Palin PWD IB by 11:00 a.m. as such gave a clear notice of nine days, whereas the relevant provisions of Section 63 of the Arunachal Pradesh *Panchayat Raj* Act requires at least seven days notice. It is also seen that the Court vide Judgment & Order dated 23-06-2014 passed in WP(C) No. 206 (AP) 2014 had upheld the said circular dated 16-06-2016 of the Member Secretary of *12 Tali Anchal Samity* Block notifying 25-06-2014 for the meeting of the No Confidence Motion against the petitioner at Palin IB. Though the petitioner did not mention about the same in this writ petition, and that the petitioner's grievance herein is against the impugned Circular No. PRI/TALI/2014/013 dated 26.06.2014, passed by the Circle Officer-cum-Member Secretary of said *12 Tali Anchal Samity*, that relates to ousting of the petitioner as Chairperson of the said *Samity* by 2/3rd majority of the ASMs of said *Samity* and electing the respondent No. 4 as its new Chairperson, in place of the petitioner. In that view of the matter, the Court is of the opinion that not-mentioning of said Judgment & Order dated 23-06-2014 passed in WP(C) No. 206 (AP) 2014 in this petition, cannot be considered as suppression of any material fact, as alleged by respondent No. 4.

14] From the records it is also seen that all the sixteen elected ASMs of *12 Tali Anchal Samity* Block were present at Palin IB on 25-06-2014 including the petitioner and the respondent No. 4, as all of them had signed

the attendance register. It is also seen that hand written Ballot Papers reveal that nine of the elected ASMs voted in favour of the respondent No. 4. But the Additional Deputy Commissioner, Kurung Kumey, Tali in his said communication No. TL/PR-1/2014 dated 04-08-2014 to the Deputy Commissioner, Kurung Kumey, Koloriang, noted above, was totally silent regarding snatching away of two ballot papers, by unknown mob at the time of packing of the ballots on 25.04.2014, in which vote was cast in favour of the respondent No. 4. The said report of the Additional Deputy Commissioner is also silent regarding filing of such FIR by the Member Secretary of said *12 Tali Anchal Samity* on 26.04.2014 before the Officer-in-Charge of Palin Police Station, Kurung Kumey district. Moreover, the respondents during the proceeding of this case neither placed the relevant Palin Police Station Case number nor the status of said PS Case. The said report of the Additional Deputy Commissioner is also not correct to the extent that after vote casting of votes was conducted on 25.06.2014, where the respondent No. 4 was declared elected as new *Anchal Samity* Chairperson of said *12 Tali Anchal Samity* Block, thereafter, the petitioner filed a case in the High Court where judgment was passed in favour of the Member Secretary of *12 Tali Anchal Samity* upholding the decision.

15] The provisions of Section 63(3) of the Arunachal Pradesh Act 1997, as amend, provides that – *notwithstanding anything contained in this Act, the Chairperson of Gram Panchayat or Anchal Samity or Zilla Parishad shall not preside at a meeting in which a motion of no confidence against him is under discussion, but he shall have right to speak or otherwise take part in the proceedings of such meeting.* As such, when the Member Secretary or the prescribed authority receives a written information from one third of the elected members of the *Gram Panchayat* or *Anchal Samity* or *Zilla Parishad* as the case may be regarding a motion of no confidence

against its Chairperson, the concerned Member Secretary or the prescribed authority is required to convene a meeting for such motion of no confidence against the concerned Chairperson of such *Gram Panchayat* or *Anchal Samity* or *Zilla Parishad* by giving at least seven days notice. In the present case, the concerned Member Secretary by the circular dated 16-06-2014 gave notice to all concerned of said *12 Tali Anchal Samity* convening the required meeting on 25-06-2014 at 11.00 a.m. in the Palin IB for the motion of no confidence against the petitioner and to that extent the process was in conformity with the provisions of said Section 63.

16] But the records in original produced by the learned Government Advocate does not reveal anything that any such meeting was actually held on 25-06-2014 except recording attendance of the 16 elected ASMs of said *12 Tali Anchal Samity* Block. The said record also does not disclose the concerned ASM, who amongst those 15 elected ASMs present, excluding the petitioner, acted as Chairperson in the meeting on 25.06.2014. Further, the said record neither contains anything regarding holding of any discussion with regard to such No Confidence Motion against the petitioner nor any resolution adopted by the elected ASMs present in the meeting resolving and/or deciding to move the issue of No Confidence Motion against the petitioner by way of secret ballot. The record in original does not contain the ballot papers conforming to the requirement of 2/3rd majority and only reflects nine docents supporting the respondent No. 4, but nothing in favour or against the said No Confidence Motion.

17] Considered the Judgment cited by the petitioner and also the arguments submitted by the parties of both the sides. It is settled that the Member Secretary of *Gaon Panchayat* or *Anchalik Panchayat* or *Zilla*

Parishad is required to convene the meeting as per the provisions of the *Panchayat Raj Act* in accordance with law and that any inaction or illegal action on its part ought not to be allowed to result in frustration and subversion of the very scheme of *Panchayat Raj Act*.

18] In the present case, in the absence of any such materials to hold that any meeting was held on 25.06.2014 regarding the No Confidence Motion against the petitioner as required under the relevant Act, and in the absence of any appropriate resolution passed by the Members present in said meeting and further in the absence of the ballot papers conforming to the requirement of 2/3rd majority with regard to said No Confidence Motion, the impugned circular dated 26-06-2014 of the Circle Officer-cum-Member Secretary of *12 Tali Anchal Samity* Block of Kurung Kumey District, Tali, holding that a meeting was held on 25-06-2014 at Palin IB where a motion was carried successfully by a 2/3rd majority of the total number of directly elected members of the *12 Tali Anchal Samity* Block, present and voting, due to which the petitioner ceased to hold the office of said *Anchal Samity* as its Chairperson with immediate effect and in her place, the House with 2/3rd majority elected the respondent No. 4, the ASM of 125 of Tamuk Segment as their new *Anchal Samity* Chairperson for *12 Tali Anchal Samity* Block with immediate effect being arbitrary, illegal and in violation of the Arunachal Pradesh *Panchayat Raj Act*, 1997 as amended is hereby set aside and quashed. The petitioner shall be reinstated in the office of the Chairperson of *12 Tali Anchal Samity* Block of Kurung Kumey District of Arunachal Pradesh, if the tenure/period has not expired. However, liberty is granted that if the concerned ASMs want to pursue the issue of No Confidence Motion against the petitioner, they may do so, if so advice, from the stage of receipt of requisition in accordance with law and

as per the procedure prescribed under Section 63 of the Arunachal Pradesh
Panchayat Raj Act, 1997 as amended

19] With the aforesaid observation, this writ petition stands
allowed. No order as to costs.

JUDGE

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