
(2008) 03 GAU CK 0058
In the Gauhati High Court

Sumitra Ghosh

APPELLANT

Vs

Suprakash Sarkar and Others

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 GLT 662

Hon'ble Judges : Jasti Chelameswar, C.J;Iqbal Ahmed Ansari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Expressing their loss of confidence in the appellant herein as Chairperson of Dhubri Municipal Board (in short, "the said Board") respondent Nos. 1 to 10 herein gave, as Ward Commissioners of the said Board, a notice, in writing, to the appellant herein requesting the latter to convene a special meeting of the Board to discuss the no confidence motion.

2. Contending that pursuant to the notice so given, when the appellant herein had failed to convene the special meeting within the prescribed period of twenty days from the date of receipt of the notice by her as Chairperson of the said Board, a special meeting was requisitioned on 20.01.2007 and that in the meeting so requisitioned, the vote of no confidence was carried through, but no meeting of the said Board had, thereafter, been convened to fill up the office of the Chairperson, respondent Nos. 1 to 10 herein came, as writ petitioners, to this Court, with an application, made under Article 226 of the Constitution of India, seeking, inter alia, issuance of appropriate Writ(s) commanding the respondent No. 13 herein, as the Deputy Commissioner of Dhubri, (who was respondent No. 3 in the writ petition) to convene a special meeting of the said Board to fill up the vacancy in the office of the Chairperson, which, according to the writ petitioners, had been created as a result of the no confidence motion having been carried through, in the special meeting of the said Board, held by the requisitionists on 20.01.2007. This writ petition gave rise to WP(C) No. 1544/2007.

3. Resisting the writ petition, the appellant herein (who was respondent No. 4 in the writ petition) contended, inter alia, that on 20.01.2007, no business could be transacted, because there was pandemonium, in the meeting, caused by the Ward Commissioners of the said Board and the Executive Magistrate, who was present there on duty, had to order dispersal of the members attending the meeting.

4. Thus, while the writ petitioners contended, in the writ petition that the meeting had been held on 20.01.2007 and the present appellant (who was respondent No. 4 in the writ petition) had stood removed from the office of the Chairperson of the said Board in consequence of the fact that the motion of no confidence had been carried through, the official respondents as well as the present appellant had contended that the special meeting could not be held due to chaos and unruly behaviour of the members, who had participated in the said meeting.

5. Having come to the conclusion, on the basis of the report of the Executive Magistrate, who was, admittedly, present at the time of the said special meeting, that no business at all could be transacted in the special meeting, which had been convened on 20.01.2007, and that no confidence motion could not be discussed, the learned Single Judge disposed of the writ petition by judgment and order, dated 15.02.2008, with the observations and directions, which read as under:

13. In the aforesaid factual background and keeping in view the provisions contained in Section. 296A of the Act whereby and where under the State Government, Commissioner and Secretary to the Government of Assam in the Urban Areas Development Department, Deputy Commissioner, Dhubri and Director of Municipal Administration Department have been empowered to see that the proceedings of the Municipal Boards are in conformity with law, Deputy Commissioner, Dhubri is directed to ensure convening a meeting of the Board to discuss the no confidence motion brought against the present Chairperson (Respondent No. 4) by the petitioners in terms of the requisition notice dated 26.12.2006 within a period of one month from today.

6. Aggrieved by the directions given by the learned Single Judge, the appellant has preferred this appeal.

7. We have heard Mr. B.C. Das, learned Senior Counsel, appearing for the appellant, and Mr. H.R.A. Choudhury, learned Senior Counsel, appearing on behalf of the respondent Nos. 1 to 10. We have also heard Ms. B. Goyal, learned Govt. Advocate, appearing for the respondent Nos. 11 to 13.

8. The directions, given by the judgment and order, dated 15.02.2008, aforementioned, stand challenged, in this writ appeal, on three specific grounds, namely, (i) that the private respondents herein had, in the past, already made two attempts to remove the present appellant from the office of the Chairperson of the said Board by convening special meetings for this purpose, but on both the

occasions, the motion of no confidence got defeated. Hence, such repeated requisitioning of special meeting for the purpose of carrying out a motion of no confidence is not permissible under the law; (ii) as the no confidence motion could not be carried through in the specially convened meeting on 20.01.2007, the notice of no confidence motion had lapsed and, hence, on the basis of such a notice, no special meeting could have, now, been judicially directed to be convened for the purpose of discussing the said no confidence motion; and (iii) at any rate, the learned Single Judge has seriously erred in law in directing the Deputy Commissioner, Dhubri, to convene the special meeting, for, the Deputy Commissioner, according to the appellant, has no power and no role to play in such matters.

9. As the controversy, in this writ appeal, centers around the interpretation of the provisions of Section 43 of the Assam Municipal Act 1956 (in short, "the said Act"), Section 43 is reproduced herein-below:

43. Ordinary and special meetings

(1) The Commissioners 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 Vice-Chairman.

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 Vice-Chairman, 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 Vice-Chairman fails to call a 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.

10. From a careful reading of the provisions, contained in Section 43, it becomes clear that a special meeting shall be called if a requisition, signed by not less than three of the Ward Commissioners of a Municipal Board for convening such a special meeting, is received by the Chairman or, in his absence, by the Vice-Chairman, Section 43 further lays down that if the Chairman or the Vice-Chairman, as the case may be, fails to call for a special meeting within twenty days after any such requisition had been made, the special meeting may be called by the persons, who had signed the requisition. There is no provision in the said Act barring convening of a special meeting to discuss a motion of no confidence in terms of Section 43 if a motion of no confidence is once defeated. Unlike the Assam Panchayat Act, 1994, the Assam Municipal Act, 1956, does not prescribe any period within which a notice for convening special meeting, in terms of the provisions of Sub-section (2) of Section 43, cannot be given if the

motion of no confidence is once defeated. We, therefore, find no force in the submissions, made on behalf of the appellant, that since the motion of no confidence, held twice, in the past, had been defeated, no special meeting for the purpose of expressing loss of confidence, in the present appellant as the Chairperson of the said Board, could have been, in the present case, requisitioned in terms of Section 43(2). Since the statute, in the present case, does not put any limitation on the number of occasions, when a notice requisitioning a special meeting can be given by the Ward Commissioners of a Municipal Board, the Court cannot restrict the right of the Ward Commissioners to give requisition to the Chairman or Vice-Chairman as the case may be, seeking convening of a special meeting.

11. Coming to the question as to whether a special meeting could have been directed to be convened by the learned Single Judge in the present case, it needs to be pointed out that the clear finding of the learned Single Judge is that the writ petitioners had given a notice, on 26.12.2006, requisitioning a meeting to be convened by the present appellant as Chairperson of the said Board, but the appellant herein had not convened the meeting and, hence, the requisitionists had convened a special meeting, for the purpose aforesaid, on 20.01.2007. According to the learned Single Judge, as this special meeting could not be held, on 20.01.2007, due to unruly behaviour of the Ward Commissioners of the said Board, a direction to convene the special meeting needs to be given.

12. It was contended, in the writ petition, by the present appellant that since the requisitionists could not hold the meeting on 20.01.2007, the requisition, convening the special meeting, must be considered to have lapsed and, hence, on the basis of such a notice, which already stood lapsed, no further meeting can be convened. This submission has not find favour in the writ petition and we see no reason to take a different view, for, the learned Single Judge, according to us, has correctly pointed out that if chaos can be made a reason for a motion of no confidence to lapse, it would give licence to unscrupulous persons, as Chairperson or Vice-Chairperson of a Municipal Board, to create such a situation, whereby the special meeting, though convened, fails to transact any business. Such a course of action, as suggested by the present appellant, would not be in public interest. We are, therefore, firmly of the view that the learned Single Judge has rightly come to the conclusion that on the basis of the requisition, received by the present appellant on 26.12.2006, since no special meeting could be held on 20.01.2007, a special meeting needs to be convened to discuss the motion of no confidence, in question.

13. Mr. B.C. Das, now, submits, as already indicated herein above, that the learned Single Judge has erred in law in directing the Deputy Commissioner, Dhubri, to ensure that a meeting for the Board is convened to discuss the motion of no confidence. For the purpose of ascertaining the correctness of the submissions so made, an examination of the provisions contained in Section 296A is necessary. Section 296A reads:

296 A. Control over proceedings of Municipal Boards

(1) The State Government, the Commissioner of Division, the Deputy Commissioner and the Director of Municipal Administration, shall see that the proceedings of the Municipal Boards are in conformity with law.

(2) The State Government may, by order in writing, annul any proceedings which it considers not to be in conformity with the law and may do all things necessary to secure such conformity.

Provided that no such order shall be made without giving the Board an opportunity of expressing its views on the matter.

14. From a cautious reading of Section 296A, it becomes clear that it is the statutory duty of, amongst others, the Deputy Commissioner to see that the proceedings of the Municipal Board are in conformity with law. In the light of the provisions of Section 296A, it was the duty of the Deputy Commissioner, Dhubri, to ensure that the special meeting, in terms of the requisition made by the Ward Commissioners expressing their loss of confidence in the present appellant, was held in accordance with law. Since this duty has not been effectively discharged by the Deputy Commissioner, Dhubri, the learned Single Judge's direction to the Deputy Commissioner, Dhubri to convene the special meeting, in question, cannot be said to be beyond the provisions of the Act of 1956.

15. Because of what have been discussed and pointed out above, we find no merit in this appeal. This appeal is, therefore, not admitted and the same shall accordingly stand dismissed. No order as to costs.