

(1998) 06 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 4002 of 1997

Sharat Sharma and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-06-1998

Acts Referred:

Assam General Clauses Act, 1915 — Section 10
Assam Municipal Act, 1956 — Section 11(2), 33(2)
Assam Municipal Rules, 1956 — Rule 1, 10, 3, 5, 6
Constitution of India, 1950 — Article 226
Representation of the People Act, 1951 — Section 33(1A)

Citation : (1999) 1 GLT 92

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

Bench : Single Bench

Advocate : H. Das and N.S. Deka, for the Appellant; H.N. Sarma, Addl. Sr. G.A. and H. Deka, for the Respondent

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution of India, the Petitioners have prayed for quashing the election of Chairperson and Vice-Chairman of Rangia Municipal Board held on 23.8.97 in the office of the Rangia Municipal Board.

2. Petitioners No. 1 to 5 are all Commissioners of the Rangia Municipal Board elected from Ward Nos. 3, 5, 4, 2 and 7 respectively in June, 1997. The Sub-Divisional Officer (Civil), Rangia sent a notice dated 2nd August, 1997 to all the Commissioners of the Rangia Municipal Board including the Petitioners that the first meeting of the Rangia Municipal Board would be held on 23rd August, 1997 at 10.30 a.m. and in the said notice the Agenda for the meeting comprised of (i) oath taking; (ii) selection/election of Chairperson; and (iii) selection/election of Vice-Chairman. Along with the said notice, a copy of the Second Schedule to the Assam Municipal Act, 1956, which detailed the business and procedure at the first meeting of the Municipal Board, was sent to the Commissioners. Thereafter, by a notice dated 22.8.97, the Sub-Divisional Officer (Civil), Rangia, nominated

Sri Kunjadhar Deka, Petitioner No. 2, to preside over the said meeting. In accordance with the said notice, the first meeting of the Rangia Municipal Board was held on 23.8.97 in the Office of the Rangia Municipal Board and the Petitioner No. 2 presided over the meeting. When the Agenda for election of Chairperson and Vice-Chairman was taken up, the Sub-Divisional Officer (Civil), Rangia, (for short "S.D.O. (C), Rangia"), informed the President of the meeting that he had received only two nomination papers from Respondents-4 and 5 for the posts of Chairperson and Vice-Chairman of the Rangia Municipal Board. The case of the Petitioners in the writ petition is that beside, the said nomination papers of Respondents - 4 and 5 Mrs. Leni Deka and Md. Safiur Rahman were also proposed for Chairperson and Vice-Chairman respectively by the Petitioners in the nomination papers submitted to S.D.O. (C) Rangia. The further case of the Petitioners is that the said nomination papers of Mrs. Leni Deka as Chairperson and Md. Safiur Rahman as Vice-Chairman were sought to be submitted by the Petitioners before the S.D.O.(C), Rangia, at his residence on 22.8.97, i.e. on the day presiding the date of the first meeting of the Rangia Municipal Board (hereinafter referred to as "the Board"), but since 22.8.97 was a public holiday, the S.D.O.(C), Rangia, refused to accept the said nomination papers and in the circumstances, the Petitioners submitted the said nomination papers before the S.D.O.(C), Rangia on 23.8.97 in the morning hours; but the same were not considered by the S.D.O.(C), Rangia on the ground that as per Rule (6) of the Second Schedule to the Assam Municipal Act, 1956, (for short "the Act, 1956"), nomination should have been filed before noon of the day preceding the date fixed for the first meeting; in other words, it should have been filed on 22.8.97. The further case of the Petitioners is that at the said first meeting of the Board on 23.8.97, a dispute arose regarding the nomination papers filed by the Petitioners and Petitioner No. 2, who was presiding over the meeting, adjourned the meeting on the demand made by other Petitioners and, thereafter, all the Petitioners left the place of meeting. The S.D.O.(C), Rangia, then nominated Sri Bibekananda Adhikari, Respondent-6, as the President of the meeting and at the said meeting Mrs. Rekha Rani Das, Respondent-4 was elected as chairperson and Sri Pankaj Lahkar, Respondent-5, was elected as Vice-Chairman of the Board.

3. Aggrieved, the Petitioners moved this Court under Article 226 of the Constitution for appropriate final as well as interim relief. On 1.9.97, this Court while issuing notice to the Respondents directed that the case would be listed on 4.9.97 for admission and till 4.9.97 the election of Respondents-4 and 5 would remain suspended. The matter, however, could not be taken up on 4.9.97 and was finally heard on 21.5.98.

4. At the hearing, Dr. H. Das, learned Counsel for the Petitioners, submitted that as per Rule (6) of the Second Schedule to the Act, 1956, any nomination for the election to the post of Chairman could be submitted before noon of the day preceding the date fixed for the first meeting and, therefore as per the said statutory provision, a nomination for election to the post of Chairman could be filed at any time before noon of 22.8.97, Which was the day preceding the date

fixed for the first meeting. But 22.8.97 was admittedly a public holiday; and hence, the nomination for election to the post of Chairman could be filed on the next date, i.e. 23.8.97 before noon as per the law as contained in Section 10 of the General Clauses Act and Section 33(1-A) of the Representation of the People Act, 1951. Dr. Das further contended that under Sub-rule (ii) of Rule 5 of the Second Schedule to the Act, 1956, if the first meeting for any reason proved infructuous and the meeting stood adjourned to some future date to be appointed by the S.D.O., the S.D.O. was required to give at least three days" notice of the adjourned meeting to the Members of the Board. But in the instant case, after the meeting proved infructuous due to dispute in relation to nominations for election to the posts of Chairperson and Vice-Chairman, the S.D.O.(C), Rangia, did not give three days" clear notice to the Members for holding the adjourned meeting and instead held the adjourned meeting immediately after the Petitioners had left the venue of the meeting. In support of this submission, Dr. Das relied on a Division Bench judgment of this Court in the case of Siddheswar Gogoi v. State of Assam and Ors. 1976 ALR 364. Dr. Das then submitted that while all the Petitioners belonged to Congress Party, the Respondents belonged to the ruling party and it is for this reason that S.D.O.(C), Rangia, did not accept the nominations submitted by the Petitioners and continued with the first meeting on 23.8.97 in which Respondents 4 and 5 were elected as Chairperson and Vice-Chairman respectively. According to Dr. Das, therefore, the election of said Respondents-4 and 5 as Chairperson and Vice-Chairman respectively is vitiated by malafide.

5. Mr. H.N. Sarma, learned Additional Senior Govt. Advocate, Assam, appearing for the State-Respondents, on the other hand, contended that the allegation of malafide against the S.D.O.(C), Rangia, has not been substantiated. He pointed out that even though the schedules of election were notified earlier, the Petitioners never raised any objection earlier to the first meeting held on 23.8.97 and that the day preceding the date fixed for first meeting, i.e. 22.8.97 being a public holiday, nominations could not be filed on 22.8.97. He further contended that the minutes of the proceeding of the first meeting held on 23.8.97 do not show that the first meeting was adjourned and it only shows that Petitioner No. 2, who was presiding over the meeting, left the venue of the meeting. Hence, the argument of Dr. Das based on Sub-rule (ii) of Rule (5) of the Second Schedule to the Act, 1956, is misconceived.

6. Mr. H. Deka, learned Counsel appearing for Respondents 4 to 6, contended that the affidavit-in-opposition filed by Respondent-3, S.D.O.(C), Rangia, would show that the Petitioners never went to the house of the S.D.O.(C), Rangia on 22.8.97, as alleged by them, to submit nomination papers for the posts of Chairperson and Vice-Chairman. Mr. Deka pointed out that the Petitioners had also not submitted any objection that 22.8.97 was a public holiday and hence nomination papers for the posts of Chairperson and Vice-Chairman could not be filed. He further contended that the proviso to Sub-section (2) of Section 33 of the Act, 1956 made it clear that the first meeting would be dissolved by the

President only where no business was transacted; but in the instant case some business were transacted at the first meeting held on 23.8.97 and thereafter the Petitioner No. 2, who was presiding over the first meeting, left the venue of the meeting. In the circumstances, the S.D.O.(C), Rangia, acting as a Magistrate under Rule (3) of the Second Schedule to the Act, 1956, appointed another Member, namely, Bibekananda Adhikari, Respondent-6, to preside over the meeting. According to Mr. Deka, considering the fact that the meeting was never adjourned and it was the same meeting which continued, the original notice dated 2nd August, 1997, issued by the S.D.O.(C), Rangia, for holding the first meeting on 23.8.97 for election to the posts of Chairperson and Vice-Chairman of the Board subsisted and there was no necessity of a fresh notice of the meeting to the Members of the Board as contended by Dr. H. Das, learned Counsel appearing for the Petitioners. Mr. Deka finally submitted that Section 10 of the Assam General Clauses Act, 1915, applied only if something was to be delivered in the office of the S.D.O.; but the Rules in the Second Schedule to the Act, 1956 do not indicate that the nomination was to be delivered in the office of the S.D.O. (C), Rangia

7. Section 10 of the Assam General Clauses Act, 1915, is quoted hereunder:

10. COMPUTATION OF TIME.-

Where, by any Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or Office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1908, applies.

On a plain reading of the aforesaid Section 10 of the Assam General Clauses Act, 1915, it would be clear that where, by any Assam Act, any act is allowed to be done or taken in any office on a certain day or within a prescribed period, then, if the office is closed on that day or the last day of the prescribed period, the act shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the office is open. Rule (6) of the Second Schedule to the Act, 1956, is a provision of the Assam Act and has to be interpreted consistent with the aforesaid Section 10 of the Assam General Clauses Act, 1915. The said Rule (6) of the Second Schedule to the Act, 1956, is quoted here in below:

(6) At any time before noon of the day preceding the date fixed for the meeting under Rule (1) any member may nominate any other member, not being an officer of Government appointed under Sub-section (2) of Section 11 of the Act, for election as Chairman, by delivering to the Magistrate or to any other officer appointed by the Magistrate in this behalf a nomination paper signed by himself

as proposer and by a third member as seconder and stating:

(a) the name of the member nominated, and

(b) that the proposer has ascertained that such person is willing to serve as Chairman if elected.

As per the aforesaid Rule (6) of the Second Schedule to the Act, 1956, nomination for election as Chairman has to be delivered to the Magistrate or to any officer appointed by him in that behalf at any time before noon of the day preceding the date fixed for the first meeting under rule (1) of the Second Schedule to the Act, 1956. In Rule (10) of the Second Schedule to the Act, 1956, "Magistrate" has been defined to mean "in the case of a municipality in a sub-division, the Sub-Divisional Magistrate. Hence, the nomination in the case of Rangia Municipal Board, has to be delivered to the Sub-Divisional Magistrate, Rangia or any officer appointed by him in that behalf. Obviously, the expression, "Magistrate or any other officer appointed by the Magistrate" would imply such Magistrate or officer at his office. It is difficult to accept the contention of Mr. Deka, learned Counsel for the private-Respondents 4 to 6, that nomination papers can, under the said rule, be delivered to the Magistrate or any other officer appointed by the Magistrate at his residence. It is also difficult to accept the contention of Respondent-3, S.D.O.(C), Rangia, in his affidavit-in-opposition that nominations in matters of election could be accepted on a holiday. The proviso to Sub-section (1-A) of Section 33 of the Representation of the People Act, 1951, cited by Dr. Das, on the other hand, clearly stated that no nomination paper is to be delivered to the Returning Officer on a day which is a public holiday. Since, 22.8.97, the day preceding the date fixed for the first meeting was a holiday, nomination for election as Chairman under rule (6) of the Second Schedule to the Act, 1956, read with Section 10 of the Assam General Clauses Act, 1915, therefore, could be delivered in the office of the S.D.O.(C), Rangia, on 23.8.97 before the Agenda for election as Chairman was taken up by the first meeting of the Board.

8. Of course, the Petitioners could have submitted the nomination paper for election as Chairman before 22.8.97 as contended by the learned Respondents. Further, the Petitioners do not appear to have submitted any objection before the S.D.O.(C), Rangia that 22.8.98 was a public holiday and nomination could not be effectively filed. But such conduct on the part of the Petitioners for not having filed the nomination for election as Chairman prior to 22.8.97 and for not having raised their objection earlier before the authorities that 22.8.97 was a public holiday, cannot be a bar for the said Petitioners to submit nomination for election to the post of Chairman on 23.8.97 before the Agenda for election was taken up at the first meeting of the Board, if under the law they were entitled to submit the nomination for the post of Chairman on 23.8.97.

9. That apart, the Respondents have not been able to show as to what prejudice they would have suffered if the nominations filed by the Petitioners before the

S.D.O.(C), Rangia, were considered by him, particularly when the election to the posts of Chairman and Vice-Chairman had not taken place when the said nominations were delivered by the Petitioners to the SDO(C), Rangia. Assuming that the S.D.O.(C), Rangia on a bonafide interpretation of rule (6) of the Second Schedule to the Act, 1956 was of the view that the nomination for election to the post of Chairman should have been filed on 22.8.97, there is no good reason for the S.D.O.(C), Rangia, to have refused to consider the nomination for election to the post of Vice-Chairman as there is nothing in Rule (6) or any other rule of the Second Schedule to the Act, 1956 to show when the nomination for election to the post of Vice-Chairman of the Municipal Board was to be filed. I am, therefore, of the considered opinion, that the S.D.O.(C), Rangia, Respondent-3, acted contrary to law in not considering the nomination papers filed by the Petitioners before him on 23.8.97 at the first meeting of the Rangia Municipal Board and the election of Respondents-4 and 5 to the posts of Chairperson and Vice-Chairman of the said Board respectively is liable to be quashed as a consequence of the said illegality.

10. For the aforesaid reasons, the Petitioners are entitled to the relief as claimed in this writ petition and it is not necessary for me to deal with the other contentions raised by Mr. Das in this writ petition. In the result, this writ petition is allowed and the election of Respondents-4 and 5 as Chairperson and Vice-Chairman respectively of the Rangia Municipal Board in the first meeting held on 23.8.97 is quashed, and the State-Respondents are directed to take fresh action in the matter in accordance with law. However considering the facts and circumstances of the case, there shall be no order as to costs.