

(1964) 03 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 174 of 1963

Lakshyadhar Chowdhury

APPELLANT

Vs

P.H. Trivedi and Another

RESPONDENT

Date of Decision : 02-03-1964

Acts Referred:

Assam Municipal Act, 1956 — Section 11(2), 33, 33(2), 36, 39
Assam Municipal Rules, 1956 — Rule 1

Citation : AIR 1968 Guw 53

Hon'ble Judges : G. Mehrotra, C.J; C. Sanjeevarao Naidu, J

Bench : Division Bench

Advocate : H. Goswami and B.M. Goswami, for the Appellant; M.C. Pathak, Sr. Govt. Advocate and N.M. Lahiri, for the Respondent

Judgement

C.S. Nayudu, J.—In this civil rule it is prayed that the notice dated 7-9-63 issued by the Deputy Commissioner, Gauhati under Rule 1(b) of the Second Schedule of the Assam Municipal Act, 1956 (Act 15 of 1957) (hereinafter called "the Act") fixing the 4th October, 1963 for the holding of a meeting of the Gauhati Municipal Board for the election of a Chairman in a vacancy that has arisen on account of the resignation of Sri Satish Chandra Kakati, Ex-Chairman, is invalid and should be quashed.

2. It will be convenient to refer to the relevant provisions of the Act. Relevant portions of Section 33 of the Act run as follows:

33 (1) * * *

(2) At the first meeting of the Municipal Board after a general election, called at the instance of the Deputy Commissioner, the Commissioners shall elect one of their own number other than an officer of the Government appointed under Sub-section (2) of Section 11, to be Chairman subject to the approval of Government. The Chairman so elected pending approval of the Government shall be competent to discharge the duties of his office.

(3) The said Commissioners shall at the said meeting or at a subsequent meeting elect one of their own number, other than an officer appointed under Sub-section (2) of Section 11, to be Vice-Chairman.

(4) When the Commissioners fail to elect a Chairman or a Vice-Chairman under the two preceding Sub-sections the State Government shall appoint by name one of the Commissioners to be Chairman or Vice-Chairman as the case may be.

Section 36 of the Act is as follows:

Whenever for any cause the offices of both the Chairman and the Vice-Chairman are vacant in any Board, the State Government shall appoint any one from amongst the Commissioners as the Chairman to hold office as such temporarily till a Chairman is elected" Section 41 of the Act deals with the filling of casual vacancies of Chairman and Vice-Chairman and is as follows:

If any Chairman or Vice-Chairman of a Board be unable to complete his full term of office or avail himself of leave granted u/s 40, the vacancy caused by his resignation, removal, death or absence on leave shall subject to the provisions of Sections 33 and 36 be filled by appointment or election, as the case may be, and the person so appointed or elected shall fill such vacancy for the unexpired portion of the term for which such Chairman or Vice-Chairman would otherwise have continued in office or during his absence on leave, as the case may be.

3. In the instant case the office of the Chairman had fallen vacant and the Deputy Commissioner had issued notices to the Commissioners of the Municipal Board calling for a meeting for the election of the Chairman, apparently acting u/s 33(2) read with Rule 1(b) of the Second Schedule to the Act. The question that calls for determination in this Civil Rule is whether the Deputy Commissioner is competent to call for a meeting for the election of the Chairman when the vacancy occurs in the course of the term of office of the Chairman the Chairman having already been elected in a meeting convened by the Deputy Commissioner u/s 33(2) of the Act.

4. Reliance is placed on Section 41 containing the clause subject to the provisions of Sections 33 and 36. From this it is contended by Mr. Pathak, the learned Senior Government Advocate that whenever a meeting for the election of the Chairman or the Vice-Chairman is to be held, it should be held subject to Section 33, which, according to him, implied that the procedural provision contained in Section 33 should all be followed. In other words, his contention is that the meeting at which such an election is to be held, has to be convened (sic) Deputy Commissioner in accordance with Section 33(2) of the Act. We are unable to agree with this submission. The use of the clause "subject to the provisions of Sections 33 and 36" in our opinion, only means that whenever there is any conflict between the procedure indicated to be followed in Section 41 and that in Sections 33 and 36, the latter sections should prevail but in the absence of any such conflict the normal Procedure envisaged in Section 41 has got to be followed. The mere use of the expression "subject to the provisions of Sections

and 36, does not, in our opinion amount to making Section 41 in this case subject to Sections 33 and 36, so as to read the part of Section 41.

This could hardly have been t of the intention of the legislature Section 33(2) clearly provides for the holding of the first meeting at which the Chairman and the Vice-Chairman are to be elected Section 41 contemplates a later stage where the election having been held in accordance with Section 33(2) at a meeting convened by the Deputy Commissioner for the purpose a casual vacancy arises by reason of resignation death or other causes. It is true that where the Commissioners fail to elect a Chairman or Vice-Chairman u/s 41, u/s 33(4) the State Government shall appoint by name one of the Commissioners to be the Chairman or the Vice-Chairman as a case may be, Similarly an examination of section 33 shows that the appointment contemplated by that section was only for a temporary purpose until the permanent incumbent is elected u/s 41. Hence giving Section 41 the plain meaning in our opinion, does not, in any w?y militate with the provisions of Sections 33 and 36.

5. In this connection it would be to refer to the Second Schedule to the - which contains the rules framed in the power conferred on the State u/s 300 of the Act. Section of the Act also provides that the rules in-Second Schedule shall have effect as If on? in the body of the Act itself. If It had b Intention of the legislature that the prescribed? in Section 41 should be su the business procedure prescribed for meeting of the Board in B. 1 C? Schedule, specific mention c:?_ been made to that effect, but signific is absent.

6. Further, Section 46 of the Act, relevant portions whereof are extracted (sic) under, makes provision for calling a meeting on the Board by the Chairman or Vice-Chairman for the election of the Chairman or Vice-Chairman after the first meeting of the Board contemplated by Section 33:

46. No business shall be transacted any meeting of the Board unless such meeting has been called by the Chairman or Vice-Chairman, or, u/s 43, Sub-section (3), (sic) personcs signing a requisition, nor unless a quorum shall be present. The quorum necessary for the transaction of business at a meeting shall be one-half of the total number of Commissioners of the Board when any of the following subjects are to be disposed of at such meeting-

(v) the election of Chairman or Vice-Chairman,

A cumulative consideration of these provisions leaves no room for doubt that the correct procedure to be followed in the matter of filling a vacancy caused in the office of the Chairman the Vice-Chairman during the term for which the election is held, is as indicated in Section 41 and that such a meeting could be called by the Vice-Chairman, who having regard to Section 39, facts during the vacancy in the office as a Chairman and is empowered to perform all the duties the Chairman.

7. In this view we are clearly of opinion that the Deputy Commissioner had no

jurisdiction to call for a meeting for the holding of the election of the Chairman for filling the unexpired term of office of the Chairman of the Municipal Board. It is true that the date of the meeting given in the notice issued by the Deputy Commissioner had expired long ago. Nevertheless to make the legal position clear, we would make the rule absolute and in the entire circumstances we do not propose to make any order as to cost.

8. It is presumed that the Vice-Chairman could not lose further time in calling for a meeting for the election of the Chairman u/s 41 of the Act.