
(1997) 09 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule No. 3673 of 1997

Girish Chandra Borkotoky

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 16-09-1997

Acts Referred:

Assam Municipal Act, 1956 — Section 11(3)(a), 11(3)(a)
Constitution of India, 1950 — Article 226, 226, 243ZG, 243ZG

Citation : (1997) 2 GLJ 460 : (1997) 3 GLT 586

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : U.C.Nath, S.N.Bhuyan, P.G.Barua, N.S.Deori, H.Roy, H.N.Sharma, Y.Doloi, B.D.Das, Advocates appearing for Parties

Judgement

1. In this application under Article 226 of the Constitution, the petitioner has prayed for quashing the notification dated 15.7.97 issued by the Secretary to the Government of Assam, Municipal Administration Department, in so far as it orders that Shri Keshab Chandra Mahanta, MP, and Smti Sushila Hazarika, MLA, shall be exofficio members of the Jorhat Municipal Board.

2. The facts briefly are that the petitioner is a permanent resident of Jorhat town and is a voter of Ward No. 12 of Jorhat Municipality. By the Constitution (Seventyfourth Amendment) Act, 1992, Part IXA was introduced in the Constitution of India and clauses (2) of Article 243R of the Constitution empowered the Legislature of a State to provide by law for the representation in a Municipality, inter alia, of the Members of the House of the People and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area. Pursuant to the said provision in clauses (2) of Article 243R of the Constitution, the State Legislature of Assam amended the Assam Municipal Act, 1956 by the Assam Municipal (Amendment) Act, 1994, and provided in subsection (3) of section 11 thereof that the Member of the House of the People and the Legislative Assembly of the

State of Assam representing the constituencies which comprise fully or partly the Municipal area, shall be the exofficio members of the Municipal Board. Thereafter, the impugned notification dated 15.7.97 was issued by the Secretary to the Govt of Assam, Municipal Administration Department ordering that Shri Bijoy Krishna Handique, MP, Shri Keshab Chandra Mahanta, MP, Shri Hitendra Nath Goswami, MLA and Smti Sushila Hazarika, MLA shall be exofficio members of the Jorhat Municipal Board. Shri Bijoy Krishna Handique is a Member of Parliament of Jorhat Parliamentary Constituency and Shri Hitendra Nath Goswami is the Member of Legislative Assembly of Jorhat Legislative Assembly Constituency and the petitioner has no grievance whatsoever for their inclusion in the Jorhat Municipal Board. But the petitioner's grievance is against the inclusion of Shri Keshab Chandra Mahanta, Member of Parliament of Kaliabor Parliamentary Constituency and Smti Sushila Hazarika, Member of Legislative Assembly of Dergaon Legislative Assembly Constituency in the Jorhat Municipal Board by the impugned notification dated 15.7.97.

3. The only ground taken in the writ petition against such inclusion of Shri Keshab Chandra Mahanta, MP, Kaliabor Parliamentary Constituency and Smti Sushila Hazarika, MLA, Dergaon Legislative Assembly Constituency in the Jorhat Municipal Board is that their inclusion is contrary to section 11 (3) of the Assam Municipal Act, 1956 as amended and substituted by the Assam Municipal (Amendment) Act, 1994. Section 11 (3) (a) of the Assam Municipal Act, 1956, as amended by the Assam Municipal (Amendment) Act, 1994, is quoted below :

"11. (3) (a) The Member of the House of the People and the Legislative Assembly of the State of Assam representing the constituencies which comprise fully or partly the Municipal Area, shall be the exofficio members of the Board."

4. Mr. S.N. Bhuyan, learned counsel for the petitioner, vehemently contended that the aforesaid section 11 (3) (a) would show that "The Member" of the House of the People and Legislative Assembly of the State of Assam representing the constituencies which would comprise fully or partly the Municipal area are to be ex officio member of the Board. The words "The" and "Member" are indicative of the fact that only one Member of the House of the People and only one Member of Legislative Assembly representing the constituencies which comprise fully or partly the Jorhat Municipal area are to be ex officio members of Jorhat Municipal Board. There was therefore no question of two Members of the House of the People and two Members of the Legislative Assembly being included in the Jorhat Municipal Board. Mr. Bhuyan further contended that the word "or" in the aforesaid section 11 (3) (a) further indicates that the Member of the House of the People or the Member of the Legislative Assembly representing either constituencies which comprise fully the Jorhat Municipal Board or the constituencies which comprise partly the Jorhat Municipal area is to be the exofficio member of the Jorhat Municipal Board. According to Mr. Bhuyan, use of the word "The" at the beginning of section 11 (3) (a) and the use of singular word "Member" instead of "Members" and the use of word "or" instead of "and"

in the said section 11 (3) (1) show that the intention of the Legislature is to have only one Member of the House of the People and one Member of the Legislative Assembly representing the constituencies which comprise the Jorhat Municipal area to be the exofficio members of the Jorhat Municipal Board. Thus the Member of the House of People and the Member of the Assam Legislative Assembly of the Jorhat Parliamentary Constituency and the Jorhat Legislative Assembly Constituency which comprise the Jorhat Municipal area can be the exofficio members of the Jorhat Municipal Board and the Members of the House of the People and the Legislative Assembly representing the Kaliabor Parliamentary Constituency and the Dergaon Legislative Assembly Constituency cannot be the exofficio members of the Jorhat Municipal Board. Mr. Bhuyan further pointed out that as a matter of fact only 25 voters of the Kaliabor Parliamentary Constituency and Dergaon Assembly Constituency are included in the Voter List of Jorhat Municipal area and in the circumstances the MP of Kaliabor Parliamentary Constituency and the MLA of Dergaon Legislative Assembly Constituency cannot possibly be said to represent the constituencies which comprise the Jorhat Municipal area. In support of his aforesaid submission, Mr. Bhuyan cited the Full Bench judgment of the Punjab and Haryana High Court in the case of Goodyear India vs. Panchayat Samity, AIR 1969 P&H 379, in which it was held that the word "or" in clause (2) of Article 276 of the Constitution has been used in a disjunctive sense and cannot be read as "and".

5. In reply, Mr. P.G. Baruah, learned Advocate General Assam, assisted by Mr. HN Sarma, learned Addl Senior Govt Advocate, Assam, referred to the provisions of section 9 of the Delimitation Act, 1972 for the purpose of explaining as to why the expression "partly or wholly" has been used in Article 243 R of the Constitution as well as in section 11 (3) (a) of the Assam Municipal Act, 1956 (as amended). According to Mr. Baruah, the aforesaid section 9 of the Delimitation Act, 1972 would show that while all constituencies are, as far as practicable, to be geographically compact areas, constituencies in which seats are reserved for the Scheduled Castes are to be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large. As per the said provision of section 9 of the Delimitation Act 1972, though Sarbaibandha Gaon of Sarucharai Mouza falls under Ward 14 of Jorhat Municipal area as per the notification dated 17.6.78 issued by the Govt of Assam under section 13 of the Assam Municipal Act, 1956, Sarucharai Mouza falls under 97 Dergaon Legislative Assembly Constituency reserved for Scheduled Caste because the said Sarucharai Mouza including the Sarbaibandha Gaon has a large Scheduled Caste population. According to Mr. Baruah, if the said subsection (3) (a) of section 11 is construed in such a manner as to include only the Member of the House of the People of the Jorhat Parliamentary Constituency, and the Member of Jorhat Legislative Assembly Constituency, then the voters of Saraibandha Gaon of Sarucharai Mouza in Ward No. 14 of Jorhat Municipal area would go unrepresented in the Jorhat Municipal Board. It is because of the fact that different Parliamentary and Assembly

constituencies, territorial and reserved, may fall in a Municipal area that provision was made in Article 243 R of the Constitution that the Members of the House of the People and the Members of the Legislative Assembly of the State representing the constituencies which comprise wholly or partly the Municipal areas should be represented in the Municipality. It is again for this reason that in the amended subsection (3) (a) of section 11 of the Assam Municipal Act the Members of the House of the People and the Legislative Assembly of the State of Assam representing the constituencies which comprise fully or partly the Municipal area have been made exofficio members of the Board. Mr. Baruah referred to the provisions of section 13 (2) of the Assam General Clauses Act for the proposition that in all Assam Acts, unless there is anything repugnant in the subject or context, the word in the singular shall include the plural. Hence, the word "Member" in subsection (3) (a) of section 11 of the Assam Municipal Act, 1956. as amended by Assam Municipal (Amendment) Act, 1994 would mean "Members" and thus all members of the Parliament and the Members of the Legislative Assembly representing the constituencies wholly or partly the Jorhat Municipal area are exofficio members of the Jorhat Municipal Board. Mr. Baruah explained that since Sarbaibandlia Gaon of Sarucharai Mouza falls within the Kaliabor Parliamentary Constituency and the Dergaon Legislative Assembly Constituency, Sri Keshab Chandra Mahanta, MP of Kaliabor Parliamentary Constituency and Smti Sushila Hazarika, MLA of Dergaon Legislative Assembly Constituency are exofficio members of the Jorhat Municipal Board along with the MP and the MLA of the Jorhat Parliamentary and the Legislative Assembly Constituencies. It has been further contended by Mr. Baruah that Article 243 ZG of the Constitution clearly provided that notwithstanding anything in the Constitution no election to any Municipality is to be called in question except % an election petition presented to such authority in such manner as is provided for by or under any law made by the Legislature of a State, and thus creates a bar for the High Court to entertain a writ petition under Article 226 of the Constitution challenging the election to any Municipality. He submitted that in the present writ petition, the petition has indirectly challenged the election of the Chairman and the Vice Chairman of the Jorhat Municipal Board at the first meeting of the Jorhat Municipal Board and hence the writ petition should be dismissed in limine in view of the said bar contained in Article 243ZG of the Constitution. In support of this submission, Mr. Baruah. learned Advocate General, Assam, cited the decision of the Supreme Court in the case of Mahinder Singh vs. Chief Election Commissioners, AIR 1978 SC 851. Mr. BD Das. learned counsel appearing for the intervenorrespondent No. 10 adopted the aforesaid contentions of Mr. Baruah

6. I am unable to accept the aforesaid submission of Mr. Baruah that this writ petition cannot be entertained by this Court under Article 226 of the Constitution. In this writ petition, the petitioner has not challenged any election to the Municipality but has challenged the notification dated 15.7.97 issued by the Secratary, Govt of Assam, Municipal Administration Department in so far as it ,

orders that Sri Keshab Chandra Mahanta, MP of Kaliabor Parliamentary Constituency, and Smti Sushila Hazarika, MLA of Dergaon Legislative Assembly Constituency are the exofficio members of the Jorhat Municipal Board. Hence, the bar under Article 243ZG (b) which relates to challenge to election to a Municipality does not apply to the present writ petition. In the case of Mohinder Singh vs. Chief Election Commissioner (supra) the Supreme Court found that substantive reliefs had been claimed with regard to election and in view of the bar in Article 329 (b) of the Constitution to a challenge to any election to either House of Parliament except by election petition under the Representation of People Act, the Supreme Court held that the High Court had no jurisdiction to entertain the writ jurisdiction under Article 226 of the Constitution. But in the present case, from a reading of the writ petition it is difficult to hold that the substantive relief claimed relates to election to the Jorhat Municipality.

7. Coming now to the merits of the challenge with regard to inclusion of the said two Members in the Jorhat Municipal Board as exofficio members, it is true as contended by Mr. Bhuyan that the word "Member" and not the word "Members" has been used in the amended section 11 (3). (a) of the Assam Municipal Act, 1956. But section 13 of the Assam General Clauses Act. 1915. makes it abundantly clear that in all Assam Acts, unless there is anything repugnant in the subject or context, the words in the singular shall include the plural. That apart, the Preamble of the Assam Municipal (Amendment) Act, 1994, which substituted by way of amendment the provision contained in subsection 3 (a) of section 11 of the Assam Municipal Act, 1956, clearly indicates that the aforesaid amendment by way of substitution has been made with a view to bring the Assam Municipal Act, 1956 in conformity with the Constitution (Seventyfourth Amendment) Act, 1992. The intent of the State Legislature of Assam therefore in substituting by way of amendment subsection (3) of section 11 of the Assam Municipal Act, 1956, was to make the said provision of section 11 of the Assam Municipal Act, 1956 consistent with the provision in Article 243 R of the Constitution introduced by the Constitution (Seventyfourth Amendment) Act, 1992. Article 243R(2) reads as follows :

"243R. (2) The Legislature of a State may, by law, provide

(a) for the representation in a Municipality of

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;....."

In the aforesaid provision in clause (2) of Article 243R, the word "Members" has been used instead of the word "Member". Thus the Legislature of a State could make a law for representation in a Municipality of the Members of the House of the People and the Members of the Legislative Assembly of the State representing the constituencies which comprise wholly or partly the Municipal area. Since the intention of the Legislature of the State of Assam in enacting the

Assam Municipal (Amendment) Act, 1994 was to amend the Assam Municipal Act, 1956 in conformity with the said provision contained in clause (2) of Article 243 R of the Constitution, subsection (3) (a) of section 11 of the said Amendment Act, 1994 has to be construed consistent with the said provision in clause (2) of Article 243 R of the Constitution and so construed the word "Member" in the said subsection 3 (a) of section 11 would mean "Members" and under the said provision the Members of the House of the People as well as the Legislative Assembly of the State of Assam representing the constituencies which comprise fully or partly the Municipal area are to be exofficio members of the Municipal Board.

8. Coming now to the argument of Mr. Bhuyan on the use of the word "or" instead of "and" in subsection 3 (a) of section 11 as substituted by the Assam Municipal (Amendment) Act, 1994, in the very decision of the Punjab & Haryana High Court in the case of Goodyear India vs. Panchayat Samity (supra), cited by Mr. Bhuyan, the following passage from Crawford on Statutory Construction (1940 Edition) has been quoted :

"In ordinary use the word "or" is a disjunctive that marks an alternative which generally corresponds to the word "either". In face of this meaning however, the word "or" and the word "and" are often used interchangeably. As a result of this common and careless use of the two words in legislation, there are occasions when the Court, through construction, may change one to the other. This cannot be done if the statute's meaning is clear, or if the alteration operates to change the meaning of the law. It is proper only in order to more accurately express, or to carry out the obvious intent of the Legislature, when the statute itself furnishes cogent proof of the error of the Legislature, and especially where it will avoid absurd or impossible consequences, or operate to harmonize the statute and give effect to all of its provisions."

It is thus clear that the words "or" and "and" are often used interchangeably by the Legislature, and in each case the intent of the Legislature has to be found out and in finding out the intent of the Legislature absurd and impossible consequences are to be avoided. In case subsection (3) (a) of section 11 as substituted by the Amendment Act of 1994 is interpreted to mean that only one Member of the House of the People and one Member of the Legislative Assembly representing the constituencies which comprise the Municipal Board, then such an interpretation would have absurd and impossible consequences. In case of all Municipal areas in which two or more constituencies of the House of the People or the Legislative Assembly of the State may fall it would almost be impossible to determine as to who among the Members of the Legislative Assembly or the Members of the House of People representing the constituencies which comprise fully or partly the concerned Municipal area shall be exofficio members of the Board and who among such Members of the House of the People or the Legislative Assembly representing the constituencies which comprise fully or partly the Municipal area cannot be exofficio members of the Board. Mr. Bhuyan

strenuously contended that in such a case only the Member of the House of the People and only the Member of the Legislative Assembly representing the constituencies which would fall in major part of the Municipal area would be exofficio members of the Municipal Board and other Members of the House of the People and the Legislative Assembly representing the constituencies which fall in minor part of the Municipal area would have to be excluded from the Municipal Board. I am afraid, there is nothing in the language of Article 243 R (2) of the Constitution or subsection 3 (a) of section 11 as substituted by the Assam Municipal (Amendment) Act, 1994, which supports such an interpretation given by Mr. Bhuyan. Hence, the word "or" in section 11 (3) (a) has to be used interchangeably with the word "and".

9. As Sarbaibandha Gaon of Sarucharai Mouza is within the Municipal area of Jorhat Municipality and is also part of the Kaliabor Parliamentary and Dergaon Assembly Constituencies, I am of the view that the Member of the House of the People and the Member of the Legislative Assembly of the State of Assam of the said constituencies are also exofficio members of the Jorhat Municipal Board under section 11 (3) (a) of the Assam Municipal Act 1956, and the impugned notification dated 15.7.97 in so far as it includes Shri Keshab Chandra Mahanta, MP of Kaliabor Parliamentary Constituency, and Smti Sushila Hazarika, MLA of Dergaon Legislative Assembly Constituency, along with the MP and the MLA of Jorhat Parliamentary and Legislative Assembly Constituencies as exofficio members of the Jorhat Municipal Board, is not liable to be interfered with. The writ petition is accordingly dismissed and the interim order passed by this Court on 4.9.97 in Misc Case No. 765 of 1997 directing that the results of the election of the officebearers held in the first meeting of the Commissioners of Jorhat Municipal Board on 5.9.97 would not be declared or announced until further orders, is hereby vacated.

However, considering the entire facts and circumstances of the case, the parties shall bear their own costs.