
(2004) 03 GAU CK 0044
In the Gauhati High Court
Case No : WP. (C) No. 549 of 2004

Bhabish Dihingia	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Assam Municipal Act, 1956 — Section 33
Constitution of India, 1950 — Article 243T, 243T(3)

Citation : (2004) 2 GLT 161

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : G.N. Sahewalla and A.K. Goswami, for the Appellant; R.K. Bora, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—By this writ application, the Petitioner who has been elected as one of the commissioner of Dhemaji Town Committee which was held on 2.12.2003 has challenged the legality and validity of the Notification dated 14.1.2004 by which the Dhemaji Town Committee has been notified to have woman Chairman. By the said Notification, the Chairmanship of the Dhemaji Town Committee has been reserved for women in general.

2. As per the averments made in the writ petition, the election to the Dhemaji Town Committee was held on 2.12.2003 in which the Petitioner stood as an independent candidate from Ward No. 1. He was initially projected as a candidate of the Indian National Congress and in fact was given the ticket. However, minutes before the filing of the nomination paper, the candidature of the Petitioner as a candidate of the Indian National Congress was withdrawn and in his place the ticket was given to an women candidate namely Smti Reeta Pegu. This led to the Petitioner contesting the election as an independent candidate. On successful completion of election, the results were declared on 3.12.2003 and the Petitioner was declared elected from Ward No. 1.

3. The Dhemaji Town Committee consists of four Wards. Ward No. 2 is reserved for women while the other two remaining wards are unreserved. As per the provision of the Assam Municipal Act, 1956, the elected Commissioner are required to elect one amongst them as the Chairman of the Town Committee. The amendment was brought in 1994 to the said Act of 1956 as per which 30% of the posts of Chairman are reserved for women Commissioner. u/s 33 of the Act, the State Government is empowered to determine and declare the particular Municipalities or Town Committees, which will have Women Chairperson. Section 33 further provides that Municipality and Town Committees having women as Chairman shall be so rotated that the percentage is preserved. In other words, if in one tenure the post of Chairman is reserved for women, irrespective of the fact whether belonging to Schedule Caste or Schedule Tribe on next tenure in view of the rotation, the said Municipality and Town Committees shall not be reserved for Women. The determination is to be made on the basis of rotation. The provision of Section 33 are quoted below:

33. Appointment or election of Chairman and vice-Chairman. (1) The State Government shall, by notification determine from time to time as to which of the Municipalities and Town Committees shall have Scheduled Castes Scheduled Tribes or Women as Chairman. The percentage of Municipalities and Town Committees with the Scheduled Castes and the Scheduled Tribes as Chairman will be broadly in conformity with the percentage of population of the Scheduled Castes and Scheduled Tribes Communities in the State as per the latest census figure and in respect of women irrespective of the Scheduled Castes and Scheduled Tribes the number of women Chairman will be, approximately 30 percent of the Municipality, and Town Committees. The Municipality and Town Committees having women as Chairman shall be so rotated that this percentage is preserved.

4. By a Notification dated 20.7.01 issued by the Government of Assam declared that the Chairman of the Dhemaji Town Committee shall be reserved for S.T. (Woman). Accordingly on that occasion S.T. Woman Commissioner was elected as the Chairman of the Town Committee. Same being the previous election to the one in question, according to the Petitioner the post of Chairman in the present term cannot be reserved for woman in view of the aforesaid provision of Section 33 of the Act. However, by the impugned Notification dated 14.1.004; the Government of Assam in the Urban Development Department has provided reservation for women general in respect of Dhemaji Town Committee amongst others. This has eliminated the chance of the Petitioner to become the Chairman of the Town Committee and thus the writ petition assailing the legality and validity of the said Notification dated 14.1.2004.

5. The Respondents have filed an affidavit- in apposition. Their stand in the affidavit is that a meeting was held by the representatives of different political parties on the agenda of reservation of the post of Chairman for women in different districts and it was unanimously decided to have women Chairman for

the Municipal Boards and Town Committees including the Dhemaji Town Committee as reflected in the impugned Notification dated 14.1.2004. The stand of the Respondents is that such a course of action was adopted as per the provision of Section 33 of the aforesaid Act as well as Article 243T of the Constitution of India. According to the Respondents, four factors towards determination of reservation for woman Chairman were taken into consideration. They are:

- i) Holding of meeting with representative of deferent political parties in which an unanimous decision was arrived at;
- ii) Decision arrived at in the district level political meeting;
- iii) 30% reservation for women taking into account census figure of SC ST and total population of the State and
- iv) Consideration of relevant documents/notification.-

6. I have heard Mr. G.N. Sahewalla, learned senior Counsel assisted by Mr. A.K. Goswami, Advocate appearing for the Petitioner and Mr. P. Bora, learned Govt. Advocate appearing for the Respondents.

7. Mr. Sahewalla submitted that on the face of the provisions of the Section 33 of the Act, there cannot be any reservation for women in respect of Dhemaji Town Committee for which on the earlier occasion, the post of Chairman was occupied by an Woman Commissioner. Mr. P. Bora on the other hand submitted in reference to the stand in the affidavit that the impugned Notification was issued as per the consensus arrived at amongst the representatives of different political parties. Referring to Article 243T of the Constitution of India, Mr. Bora submitted that on the earlier term the Woman Commissioner who occupied the position of Chairman belonged to ST Community and thus there is no impediment towards electing a general category Woman Commissioner as Chairman for this term.

8. I have considered the rival submissions made by the learned Counsel for the parties and perused the materials on record. This Court while entertaining the writ petition by its order dated 5.2.2004 recorded a prima-facie satisfaction that the impugned Notification dated 14.1.2004 does not appear to be inconformity with the norms of the reservation and accordingly was inclined to pass an interim order not to fill up the post of Chairman, Dhemaji Town Committee.

9. The short question for determination is as to whether on the face of the provision of Section 33 of the aforesaid Act, there could be any reservation for women Commissioner in respect of the post of Chairman of Dhemaji Town Committee. The provision contained in Section 33 of the Act as quoted above are unambiguous and do not require any aid for interpretation of the same the plain and simple meaning of the said provision is that the post of Chairman in respect of Municipalities and Town Committees Constituting 30% shall be reserved for women irrespective of belonging to Scheduled Castes and Scheduled Tribes. The admitted position is that on the earlier term, the post of Chairman was occupied

by a woman Commissioner who was incidentally from ST Community. Referring to the provision of Article 243T of the Constitution of India by which provisions have been made for reservation of seats for Scheduled Castes and Scheduled Tribes in every Municipality, it was submitted on behalf of the Respondents that the earlier chairman who was incidentally a woman would fall in the category of reservation for ST irrespective of the fact that such reservation had also gone in favour of a woman and the same would not operate as a bar for appointment of a "woman Commissioner as Chairman of Dhemaji Town Committee. The provision in this regard as confined in Section 33 of the Act is clear enough and does not lead to any ambiguity. As per the said provision there shall be reservation for women, irrespective of Scheduled Castes and Scheduled Tribes and the number of women Chairman will be approximately 30% of the Municipalities and Town Committees and the Woman Chairman shall be on rotation maintaining the percentage. The admitted position is that on the earlier term, the Chairman of the Town Committee in question was an woman although belonged to ST Community. The argument advanced on behalf of the Respondents is that although on earlier term also the post of Chairman was filled up by an Woman Commissioner but that was not within the percentage prescribed for woman but was in consideration of the commissioner belonging to ST Community cannot be accepted in view of express provision made "irrespective of the Scheduled Castes and the Scheduled Tribes" in Section 33 of the aforesaid Act. A provision having been made providing 30% reservation for women Chairman irrespective of the Scheduled Castes and Scheduled Tribes and for maintenance of the reservation by way of rotation, the impugned notification could not have been issued giving the good-bye to the concept of rotation. The post of Chairman having been occupied by an Woman Commissioner on the earlier term and provision having been made for rotation so as to maintain number of Woman Chairman 30% of the Municipalities and Town Committees by way of rotation, there could not have been any occasion for determining the post of Chairman for Dhemaji Committee as "reserved for women. No amount of consensus among the political parties can override the express provision of Section 33 of the Act. Provision of a statute cannot be set at naught by any consensus. Equally there cannot be any direction to violate the provision of a statute.

10. For the foregoing reasons, the decision as conveyed in the impugned Notification dated 14.1.2004 providing reservation for women in respect of Dhemaji Town Committee is not sustainable being violative express provision of Section 33 of the Assam Municipal Act, 1956. Same is also against the mandate of Article 243T(3) of the Constitution of India. Accordingly, same is set aside and quashed. So far as Dhemaji Town Committee is concerned there is no question of filling up of the post of Chairman by providing reservation for women. The State Government now shall take action to fill up the post of Chairman of Dhemaji Town Committee de hors the reservation provided for women as per the impugned notification dated 14.1.2004 with utmost expedition inasmuch as it not

at all conducive and desirable to keep the post of Chairman of a Town Committee vacant which if allowed to continue will have telling effect on the affairs of the Town Committee.

11. The writ petition stands allowed leaving the parties to bear their own cost.