
(2007) 04 GAU CK 0031
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 787 of 2006

Dilip Singh

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:

Assam Municipal Act, 1956 — Section 28(2), 28(2), 44, 44

Citation : (2008) 1 GLR 715

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : B.D.Goswami, J.Abedin, Advocates appearing for Parties

Judgement

1. A notice of no confidence motion against the petitioner, who was elected as the chairman of the Lanka Municipal Board, was submitted by 6(six) members of the Board on 29.8.2005. On receipt of the said requisition/notice, a meeting of the Board was convened on 19.9.2005 to discuss the no confidence motion. In the said meeting 6(six) members subscribed to the vote of no confidence. Thereafter, on 1.10.2005, the respondent No. 6 was elected as the new chairman of the Board. The said election was approved by the authority in the Municipal Administration Department on 8.11.2005. All the aforesaid actions and orders have been put to challenge in the present writ petitions

2. The brief facts, which will be necessary; to be noticed for an effective adjudication of the questions arising in the present writ petition, may be stated as hereunder :

The petitioner was elected as a Member of the Lanka Municipal Board from Ward No. 4 in the year 2004. Thereafter, he was elected as the chairman of the Board and in the normal course the petitioner was to have a tenure up to the year 2009. According to the petitioner, on account of the exemplary nature of works done and performed by him, certain members within the Board nourished a grievance against the petitioner and as a sequel thereto on 29.8.2005 6(six)

members of the Board including the Vicechairman gave a notice of no confidence motion against the petitioner. It is the petitioner's own pleaded case that on examination of the no confidence motion, the petitioner found the same to be in order and, therefore, convened a meeting to discuss the motion on 19.9.2005. According to the petitioner, in the said meeting held on 19.9.2005, he had explained the situation to all the members, who ^ appeared to be satisfied with the explanation furnished. However, by resolution No. 2 adopted in the said meeting dated 19.9.2005, the no confidence motion was accepted by 6(six) Members. According to the petitioner, the resolution was sent to the Municipal Administration Department as well as to the local SubDivisional Officer (Civil).

The petitioner has further pleaded in the writ petition filed that 5(five) Members of the Board including 3(three) persons, who had requisitioned the meeting to discuss the no confidence motion against the petitioner, submitted a letter dated 22.9.2005 to the SubDivisional Officer (Civil) expressing full confidence in the petitioner. According to the petitioner, the SubDivisional Officer (Civil) had sent both the resolution dated 19.9.2005 and the aforesaid letter dated 22.9.2005 to the Director, Municipal Administration, Assam. While the matter was so situated, another meeting of the Board was convened on 1.10.2005 with the agenda of election of the chairman. This was at the instance of the ViceChairman. On receipt of the notice of the said meeting, the petitioner filed his objection saying that no order for his removal had yet been passed by any authority and, therefore, he must be deemed to have been continuing in the post of Chairman. However, according to the petitioner, the meeting scheduled for 1.10.2005 was held and in the said meeting the respondent No. 6 was elected as the chairman.

3. In the aforesaid circumstances the petitioner had instituted a writ proceeding before this court which was registered and numbered as WP(C) No. 7207 of 2005. In the said writ petition the petitioner has challenged the Notice dated 29.8.2005 and the proceedings of the meeting held on 1.10.2005 in which the respondent No. 6 was elected as the chairman. The meeting dated 19.9.2005 has, however, not been challenged in the said writ petition filed. By an interim order of the court dated 5.10.2005, the resolution dated 1.10.2005 electing the respondent No. 6 as the chairman was stayed by the court. However, subsequently, on 8.11.2005, the aforesaid interim order of the court was vacated on the ground that in the writ petition filed, i.e., WP(C) No. 7207/2005, the petitioner had not specifically challenged the resolution of the Board dated 19.9.2005 by which he had been removed from the Office of the chairman. The petitioner, thereafter, claims to have filed a comprehensive amended writ petition incorporating the aforesaid challenge. However, in the meantime, as by an order dated 18.11.2005 the Municipal Administration Department had approved the election of the respondent No. 6 to the post of Chairman, the petitioner has instituted the writ petition, i.e., W.P(C) No. 787 of 2006.

4. The case pleaded by the petitioner, which has been sought to be dilated g and

fortified in the course of the arguments advanced by Mr. B.D. Goswami, learned counsel for the petitioner, is basically threefold. Firstly, it has been contended that under section 28(2) of the Assam Municipal Act ("the Act"), an elected chairman may be removed from his office by a resolution of the Board in favour of which not less than half of the whole number of commissioners have given their votes at a meeting specially convened for the purpose. According to the petitioner, no voting took place in the meeting held on 19.9.2005. Therefore, the requirement spelt out by section 28(2) of the Act was not complied with prior to the removal of the petitioner from the Office of the chairman. In this regard arguments have also been advanced to the effect that the meeting held on 19.9.2005 was not specially convened for the purpose of discussion and vote on the no confidence motion against the petitioner. The second contention of the petitioner is that the resolution of the Board dated 19.9.2005 by which* the respondents claim that the petitioner was removed from the Office of the chairman has not been approved by the Administrative Department and in the absence of such approval, no legal effect can be given to the said resolution dated 19.9.2005. Lastly, it has been contended on behalf of the petitioner that in the meeting held on 19.9.2005, it is the petitioner, as the chairman of the Board, who had presided over the said meeting. In this regard it has been contended that under section 44 of the Act in such a meeting the ViceChairman of the Board should have presided. Accordingly, the proceedings of the meeting dated 19.9.2005 has been contended to be null and void being contrary to the provisions contained in section 44 of the Act.

5. While the State has not filed any affidavit in the case, the respondent No. 6, i.e., newly elected chairman has brought on record an affidavit on his behalf. A reading of the said affidavit would go to show that the respondent No. 6 would like to contend before the court that all requisite steps in accordance with the provisions of the Act were taken prior to removal of the petitioner and the election of the respondent No. 6 and that there is no legal infirmity with the process of removal and election so as to warrant or justify the interference of the court.

6. The rival submissions advanced on behalf of the contesting parties have received the due and anxious consideration of the court. Section 28(2) of the Act lays down that removal of an elected chairman from office can only be by means of a resolution of the Board in favour of which resolution not less than half of the whole number of commissioners vote at a meeting specially convened for the said purpose. In the present case, there is no dispute that if 6(six) members of the Board can be understood to have voted in favour of the no confidence motion the requisite majority will be reached. The court will, therefore, have to consider as to whether a valid requisition was given by the 6(six) members and thereafter on the basis of such requisition a meeting was validly convened specially for the purpose of deciding on the no confidence motion.

7. The petitioner has brought on record a copy of the requisition, dated

29.8.2005 as well as a copy of the proceedings of the meeting held pursuant thereto on 19.9.2005. A bare reading of the requisition dated 29.8.2005 would go to show that the subject of requisition was clearly specified to be as follows :

"To call for a special meeting of Lanka Municipal Board to discuss "no confidence" motion against the chairman. Requisition signed by below noted Commissioners."

In the requisition letter, in the ultimate paragraph, it has been stated that the signatories are requesting the chairman to requisition a meeting as per the provisions of section 28 of the Act to discuss the no confidence motion against the chairman. There is, therefore, no manner of doubt that the signatories, to the requisition dated 28.8.2005 had clearly spelt out that a meeting to discuss the no confidence motion was required to be convened under the provisions of section 28 of the Act. Pursuant thereto, the petitioner called a meeting on 19.9.2005 to discuss on the requisition dated 29.8.2005 submitted by the 6(six) members. This is evident from the pleaded case of the petitioner as well as the minutes of the meeting held on 19.9.2005. Resolution No. 2 adopted in the said meeting makes it clear that 6(six) members of the Board were not satisfied with the explanations given by the petitioner as the chairman and that the said 6(six) members had expressed dissatisfaction with the conduct of the chairman and had resolved to express "no confidence" on the chairman. This is apparent from the text of the resolution, In the above facts vehement arguments have been advanced before the court to contend that there has been no voting as contemplated by section 28(2) of the Act so as to confer legitimacy to what was sought to be adopted by the aforesaid resolution No. 2 of the said meeting.

8. In view of the arguments advanced, the court will, therefore, be required to decide on the meaning of the expression "given their votes" as appearing in section 28(2) of the Act.

In Black's Law Dictionary "Vote" has been defined, as an expression of one's will, preference, or choice. Under the meaning ascribed to "Voting by ballot", it has been stated that the said term is used to distinguish open voting from secret voting and that the privilege of secrecy is the essence of voting by ballot. In Stroud's Judicial Dictionary, under the expression "vote", it is stated that there are two wellknown methods of voting, (1) by show of hands, and (2) by a poll. In Oxford English Dictionary "vote" has been defined to mean, inter alia, a formal expression of opinion by a member of a deliberative assembly on a matter under discussion and, alternatively, as an indication, by some approved method, of one's opinion or choice on a matter under discussion.

9. The various meanings ascribed to the word "voting" or "vote", as noticed above, make it abundantly clear that the act of voting denotes an expression of an opinion and that there can be no laid down or any particular manner in which such expression or the opinion is required to be conveyed. Voting, therefore, can be in any form and voting by ballot is one of the accepted forms of voting. In the present case a reading of the Resolution No. 2 dated 19.9.2005 makes it

abundantly clear that 6(six) members of the Board had decided to express their mind in favour of the no confidence motion against the petitioner. If that be so, it will be difficult to accept the argument advanced on behalf of the petitioner that there was no voting in the meeting held on 19.9.2005 as mandated by section 28(2) of the Act.

10. This will bring the court to a consideration of the second limb of the argument advanced on behalf of the petitioner, namely, that as the petitioner had presided over the meeting held on 19.9.2005 to discuss and vote on the no confidence motion against the petitioner himself, the proceedings of the said meeting are null and void.

While it is correct that under section 44 of the Act, it is the ViceChairman who should have presided over such a meeting, the question that confronts the court is whether the participation of the petitioner in the said meeting as the President would render the proceedings a nullity in law. Law is an expression of what is right, what is just, what is fair and what is proper. A meeting in which a discussion on a vote of no confidence against the chairman is to take place is required to be presided not by the chairman but by the ViceChairman. Why has such a course of action been prescribed by the statute ? A consideration of the provisions of the Act and the Rules framed thereunder particularly those with regard to the holding of such a meeting would seem to indicate that there is no inherent incompetence or disability on the part of the chairman to preside over such a meeting except that such an act may be improper or at least appear to be so in the context of the current/prevalent values. The possibility of bias to act as a crippling factor has to be excluded in view of the virtually routine duties assigned to the President of such a meeting by the provisions of the Act and the Rules. Moreover, the fact that the ViceChairman, who is required to preside over such a meeting may, himself, be amongst the movers of the no confidence motion is another significant fact that must be taken into account to exclude the possibility of bias as being the *raison d'etre*, behind the particular statutory provision. The court is, therefore, inclined to take the view that the participation of the petitioner as the President of the meeting may have been an improper act but the same cannot have the effect of invalidating or nullifying the proceedings of the meeting. That apart, in this present case, the petitioner fully knowing that the no confidence motion to be discussed in the meeting was against himself participated in the same as the President. If that be so, how the petitioner can be allowed to take advantage of the situation at this stage ?

11. This will bring the court to a consideration of the last argument advanced on behalf of the petitioner. The said argument is to the effect that the resolution of the Board dated 19.9.2005 has not been approved by the Administrative Department or by any authority in the State Government. No provision of the Act or any law in force has been placed before the court to enable the court to take the view that such approval is required or is mandatory in the absence of which the resolution of the Board cannot be given its due legal effect. If there is no

requirement of approval of the Administrative Department of the State, the conclusion that has to be reached is irresistible. The resolution dated 19.9.2005 will take legal effect immediately after it was adopted by the majority of the members.

12. The validity of the election of the respondent No. 6 being contingent on the validity/invalidity of the resolution dated 19.9.2005 expressing No confidence in the petitioner, in view of the conclusion reached as above, the court will have no occasion to record any adverse finding against the said election of the respondent No. 6

13. In view of the discussions that have preceded, the court has to take the view that the petitioner has not been able to make out any case for interference so as to justify an order setting aside the election of the respondent No. 6 and a further direction to enable the petitioner to reassume the Office of the chairman. Accordingly, the writ petition has to fail. It is, therefore, dismissed. However, in the facts and circumstances P of the case I leave the parties to bear their own costs.