
(2011) 12 GAU CK 0050
In the Gauhati High Court
Case No : Writ Petition (Civil) No.4881 of 2009

Moin Uddin Laskar

APPELLANT

Vs

State of Assam and ors.

RESPONDENT

Date of Decision : 17-12-2011

Acts Referred:

Representation of the People Act, 1951 — Section 36, 36

Citation : (2012) 3 GLR 365 : (2012) 3 GLT 684

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

Bench : Single Bench

Advocate : Mr. R.R Sarmah , Mr. S.M.T. Chistie for the petitioner.??Mr. A. Choudhury , Mr. R.K. Bora for the respondents., Advocates appearing for Parties

Judgement

1. The case of the writ petitioner, in short, is that as the tenure of the managing committee of Bhaga Bazar Samabai Samitee Ltd. (for short, "the society") was nearing end, the Secretary of the society issued a notification dated 30.10.2009 calling for an annual general meeting ("AGM")/election of the society to be held on 15.11.2009. The notification indicated that the Returning Officer for the said election would accept nomination papers from the aspiring candidates from 11 a.m. to 1 p.m. on 5.11.2009 in the office of the society. It has also been indicated that the nomination papers would be scrutinized by the Returning Officer from 1 p.m. to 2.30 p.m. and the list of the candidates, whose nomination papers are found to be valid, would be announced along with the election symbol. The notification also specified that the candidates could withdraw their nomination papers up to 3.30 p.m.

2. The petitioner duly submitted his nomination paper for the post of Chairman by complying with all the formalities and 3 other persons, namely, the respondent Nos. 6 and 7 and one Sunil Chandra Das had also submitted their nomination for the post of chairman. On the specified time, the nomination papers were opened for scrutiny by the Returning Officer and on such scrutiny, the nomination paper of the petitioner was found to be valid. Sri Sunil Chandra

Das had withdrawn his nomination paper. One Shri Riajul Islam Talukdar supported and proposed the candidature of respondent No. 6 as well as respondent No. 7 for the same post of Chairman of the society and, therefore, the petitioner, on 5.11.2009 itself, requested the Returning Officer to take appropriate action if the same was against law. The Returning Officer, according to the petitioner, had declared that the nomination papers of respondents 6 and 7 were rejected as they were found to be defective/invalid. A comparative statement was prepared by the Returning Officer on 5.11.2009 showing the nomination papers that were found to be valid in respect of the various other posts, but there was no mention with regard to the nomination papers submitted for the post of Chairman. By a letter dated 7.11.2009, the Returning Officer informed the respondents 6 and 7 that in view of the order of the Assistant Registrar of Cooperative society on the body of his letter dated 6.11.2009, their nomination papers were accepted and as such allowed to contest in the annual general meeting/election scheduled to be held on 15.11.2009. It was also informed that the respondent No.7 was allowed to withdraw his nomination. Copy of the letter dated 7.11.2009 was also sent to the petitioner and all of them were also requested to choose their respective symbol for printing of the ballot.

3. The writ petitioner, by filing this application under article 226 of the Constitution of India has prayed for the following directions :

"1. Quashing the impugned letter dated 7.11.2009 (vide Ax. No.8 to the writ petition) issued by the Returning Officer Bhaga Cooperative Society Ltd. i.e., respondent No. 5 so far it relates to acceptance of nomination papers of the respondent No. 6 and 7 as per direction of the Assistant Registrar of Cooperative Societies, Silchar, i.e., respondent No. 3 for the election to the post of Chairman Bhaga Bazar Cooperative Society Ltd. Dist. Cachar to be held on 15.11.2009 and allowing the respondent No.7 to withdraw his nomination paper on a back date instead of rejecting the same on 15.11.2009 and allowing the respondent No.6 to choose his symbol for printing of his ballot paper.

2. Directing the respondent authorities more particularly the Returning Officer Bhaga Bazar Cooperative Society Ltd., i.e., the respondent No. 5 to declare the petitioner elected a Chairman of the society unopposed.

3. Directing the respondent authorities not held any election for the post of Chairman Bhaga Bazar Cooperative Society Ltd. proposed to be held on 15.11.2009 and to pass any order direction as your lordship may deem fit and proper considering the interest of the petitioner and be pleased to make the rule absolute and/or pass any other appropriate order/orders or direction as your lordship may deem fit and proper so as to grant adequate relief to the petitioner in the interest of justice."

4. A joint affidavit has been filed by respondent Nos.6 and 7. It has been stated that respondent 7 and Sunil Chandra Das had immediately withdrawn their nomination papers and, therefore, question of a particular person supporting 2

persons by way of proposing and seconding does not arise and that the Assistant Registrar of Cooperative Societies had rightly accepted the nomination paper of the respondent No. 6. The allegation that the Returning Officer had rejected the nomination papers of the respondent Nos. 6 and 7 were also denied. The respondent Nos. 6 and 7, in their affidavit, had also raised the question of maintainability of the writ petition on the ground of alternative remedy being available to the petitioner.

5. A reply affidavit was filed by the petitioner to the affidavit in opposition filed by respondent Nos. 6 and 7, reiterating the statements made in the writ petition as well as denying the statement of the respondent Nos. 6 and 7 that the respondent No. 7 had withdrawn his nomination paper on 5.11.2009 and furthermore, there was no question of his withdrawing the nomination paper, as, his nomination was not a valid nomination.

6. An affidavit in opposition has also been filed by respondent No. 3. It is denied that the Returning Officer had rejected the nomination of 2 candidates for the post of Chairman. The Returning Officer kept the decision pending for the post of Chairman and the Returning Officer, by a letter dated 6.11.2009, had sought instruction from the respondent No. 3. The affidavit recited that the respondent No. 3 advised the Returning Officer that it was his prerogative to allow withdrawal and to accept nomination papers as per provisions of byelaw and notice issued by the society. Accordingly, the Returning Officer had communicated acceptance of the nomination papers of the respondent Nos. 6 and 7 as well as withdrawal of nomination of respondent No. 7 for the post of Chairman.

7 I have heard Mr. R.P. Sarmah, learned senior counsel appearing for the petitioner. I have also heard Mr. A. Choudhury, learned counsel appearing for respondent Nos. 6 and 7 as well as Mr. R.K. Bora, learned Addl. Senior Government Advocate, who has also produced relevant records for perusal of this court.

8. Mr. R.P. Sarmah, learned senior counsel for the petitioner submits that one person cannot support the nomination paper of 2 candidates contesting for the same post by being a proposer in one nomination and by being a seconder in the other nomination paper. In the instant case, one Rijul Islam Talukdar supported both the respondent Nos. 6 and 7, who submitted their nomination papers for the post of Chairman and, therefore, palpably, the nomination papers of the respondent Nos. 6 and 7 are invalid and, therefore, liable for rejection. As such, learned senior counsel submits that decision of the Returning Officer to accept the nomination papers of both Respondent Nos. 6 and 7 and further to give allow withdrawal of the nomination paper of the respondent No. 7 as communicated by letter dated 7.11.2009 is illegal and cannot be sustained in law. The learned senior counsel further submits that the petitioner being the only contestant in the fray for the post of Chairman, a direction should be issued to the respondents and, more particularly, to the Returning Officer to declare the

petitioner elected as Chairman of the society, being unopposed.

9. Mr. A. Choudhury, learned counsel for respondent Nos. 6 and 7 submits that the respondent No. 7 had withdrawn the nomination paper on 5.11.2009 itself and, therefore, there is no basis in the argument of the learned senior counsel for the petitioner that one person had supported 2 candidates who were locking horns for the same post.

10. The learned Government Advocate also, in reiteration of the stand taken by respondent No. 3 in his affidavit, has argued that the letter dated 7.11.2009 of the Returning Officer does not call for any interference.

11. Perusal of the record reveals that one Riajul Islam Talukdar is the proposer in the nomination paper of respondent No.7 and he is a supporter in the nomination paper of the respondent No. 6. Record also reveals that the Returning Officer wrote a letter dated 6.11.2009 to the respondent No.3 on the subject "Nomination". The relevant extract of the said letter is extracted herein below :

".....Out of the total nomination papers received for the post of Chairman, 2 nomination papers found to be defective at the time of scrutiny. One Riajul Islam Talukdar bearing share number 3901, a proposer of Samsul haq Laskar (a candidate for the post of Chairman) supported another candidate Sams Uddin Laskar, a candidate of the same post. So, validity of both the nomination papers is in question. Further, it is to be mentioned here that Samsul Haq Laskar, one of the candidates as above has submitted a withdrawal petition at the time of scrutiny for his personal reason.

I therefore request your honour kindly to give necessary instruction whether some person can proposed and support 2 candidates of the same posts."

12. The respondent No. 3, on the body of the said letter, made the following endorsement :

"Returning Officer

Please allow to withdraw of nomination papers as well as allow 2 nomination papers of Sams Uddin Laskar as per provisions of bye/law of the society and notice issued by the society."

13. It is on the basis of the aforesaid endorsement of the respondent No.3, the letter dated 7.11.2009 was issued by the Returning Officer. To that extent, the stand taken in the affidavit of the respondent 3 that the respondent 3 had advised the Returning Officer that it was the prerogative of the Returning Officer to accept nomination papers and/or to allow withdrawal of nomination papers, is not correct. Endorsement of the respondent No. 3 on the body of the letter of the Returning Officer dated 6.11.2005, bearing in mind the request of the Returning Officer in the said letter, it would appear to me, is a kind of direction given to the Returning Officer.

14. The notification dated 30.10.2009 also makes it clear that only the

nomination papers which were found valid could be withdrawn up to 3.30 p.m. on 5.11.2009 and they would be entitled to refund of the nomination fees. Till such time a declaration is given by Returning Officer that the nomination is valid, there does not arise any question of withdrawal of nomination. Therefore, the contention advanced by the learned counsel for respondent 6 and 7 that the nomination paper of the respondent No. 7 having been withdrawn, nomination paper of the respondent No.6 is valid, is akin to a situation of a cart being placed before the horse. It is, however, on record, that the respondent No.7, had, in fact, submitted an application for withdrawal of his nomination on 5.11.2009 itself.

15. A reading of the letter dated 6.11.2011 of the Returning Officer along with the endorsement of respondent No. 3 therein as also the letter date 7.11.2009 suggest that though the Returning Officer appeared to have found 2 nomination papers for the post of Chairman defective, he did not make any declaration as such and rather, sought for instruction in the matter from the respondent No.3. The Returning Officer, as per the notification dated 30.11.2009, was required to take a decision on the nomination papers, on the date of scrutiny.

16. Clause 18 of the model byelaws for New Gaon Panchayat Level Cooperative Societies placed before this court by Mr. R.P. Sarmah, learned senior counsel, provides for conduct of the meeting of the General Assembly. It appears therefrom that the Returning Officer is to be nominated by the Registrar of Cooperative Societies and nomination paper of a member shall be rejected if a candidate is found disqualified for reasons as provided under byelaw 22. Perusal of byelaw 22 would go to show that the said byelaw does not envisage rejection of nomination paper of a candidate on the ground that his proposer or seconder also supports by way of proposing or seconding any other candidate for the same post.

17. Under section 33 or section 36 of the Representation of the People Act, 1951, as amended by Act of 1956 also, there is no express ban or prohibition against an elector proposing more than one candidate for a single seat constituency. On the other hand, the amendment of section 33 by Act 27 of 1956 would go to show that it was the intention of the Parliament that there should be no ban on the number of nomination papers or the number of candidates to be proposed by an elector for a single seat constituency.

18. In *Amolak Chand v. Raghuveer Singh*, AIR 1968 SC 1203, the facts were as follows : There were 2 nomination papers filed for one Nathu. One nomination paper was filed on 19th January, 1967 at 2.12 p.m. and the second nomination paper was filed on 20th January, 1967 at 12.47 p.m. A nomination paper of one Sitaram was also filed on 20th January, 1967 at 2.32 p.m. In all the 3 nomination papers, the name of the candidate was proposed by one Sharawan, an elector from that constituency. On 21st January, 1967, the Returning Officer rejected the nomination papers of the aforesaid 2 candidates on the ground that the same elector could not propose 2 different candidates for the same

constituency. The Apex Court did not accept the argument that if more than one nomination is made for a single constituency and the nomination are proposed by the same elector, then all the nomination papers should be taken as null and void.

19. None of the parties have been able to point out any bar or prohibition to support, 2 candidates for the same post by a share holder. Therefore, the same analogy equally holds good in the present case. Consequentially, it must be held that both the nomination papers of respondent Nos. 6 and 7 are valid nomination. If that be so, the respondent No. 7 is also entitled to withdraw his nomination.

20. In view of the aforesaid discussion, I am of the considered opinion that no interference is called for with regard to the letter dated 7.11.2009.

21. This court, by an order dated 13.11.2009, had stayed the election scheduled to be held on 15.11.2009 for the post of Chairman only. In that view of the matter, respondent No.2, i.e., the Registrar Cooperative Societies is directed to take such steps as are required to hold election for the post of Chairman of Bhaga Bazar Samabai Samitee Ltd. with the petitioner and the respondent No. 6, Sams Uddin Laskar as the candidates for the post of Chairman. The election shall be held within a period of one month from today with the voter list that was approved for the purpose of holding election on 15.11.2009.

22. The writ petition is disposed of in terms of the above.