
(2019) 09 GAU CK 0079
In the Gauhati High Court
Case No : Writ Appeal No. 259 Of 2019

Himangshu Roy

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 30-09-2019

Acts Referred:

Assam Municipal Act, 1956 — Section 28(2), 43(2)

Citation : (2019) 09 GAU CK 0079

Hon'ble Judges : Sanjay Kumar Medhi, J;A.K. Goswami, J

Bench : Division Bench

Advocate : B.C. Das, T.C. Chutia, U.K. Das, T.J. Mahanta, I. Ali

Final Decision : Dismissed

Judgement

A.K. Goswami, J

1. Heard Mr. B.C. Das, learned senior counsel, appearing for the appellant. Also heard Mr. T.C. Chutia, learned State counsel, appearing for

respondent Nos.1 to 5; Mr. T.J. Mahanta, learned senior counsel, appearing for respondent Nos.8 to 12; Mr. U.K. Das, learned counsel for

respondent No.7 and Mr. I. Ali, learned Standing counsel, Election Commission of India, appearing for respondent No.13.

2. Respondent No. 6 had refused to accept notice and, therefore, by an order dated 28.08.2019, service of notice on respondent No. 6 was treated to be complete.

3. None appears for respondent No. 6.

4. This intra-court appeal is directed against the judgement and order dated 18.06.2019, passed by the learned Single Judge, in WP(C) No. 2815/2019,

dismissing the writ petition filed by the appellant, who had been removed from

the post of Chairman, Pathsala Municipal Board, in a Special Meeting convened on 02.05.2019.

5. Pathsala Municipal Board had 12 (twelve) Members, out of which 10 (ten) were elected and 2 (two) were nominated Members. One of the elected members has since expired and, therefore, presently, the strength of the Pathsala Municipal Board is 11 (eleven).

6. By a Notice dated 01.04.2019, seven elected Members had sent a requisition expressing their No Confidence on the appellant, which was received by the appellant on 03.04.2019. On the failure of the Chairman to convene a Special Meeting within a period of twenty days from the date of receipt of the requisition, in terms of Section 43(3) of the Assam Municipal Act, 1956 (hereinafter referred to as "Municipal Act"), a Special Meeting was called by the requisitionists on 02.05.2019. In the said meeting, a resolution was adopted expressing No-Confidence against the Chairman by all the seven Members present in the meeting.

7. The learned Single Judge did not accept the contentions advanced by the appellant and, consequently, dismissed the writ petition.

8. Out of the grounds urged before the learned Single Judge, Mr. Das has argued only one ground, which is to the effect that there being no voting in terms of Section 28(2) of the Municipal Act, mere adoption of a resolution will not fulfill the mandate of the Municipal Act. He has also urged another ground, which is taken in the appeal, that the ex-officio Members of the Municipal Board are also entitled to notice of the Special Meeting convened by the requisitionists and there was no materials on record to demonstrate that, in fact, such notice was duly served on the ex-officio Members, i.e., Member of Parliament as well as the Member of the Legislative Assembly.

9. We have taken up the second ground first for consideration.

10. Though such contention is urged, a perusal of the writ petition goes to show that even in the writ petition the ex-officio Members were not arrayed as party to the writ proceeding by the appellant. Further-more, there is a document at page 35 of the Appeal papers (Annexure IV) indicating that notices were issued to the Member of the Parliament as well as the Member of the Legislative Assembly.

11. Having regard to the above, in absence of any pleading in the writ petition, no further discussion is called for on this aspect of the matter and,

consequently, the second ground urged by Mr. Das stands rejected.

12. So far as the contention advanced by Mr. Das with regard to the first ground is concerned, it will be apposite to take note as to how the aforesaid

aspect of the matter was dealt with by the learned Single Judge. The learned Single Judge had addressed the issue in the following manner:

â??In so far submission of Mr. Choudhury that going by the language of Sub-section (2) of Section 28, there has to be voting to remove an

elected Chairman or Vice Chairman is concerned, a careful perusal of the said provisions would go to show that an elected Chairman or

Vice Chairman may be removed from his office by a resolution of the Board in favour of which more than half of the total number of Ward

Commissioners shall have given their votes at a meeting specially convened for the purpose. Proceedings of the special meeting held on

02.05.2019 would go to show that 7 Ward Commissioners out of 9 numbers of elected Ward Commissioners plus 2 ex-officio members

totalling 11 had clearly adopted a resolution expressing no confidence against the Chairman which is more than half as per the statutory

requirement. Sub-section (2) does not prescribe any mode or manner of voting. When the 7 numbers of Ward Commissioners had resolved

that they have no confidence in the Chairman it is a clear expression of their stand. In the absence of any statutory requirement that the

voting has to be by secret ballot or by show of hands, adoption of resolution by the Ward Commissioners numbering more than half

expressing no confidence in the Chairman would be in compliance to the requirement of Sub-section (2) of Section 28.â??

13. Materials on record demonstrate that only seven requisitionists had attended the Special Meeting on 02.05.2019 and no other Member of the

Municipal Board was present in the said meeting. All the seven requisitionists unanimously expressed their No-Confidence. Learned Single Judge was

correct in holding that Sub-Section (2) of Section 28 of the Municipal Act does not prescribe any mode or manner of voting. The question of voting in

some form would have arisen in a situation when there was no unanimity amongst the Members. But that is not the position here in the instant case.

14. In the facts and circumstances of the case, we are of the opinion that the view expressed by the learned Single Judge does not need any

interference in an appeal of the present nature. Consequently, the appeal is dismissed.

15. The interim order passed earlier stands vacated.