

(1993) 04 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 2118 of 1992

Amiruddin Ahmed and Another	Vs	APPELLANT
State of Assam and Ors.		RESPONDENT

Date of Decision : 05-04-1993

Acts Referred:

Assam Mnnicipal Act, 1956 — Section 11(3), 11(3)
Constitution of India, 1950 — Article 226, 226

Citation : (1993) 1 GLJ 395

Hon'ble Judges : J.Sangma, J

Bench : Single Bench

Advocate : A.K.Sharma, S.Medhi, R.Barua, P.Upadhyay, P.G.Barua, D.P.Chaliha,
Advocates appearing for Parties

Judgement

1. The point which requires determination in this petition under Article 226 of the Constitution is: Whether the Government can nominate respondent No.4 (Smti Kamala Hazarika) and respondent No. 5 (Sri Koneswar Gogoi) as members of Bihpuria Town Committee under the provision of section 11(3) of the Assam Municipal Act, 1956, hereinafter referred to,for short, as the Act.

2. Bihpuria is a small town in the district of Lakhimpur of Assam. The Government of Assam had constituted a Town Committee for this place in 1962. The Town Committee consisted of 4 elected and 2 nominated members. Before 1992, the Town Committee did not function for 14 years ; but on 8.7.92 the election was held and the following members were declared elected:

(1) Ward No. 1 : Shri Bijoy Sarma (Writ petitioner No.2)

(2) Ward No. 2 : Amiruddin Ahmed (Wfrit petitioner No.I)

(3) Ward No. 3 : Shri Lakhikanta Hazarika

(4) Ward No. 4 : Shri Nikhil Ghose (Other Baekwaf d Classes) Section 11(3) of the Act provides as follows :

11. (3) of the total number of Commissioners as determined under sub-section (1), not more than two may be appointed by the State Government to represent Scheduled Castes, Scheduled Tribes and other socially and educationally Backward Classes, and the remainder shall be elected. The State Government may, at any time, direct that all the Commissioners of any Municipal Board shall be elected."

Under this provision, the respondent No.3 (Deputy Commissioner, North Lakhimpur) by a WT message sent on 6.8.92 (Annexure 1) recommended the three persons to Government to fill up the two by nomination. They were:

(1) Sri Amulya Biswar (ST), (2) Sri Ram Kanta Deuri (OBC) and (3) Sri Nrtjjen Dutta, whose community is not shown. The Government did not accept the recommendation and by WT Message sent on 22.9.92 (Annexure 2) nominated the respondents No.1 and 5 without showing the communities to which they belong.

3. The petitioners are voters in the electoral roll of Bihpuria Town Committee and, as such, they say that they are highly interested to see that nominations are made by the Government in the true sense of section 11 (3) of the Act. They contended that : (1) since Nikhil Ghose had been elected from Other Backward Classes (OBC), the Government cannot nominate the respondent No. 5, who also belongs to OBC; (2) the respondent No. 4 (Smti Kamala Hazarika) belongs to Thengal Community which is not a Scheduled Tribe; therefore, the Government cannot nominate her to represent the Scheduled Tribe Community. On this ground, the petitioners pray for quashing their nomination.

4. Neither the respondent Nos. 1 to 3 nor the respondent Nos. 4 and 5 filed counter affidavit to refute the allegation.

5. Mr. PG Baruah, learned counsel for the petitioners, first argued that since Nikhil Ghose has won the election, he would represent the Other Backward Classes and, therefore, the Government has to nominate person to represent the Scheduled Castes and Scheduled Tribes. He submitted that the nomination of respondent No. 5 is against the provision of section 11 (3) of the Act. Mr. DP Chaliha, learned Govt Advocate, in reply, contended that though Nikhil Ghose has won in the election and he would represent the Other Backward Classes, section 11 (3) does not bar nomination from this community. The same contention is made by Mr S. Medhi on behalf of the respondent No.5. The contention of Mr. Medhi cannot be accepted because a plain reading of section 11 (3) clearly shows that the Government has duty to see that the 3 communities (Scheduled Castes, Scheduled Tribes and Other Socially and Educationally Backward Classes) have their representatives in the Town Committee. The Government has to nominate only two. So, if the nomination of respondent No. 5 is allowed to stand, the Government would not be able to nominate one for Scheduled Tribes and another for Scheduled Castes. The submission on behalf of the petitioner therefore, appears to be correct.

6. The second point which Mr. PG Baruah has argued is the respondent No.4 (Smti Kamala Hazarika) is a woman of Thengal Community which is not a Scheduled Tribe. He, therefore, contends that she cannot be nominated under section 11 (3) of the Act. Mr. S. Aledhi supported her case on the basis of copies of Caste Certificates which he produced at the time of argument. Of these 2 certificates, one says : "Smti Kamala Hazarika wife of Rupeswar Hazarika belongs to Kachari Community which is a recognised Scheduled Tribe". The other certificate says : "Sri Rupeswar Hazarika belongs to Kachari Tribe which is a recognised Scheduled Tribe". As stated before, she (respondent No.4) did not file counter affidavit. Mr. S. Medhi supported her case by saying that though by birth she belongs to Thengal Community, which is not a Scheduled Tribe, she had married to Rupeswar Hazarika (Scheduled Tribe) and by reason of her marriage to him, she became a convert to Scheduled Tribe and, as such, her nomination cannot be questioned. To support this, relied on NE Horo vs. Smti Jahanara, (1972) 1 SCC 771; wherein it was held :

"Article 342 of the Constitution shows that wide import and meaning should be given to the Tribal Community and even if a person is not a member of the Munda tribe by virtue of birth, she being married to a Munda, after due observance of all formalities and after obtaining approval of the elders of the tribe would belong to the Tribal Community, to which her husband belongs on the analogy of the wife taking the husband's domicile."

The submission cannot be accepted because no affidavit was filed by the respondent Nos. 1 to 3 or by respondent No. 4 to support it. Of course the petitioners have described the respondent No. 4 as "wife of Rupeswar Hazarika"; but they stated that she did not belong to Scheduled Tribe which stands un rebutted. Mr. Medhi then relied on the certificates. In the absence of the affidavit, the certificates cannot be accepted as correct. Even assuming that Rupeswar Hazarika is a Scheduled Tribe, it is not known if the respondent No. 4 had married him after due observance of all formalities and after obtaining the approval of the elders of the tribe. This apart, even, if the certificates were to be taken as true, they were issued only by the President/Secretary of the Lakhimpur District Tribal Sangha and not by the Deputy Commissioner. It has not been shown by the respondent that apart from Deputy Commissioner, the District Tribal Sangha is also authorised by law to issue such certificate.

7. In the result, the petition must be allowed. The impugned nominations of respondent Nos. 4 and 5 is quashed. The notice of motion and the stay are made absolute. No costs.