
(2007) 09 GAU CK 0016
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 406 of 2007

Rina Gohain

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:

Assam Municipal Act, 1956 — Section 43, 43
Constitution of India, 1950 — Article 226, 226

Citation : (2008) 5 GLR 168

Hon'ble Judges : I.A.Ansari, J

Bench : Single Bench

Advocate : B.K.Nath, D.R.Gogoi, H.Rahman, M.R.Adhikari, P.C.Deka, P.J.Saikia, R.D.Nair, R.P.Sarmah, S.Saha, B.J.Ghosh, B.Chetia, Advocates appearing for Parties

Judgement

1. By making this writ application under article 226 of the Constitution of India, the petitioner puts to challenge the resolution, which the respondents herein claimed to have been adopted, on 2.1.2007, by the Chabua Town Committee, removing the present petitioner and one Shiva Shankar Paul from the Office of the Chairperson and ViceChairman respectively of the said Town Committee. By this writ petition, the petitioner also challenges the legality of the letter, dated 12.1.2007, "issued by the respondent No. 1, namely, Commissioner & Secretary, Government of Assam, Urban Areas Development Department, addressed to the respondent No. 2, namely, Deputy Commissioner, Dibrugarh, whereby a request was made that since Smt. Anju Upadhyay and Sri Bolen Dutta (i.e. respondent Nos. 5 and 6 respectively) were elected, on 2.1.2007, in an emergent meeting of the said Town Committee, by removing the present petitioner and the said Sri Shiv Shankar Paul from the Office of the Chairperson and ViceChairman respectively, there should be peaceful transformation of power from the former to the presently elected Chairperson and Vice Chairman of the said Town Committee.

2. I have heard Mr. R.P. Sharma, learned senior counsel, appearing on behalf of

the petitioner, and Mr. P.C. Deka, learned senior counsel, appearing on behalf of respondent Nos. 5 and 6. I have also heard Mr. BJ Ghosh, learned Govt. Advocate, appearing for the State respondents.

3. The moot question, which the present writ petition, raises is: whether the special emergent meeting of the said Town Committee, claimed by the respondents, to have been held on 2.1.2007, was in accordance with law? This question, in turn, takes one to a more important question and the question is: whether the requisition, dated 11.12.2006, which the respondents claimed to have been given to the present petitioner as the Chairperson of the said Town Committee, for holding a special emergent meeting, on 2.1.2007, for the purpose of holding a motion of no confidence against her and the said Vice Chairman, was in accordance with law ? This question, in turn, brings us to a basic question and the question is what are the conditions precedent for holding of a special emergent meeting of a Town Committee under the provisions of the law relevant thereto?

4. Before I enter into the discussion of the questions posed above, it is necessary to take note of some material facts. These facts may,, in brief, be set out as follows :

(i) The Chabua Town Committee has four elected members from the various wards of the said Town Committee. There are two exofficio members of the said Town Committee by virtue of their being 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. There are also two members, who have been nominated by the State Government in exercise of its power under section 11(2) of the Assam Municipal Act, 1957. A letter, dated 11.12.2006, was addressed to the Chairperson/ViceChairman of the Chabua Town Committee, by two persons, namely, Raju Sahu, i.e., respondent No. 4, who, being a Member of the Legislative Assembly, is an exofficio member of the said Town Committee and the respondent No. 6, who is an elected Commissioner. By this letter, respondent Nos. 4 and 6 alleged that despite several letters given to the Chairperson/ViceChairman of the said Town Committee with regard to holding of a meeting on the motion of no confidence, no meeting had been held and, hence, 2.1.2007 had been fixed as the date for holding of the said meeting. By this letter, respondent Nos. 4 and 6 also requested the Chairperson/ViceChairman to be present in the meeting proposed to be held on 2.1.2007, on the motion of No Confidence. Though the petitioner, as the Chairperson and the said Shiv Shankar Paul, as the Vice Chairman, were not present, a meeting of the said Town Committee was held, on 2.1.2007. In this meeting, a resolution was adopted removing the present petitioner and the said Shiv Shankar Paul from the office of the Chairperson and the ViceChairman of the said Town Committee respectively for their alleged violation of the rules and bylaws of the said Town Committee. This meeting was attended by the persons mentioned below:

1. Raju Sahu MLA.
2. Anju Upadhyay Ward Commissioner.
3. AmbikaPaul Representative of M. P.
4. Bulu Dutta Ward Commissioner.
5. Debananda Chetia Government Nominee.
6. Afiruddin Ahmed Government Nominee.

(ii) The said meeting, held on 2.1.2007, also elected respondent No. 5 as the Chairperson and the respondent Nos. 6 as the ViceChairman of the said Town Committee. Treating the meeting, so held on 2.1.2007, as a meeting held in accordance with law, the impugned letter, dated 12.1.2007, aforementioned has been issued by the Commissioner & Secretary, Government of Assam, Urban Areas Development Department, requesting the Deputy Commissioner, Dibrugarh, to ensure that in terms of the decision, taken in the special emergent meeting, held on 2.1.2007, there shall be peaceful transfer of power in favour of respondent No. 5 and 6 in respect of the offices of the Chairperson and Vice Chairman of the said Town Committee respectively.

(iii) As already indicated above, the very holding of the special emergent meeting, on 2.1.2007, is under challenge in the present writ petition. It is, therefore, necessary to determine if the special emergent meeting, held on 2.1.2007, was in accordance with law.

5. While considering the present writ petition, what needs to be borne in mind is that Section 334 read with section 336 of the Assam Municipal Act, 1956, ("the said Act") empowers the State Government to notify the area to which the provisions of any section of the said Act shall, subject to such restrictions and modifications, if any, as the State Government may prescribe, apply. Upon such a notification, the Town Committee, which is constituted under section 335, shall be deemed to be a Municipal Board, the notified area shall be treated as a municipal area and the members of the Town Committee shall be treated as Commissioners.

6. The question, now, is as to whether there is a difference between, the members of a Municipal Board and its Commissioners. A quest for an answer to this question will bring one to section 11 of the said Act. Subsection (1) of section 11 states that the number of Commissioners of each Municipal Board shall be such as the State Government may, by notification, determine in this behalf. The proviso to subsection (1) of section 11, however, restricts the maximum number of Commissioners to thirty and also obliges the Government not to have less than ten Commissioners in each Municipal Board. Subsection (2) of section 11 empowers the State Government to appoint persons having special knowledge or experience in Municipal administration as members, who shall have the right to attend and speak at all meetings of the Municipal Board, but shall

have no right to vote. Subsection (2) of section 11 states, in no uncertain words, that persons, so nominated, shall not be deemed to be Commissioners for the purpose of the said Act.

7. Thus, subsection (2) of section 11 leaves no room for doubt that so far as the persons nominated under subsection (2) of section 11 and are concerned, who are commonly called nominated members, shall not be treated as Commissioners of the Municipal Board or Town Committee to which they may have been nominated to and though they shall have the right to speak at all the meetings of the Board, they shall have no right to vote.

8. Clause (a) of subsection (3) of section 11 makes 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, shall be the exofficio Members of the Board. Clause (b) of subsection (3) of section 11 provides that the members of the Council of States registered as Elector within a Municipal area shall be the exofficio Members of the Municipal Board of the area concerned. Thus, the MLAs and MPs, who by virtue of their holding such offices, become exoffice members of the Municipal Board or the Town Committee, as the case may be.

9. Thus, a careful analysis of the provisions of section 11 leaves no room for doubt that there are three categories of persons, who constitute a Municipal Board. The first category is of the persons, who are elected as Commissioners from various wards of the Municipality. They are commonly called as elected members. The members of the House of the People and the Members of the Legislative Assembly of the State of Assam, whose constituencies comprise, fully or partly the municipal area and also the members of the Council of the State, who may be registered as elector within the Municipal area, shall be treated to be exofficio members of the Board. The third category is of those persons, who may have been nominated by the State Government to a Municipal Board, because of their having special knowledge or experience in municipal administration. They are commonly called nominated members. While the elected members will, undoubtedly, have the right to speak and also the right to vote at every meeting of the Board, the nominated members will have no right to vote.

10. The question, now, is as to whether the Members of the House of the People and the Members of Legislative Assembly of the State of Assam or that the Council of States, who, by virtue of the provisions of subsection (3) of section 11, may have become the exofficio members of the Municipal Board shall be treated as Commissioners and shall have the right to vote or not.

11. The question raised above brings me to section 3(5), which defines "Commissioner" to mean the persons, for the time being appointed or elected, to conduct the affairs of any municipality under the said Act.

12. The definition of Commissioner as given in section 3(5) needs to be

considered in the light of the provisions of section 25 of the said Act. This section reads as under :

"25. Taking of oath. (1) Every person who is elected to be Commissioner of the Board or who becomes Commissioner of the Board by virtue of office, shall, before taking his seat at a meeting of the Board first attended make an oath or affirmation of his allegiance to the Union of India in the following form, namely:

"I.A.B. having been elected/exofficio Commissioner of this Board do swear in the name of God or solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by Law established, and will faithfully discharge the duty upon which I am about to enter."

(2) Any person having been elected a Commissioner fails to make, within three months from the date of the first meeting of the Board the oath or affirmation laid down in subsection (1), shall cease to hold his office and his seat shall be deemed to have become vacant."

13. A careful reading of section 25 shows that every person, who is elected to be a Commissioner of the Board or who becomes Commissioner of the Board by virtue of his office, shall, before taking his seat at the meeting of the Board first attended, make an oath for affirmation. The contents of the oath, as quoted above, clearly show that not only the elected, but even the exofficio Commissioners of the Board are required to take oath. Thus, section 25 draws no distinction between elected Commissioners and those, who, by virtue of being either MLAs or MPs, become the exofficio Commissioners of Municipal Board or Town Committee.

14. Bearing in mind the fact that apart from the persons elected as Commissioners to a Municipal Board, the MLA or the MP, by virtue of their being exofficio Commissioners of the Municipal Board of a Municipal Board or a Town Committee, as the case may be, shall have the right not only to speak at its meetings, but also the right to vote, let me, now, come to the provisions for removal of the Chairman and ViceChairman of a Municipal Board or a Town Committee. It is section 28 of the said Act, which governs removal of Chairman and ViceChairman. Section 28 reads as follows :

"28. Removal of Chairman, and ViceChairman. (1) [***]

(2) An elected Chairman or ViceChairman may be removed from his office by a resolution of the Board in favour of which not less than half of the whole number of Commissioners shall have given their votes at a meeting specially convened for the purpose.

(3) The State Government after giving an opportunity to explain, may remove the Chairman or ViceChairman from his office if he is persistently omitting or refusing to carry out or: disobeying the provisions of this Act and the rules thereunder or any lawful orders issued thereunder or he becomes incapable of so acting or is declared insolvent or is convicted by a criminal court for any offence

involving moral turpitude."

15. A careful reading of section 28 shows that an elected Chairman or ViceChairman may be removed from his office by a resolution of a Municipal Board or Town Committee in favour of which not less than half of the total number of Commissioners of the Board or town committee shall have to give their votes at a meeting specially convened for such purpose. These provisions show that in order to remove an elected Chairman or ViceChairman of a Municipal Board or Town Committee, not less than half of the total number of Commissioners shall have given their votes at a meeting specially convened for the purpose of removal of the Chairman and/or the ViceChairman, as the case may be.

16. How a special meeting, as envisaged in section 28 can be convened or held, is reflected by section 43 of the said Act, which reads thus:

"43. Ordinary and special meetings. (1) The Commissioner shall meet for the transaction of business at their office, at least once in every month, and as often as a meeting shall be called by the Chairman or, in his absence, by the ViceChairman.

If there be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting.

(2) The Chairman, or in his absence, the ViceChairman may call a special meeting whenever he thinks fit and shall call one on a requisition signed by not less than three of the Commissioners.

(3) If the Chairman or the ViceChairman fails to call special meeting to meet within twenty days after any such requisition has been made, the meeting may be called by the persons who signed the requisition."

17. From a careful and combined reading of subsections (2) and (3) of section 43 of the said Act, what becomes transparent is that the Chairman or ViceChairman of a Municipal Board or Town Committee may call a special meeting on a requisition signed by not less than three Commissioners and if the Chairman or ViceChairman, as the case may be, fails to call the special meeting within twenty days after such requisition has been made, the meeting may be called by these persons, who had signed the requisition. These provisions, in turn, clearly show that the special meeting can be called by those persons, who had signed the requisition for a special meeting, and subsection (3) of section 43 makes it explicit clear that requisition for special meeting must be signed by not less than three of the Commissioners.

18. In the case at hand, Chabua Town Committee has, admittedly, four elected Commissioners and two exofficio Commissioners by virtue of their being MLA and MP of the areas, falling under the said Town Committee. However, the requisition,

in the present case, for the special meeting to be held on 2.1.2007 was, admittedly, given on 11.12.2006 and this requisition was signed by only two persons, namely, respondent No. 4, who is MLA of the area, and respondent No. 6, who is an elected Commissioner. Thus, the requisition for the meeting, even if assumed to have been given to the Chairperson and/or ViceChairman of the said Town Committee, was not a valid requisition inasmuch as only two of the Commissioners had signed the said requisition, though a requisition for such a special meeting ought to have been signed by, at least, three Commissioners. The requisition, so given, being illegal, the Commissioners derived no right, under section 43(3), to hold the said special meeting. Thus, the meeting, held on 2.1.2007, was wholly without jurisdiction and the resolutions adopted, therein, removing the Chairperson and the ViceChairman of the said Town Committee, was devoid of any force of law and cannot, therefore, survive.

19. At the time of hearing of this writ petition, it has been contended by Mr. P.C. Deka, learned senior counsel, that the total number of Commissioners of Chabua Town Committee being six, it is impossible to get three Commissioners to sign the requisition. Suffice it to point out, in this regard, that the resolution of the meeting, held on 2.1.2007, was, admittedly, signed by two elected Ward Commissioners and the local MLA as Commissioner. Hence, three Commissioners attended the meeting. It was, therefore, not impossible for three Commissioners to sign the said requisition. By referring to *Air India Statutory Corporation, etc. v. United Labour Union and Ors.*, AIR 1997 SC 645, Mr. P.C. Deka, learned senior counsel, has tried to impress upon this court that this court, while exercising power under article 226 of the Constitution of India, can pass any order in the interest of justice. While considering the submissions, so made, it needs to be emphasized that the exercise of power under article 226 of the Constitution has to be to uphold the majesty of law and not to run down the law. So long as provisions of a statutory are not held to be ultra vires, the High Court has the duty to interfere with every act, which is violative of such provisions instead of putting its seal of approval on such acts by referring to or relying, the provisions of article 226. In the case at hand, none of the provisions of the Assam Municipal Act is under challenge. When the provisions of the statute are not interferable, the question of ignoring the provisions of the statute concerned or overriding the same in exercise of power under article 226 does not arise at all.

20. What crystallizes from the above discussion is that the requisition for holding of the special meeting, as claimed to have been given by the respondent Nos. 4 and 6, was not a valid requisition and, on allegation of such a requisition having not been acted upon by the present petitioner, no right had accrued in favour of any of the Commissioners of the said Town Committee to hold a special meeting as was held on 2.1.2007. Moreover, when the special meeting itself was held in violation of law, the resolutions, adopted in the said meeting, cannot be held to carry any force of law.

21. Because of what have been discussed above, the impugned requisition, dated

11.12.2006, and the resolutions, adopted in the special meeting, held 2.1.2007, need to be set aside and, in consequence thereof, the request, made by the respondent No. 1 to the respondent No. 2, for ensuring transfer of power to the respondent Nos. 5 and 6, as indicated hereinabove, cannot survive.

22. In the result and for the reasons discussed above, this writ petition succeeds. The impugned requisition, dated 11.12.2006, the resolutions, adopted in the meeting, held on 2.1.2007, and the request contained in the letter, dated 12.1.2007, aforementioned are all hereby set aside and quashed. The interim directions, passed in this writ petition, on 23.2.2007, allowing the present petitioner to continue to function as the Chairman of the Chabua Town Committee, are hereby made absolute.

23. With the above observations and directions, this writ petition shall stand disposed of.

24. No order as to cost.