
(1952) 07 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 41 of 1952

Mohi Chandra

APPELLANT

Vs

Secy., Local Self-Government of Assam and Another

RESPONDENT

Date of Decision : 18-07-1952

Acts Referred:

Constitution of India, 1950 — Article 226, 226(1)

Citation : AIR 1953 Guw 12

Hon'ble Judges : T.V. Thadani, C.J.; Haliram Deka, J

Bench : Division Bench

Advocate : R.K. Goswami, G.A. Jr., S.K. Ghose, J.C. Sen and J. Chaudhuri, for the Appellant; F. Ahmed and B.C. Barua for No. 2 and B.C. Barua, for No. 3, for the Respondent

Judgement

Thadani, C.J.—This is a second petition brought by the petitioner Mohi Chandra Bora under Article 226 of the Constitution of India for a Writ of Mandamus against the State of Assam, and a Writ of Quo Warranto against (1) The Secretary, Local Self-Government, State of Assam, (2) Sri Ram Nath Sarma, the present Chairman, Local Board, Nowgong, and (3) Nowgong Local Board. The first petition filed on the same facts was disposed of by Ram Labhaya and Deka JJ. on 13-3-52. Ram Labhaya J., in the concluding paragraph of his judgment observed :

"Notwithstanding the observations made above regarding the invalidity of the Resolution of the Board by which the removal of the Chairman was recommended to the Provincial Government and approved by them, this petition ought to fail as infructuous by reason of the events that have taken place during the pendency of the petition as the effect of these events is that no elective relief can be granted to the petitioner. Other points raised in the case need not be decided in these circumstances."

In the first petition, the present Chairman of the Nowgong Local Board, respondent 2, was not a party. In the petition before us, he has been made a

party.

2. It is not necessary to set out the facts of the case as they have been stated in considerable detail in the order of the Division Bench, dated 13-3-52. Ram Labhaya J. while commenting on the version of the petitioner and the version as contained in the affidavit of Ram Nath Sarma, the present Chairman, stated :

"The statements contained in the affidavits of the parties are conflicting as to what happened to the no confidence Resolution in the meetings of 4-8-1951 and 24-9-1951. The parties seemed to be very near to each other in regard to the proceedings of the meeting of 30-10-1951. As regards this meeting, the case for the petitioner is that he ruled the no-confidence Resolution against him out of order and left the meeting. The case for the opposite parties is that he wanted to rule it out of order but 22 members pressed for a division and he left the meeting."

3. We do not think it would be proper for us, in the exercise of our jurisdiction under Article 226 of the Constitution of India, to determine the truth or falsity of the rival versions of the parties as to what actually occurred on 4-8-1951, 24-9-1951 and 30-10-1951. It is sufficient to say that if the version as given by the present Chairman of the Nowgong Local Board were to be accepted, the petitioner would be clearly disentitled to any writ. Apart from this aspect of the case, namely, that a High Court will decline to issue a writ in the exercise of its jurisdiction under Article 226 of the Constitution where the facts stated by the petitioner are disputed by the opposite party, the principles governing the grant of a writ of Mandamus and Quo Warranto are stated in paras. 1274 and 1380 of Halsbury's Laws of England, Vol. 9, Edn. 2, Hailsham. In para. 1274, it is stated :

"A mandamus to restore, admit or elect to an office will not be granted unless the office is vacant. If the office is in fact full, proceedings must be taken by way of quo warranto or election petition to oust the party in possession. A mandamus will go only on the supposition that there is nobody holding the office in question. A mandamus will, however, be issued commanding election to an office when, although there has been an election to the office in question, yet such election is void or merely colourable."

4. It is not disputed that the office of the Chairman of the Nowgong Local Board has been filled up and that Ram Nath Sarma, respondent 2, is the Chairman. The petitioner has not alleged, much less proved, that the election of the respondent 2 to the office of the Chairman of the Nowgong Local Board is void or merely colourable. The foundation of the petitioner's case is that as he has been illegally removed from the office of Chairman of the Board, the subsequent filling up of the post is irregular or illegal. It is not his case that the appointment of respondent 2 is void or colourable. A void or colourable appointment is something quite different from an illegal or irregular appointment. Moreover, in view of the differing versions of the parties, it is impossible to say that the petitioner was illegally removed by the State Government. The question

therefore of the validity of the election of respondent 2 does not arise.

5. As for the demand of a writ of quo warranto, the petitioner has even less justification. In paragraph 1380 of Halsbury's Laws of England, it is stated :

"An information in the nature of a quo warranto is not issued as a matter of course, and when a relator applies for an information, it is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case. The Court can and will inquire into the conduct and motives of such relator, and the Court may in its discretion decline to grant a quo warranto information where it would be vexatious to do so, or where an information would be futile in its results, or where there is an alternative remedy which is equally appropriate and effective, or where there is undue delay in making the application. When, therefore, the title to a corporate office is in question, the Court, in accordance with these principles, will not grant leave to a relator to file a quo warranto information as a matter of course simply because a reasonable doubt as to the legal validity of the title is shown, but the Court will take into consideration the consequences which would be likely to follow should the information be granted, and also all the circumstances of the application. Thus, the Court will refuse to disturb the peace and quiet of a corporation by granting leave to file an information where to do so would be merely vexatious, as where there has been an irregularity in the election to the office which is without any material result, or which cannot be shown to have been productive of harm. Again where the circumstances of the application are such as to throw suspicion upon the motives of the relator, the Court will not grant an information the consequences of which may be to dissolve the corporation."

6. Having regard to the differing versions of the petitioner and the opposite party, we are not prepared to say that even a reasonable doubt as to the legal validity of the title of respondent 2 to the office has been made out. Even if a case of a reasonable doubt as to the legal validity of the title of respondent 2 had been made out, we are entitled to take into consideration all the circumstances of the application. If the version of the opposite party were to be accepted, the petitioner has acted in a very highhanded manner, for, the opposite party alleges that on 4-8-1951 when the two resolutions which are referred to in the affidavit of respondent 2 were moved and the petitioner found that there were 21 members, out of the 30 present, supporting the motion, he refused to admit them, and adjourned the meeting. It is manifest that if a Chairman of a Local Board acts in the manner in which the petitioner is said to have acted, he is not a fit person to hold the office of the Chairman of a Local Board. It is also alleged by respondent 2 that the petitioner has not correctly recorded the minutes of the meetings of 4-8-1951 and 30-10-1951. Annexure 1 filed by respondent 2 contains the following statements :

"At the outset, while the Chairman pointed out that the proceedings of the Board's meeting held on several dates were yet to be confirmed, and requested the Board to confirm the same, and took up the proceedings of the meeting held

on 4-8-1951, it was brought to the notice of the House by Sjt. Lilakanta Bora, M. A., B. L., and Mvi. Hafizuddin in a written correction, that the proceedings of the special meeting of the Board held on 4th August 1951, were not correctly entered into the Proceedings Book, which should be corrected as follows :

After the words "on the part of" in para. 3 of item 3 and that the entire minutes thereafter should be deleted and freshly entered as given below : -

"The majority of the House.

The President then wanted to know the contents of the resolutions. At that moment, Sjt. Ramnath Sarma, member, handed over to the President a copy of the following resolutions :

Motion No. 1 : The House is of opinion that the government may be moved and recommended that the membership of Sjt. Mohi Chandra Bora, B. L., as Local Board member of the Nowgong Board be cancelled as his brother, Sjt. Khargeswar Bora, who lives in his joint family, holds interests in Board's property, i. e. shares in Bupahi, Doboka and Mairabari Hats under the patronage of the said Sjt. Mohi Chandra Bora, who is the present Chairman of the Board.

Mover : Lila Kanta Bora.

Supporter:

Motion No. 2 : This House is of opinion that Sjt. Mohi Chandra Bora, B. L., Chairman of this Board, has persistently showed his incompetency to manage the affairs of the Board, particularly, he has shown incompetency in matters of managing the affairs of Public Works, Cart Taxation Medical Department, and also in management of Bazars and Hats.

Mover

Supporter :

The President then allowed to move the resolutions.

At this Sjt. Lila Kanta Bora, moved Motion No. 1, and it was seconded by Sjt. Chandra Kanta Saikia. Then Sjt. Charu Chandra Goswami, B. A., requested the mover for more clarification on the resolution. Several members opined that the resolution was comprehensive and self-explanatory. At that Sjt. Chandrakanta Borkakati raised a point of order and said that the resolution was not in order. On this majority of the House demanded that as the resolution was moved and seconded, it becomes the property of the House and a definite decision must be arrived at. The mover then pressed for a division, and members in favour of the resolution raised their hands, and the Vice-Chairman counted the votes, and declared as 21 for the motion. None raised hands against the resolution. The House then accepted the resolution, and then Mvi. Jobed Ali rose and moved the 2nd resolution. He was duly supported by Sjt. Bamnath Sarma. At that moment the President intervened and opined that he would adjourn the meeting. But the

majority of the members said that as the resolution referred to his conduct, he should not interfere, and then on demand of the mover for a division 21 members raised their hands in favour of the resolution.

At this stage, the President said that he had adjourned the meeting, and would not accept the resolution as passed, and left the House.

Mover : Lila Kanta Bora Supporter : Mvi. Hafizuddin.

The above deletion and fresh entry were unanimously agreed to and accepted. After this a member wanted to oppose, but the Chairman said that as the correction was accepted, he was unable to allow any further discussion.

After this the Chairman took up the proceedings of the adjourned special meeting which were accepted.

Then the Chairman took up the proceedings of the meeting held on 30th October 1951, wherein he pointed out that two different proceedings of the same meeting were seen in the Proceedings Book. One above the signature of Sjt. Mohichandra Bora and the other above the signature of Mvi. Md. Nurul Islam. Then the Chairman read out both the proceedings; the members opined that the proceedings written above the signature of Sjt. Mohichandra Bora were irregular and, as such, could not be accepted. Sjt. Bhadrakanta Sarma, B. L., said that the proceedings were written correctly, but majority of the members refused to accept that proceeding. The Chairman then sought for the opinion of the House, 5 members raised their hands for acceptance of the same, while 19 raised their hands for its cancellation, and thus the Board refused to accept the proceedings written above the signature of Sjt. Mohichandra Bora, and same were cancelled.

After this the Chairman read out the proceedings of the same meeting written above the signature of Mvi. Nurul Islam which were accepted unanimously.

2. Board then took up the proceedings of the Finance Committee meeting held on 27th July 1951 . . ."

7. We must, for the purposes of the petition before us, accept as correct the minutes as recorded in the first schedule annexed to the affidavit. The statements contained in the annexure clearly show that the petitioner does not enjoy the confidence of the Board and that the Board does not regard him as a fit person to hold the office of the Chairman. If we were to grant a writ of quo warranto in this case, it would amount to disturbing the peace and quiet of the Local Board. Assuming that the Government has not been moved by a proper resolution to remove the petitioner, as to which we express no opinion, nevertheless two-thirds majority of the Board has expressed its want of confidence in the Chairman. In view of the no-confidence motion passed by a majority of the members of the Board, we venture to think that it would have been more honourable for the petitioner to have tendered "his resignation than to come to this Court for the enforcement of the right to continue as Chairman of the Local Board--a right which he has by his own conduct rendered impossible to

enforce.

8. The result is that the petition is dismissed.! The Rule is discharged. Hearing fee is fixed at rs. 50 for each of the three contesting respondents.

Deka, J.

9. I fully agree with the judgment delivered by my Lord the Chief Justice and would not have ordinarily added anything to it. I, however, feel called upon to add a few words just to say that Mr. Ghose advocate for the petitioner was not quite correct in assuming that we had, as a matter of fact, come to any finding as to facts in our earlier judgment which was delivered by my learned brother, Ram Labhaya J. to which I agreed. It has been made abundantly clear in the judgment of my Lord the Chief Justice that we, as a matter of fact, were not called upon to give any opinion on the question of fact in the earlier case as the petition was dismissed on a preliminary point, namely, the absence of the Chairman of the Local Board whom we considered to be a necessary party.

My learned brother, Ram Labhaya J. while admitting that the facts leading to the resolution passed on 30th October 1951 were disputed, did not look with approval the acceptance by the Provincial Government of the resolution as to the removal of the Chairman by the members of the Board who passed the resolution expressing no-confidence on him. Inasmuch as the Rule was discharged on a preliminary point, I saw no useful purpose in adding my personal opinion as to the course taken by the members of the Board or the acceptance by the Government of the resolution leading to the removal of the Chairman.

10. I fully, however, accept the view expressed by my Lord the Chief Justice that the wiser course is to limit the scope of granting relief under Article 226 only to cases where the facts leading to the point at issue are not disputed and that is the view expressed by the Supreme Court too, Here the facts are undoubtedly disputed on material particulars and they go to throw sufficient doubt as to the truth of the statements made by the petitioner.

11. Mr. F. Ali Ahmed raised a preliminary objection that the petition under Article 226 having been once dismissed, it is not up to this Court to entertain the second petition. He has, however, placed no authority before us in support of his contention and from the principle of natural justice, I do not think the present petition can be treated as barred because of the rejection of the earlier petition on a preliminary issue. This objection, therefore, to my mind is not of much substance.

12. I agree with my Lord the Chief Justice that the Rule may be discharged.