
(2008) 08 GAU CK 0002

In the Gauhati High Court

Case No : Writ Appeal No. 180 of 2008 in Writ Petition (C) No. 1856 of 2008

Suprakash Sarkar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Assam Municipal Act, 1956 — Section 27, 27(3), 28(2), 293, 296

Citation : (2009) 2 GLR 40 : (2009) 1 GLT 297

Hon'ble Judges : Jasti Chelameswar, C.J.;Asok Potsangbam, J

Bench : Division Bench

Advocate : A. Sharma, R. Devi and N.M. Deka, for the Appellant; B. Goyal, A.K. Sharma, A.K. Goswami and A. Thakur, for the Respondent

Judgement

Asok Potsangbam, J.—The writ appeal is directed against the judgment and order dated 16.6.2008 passed by the learned Single Judge in W.P.(C) No. 1856 of 2008.

2. The controversy involved in this case has a chequered history and the relevant facts which are necessary for disposal of this appeal is stated as follows:

2.1. Dhubri Municipal Board consists of 18 member-Commissioners, 16 elected Ward Commissioners and two ex-officio members. The activities of the Municipal Board including election and resignation of Commissioners, Chairman, Vice-Chairman, etc. are governed by Assam Municipal Act, 1956, hereinafter referred to as the "Act", as amended from time to time.

2.2. The Chairman and the Vice-Chairman of the Municipal Board are elected by member Commissioners and they continue to function and discharge as Chairman and Vice-Chairman as long as they enjoy the support of the majority of the elected Commissioners. Section 28(2) deals with "removal of Chairman and Vice-Chairman". Section 28(2) reads as follows:

28(2) An elected Chairman or Vice-Chairman 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.

2.3. The above extracted Section 28(2) would make it clear that a Chairman or Vice-Chairman may be removed from office if a resolution expressing want of confidence against the Chairman/Vice-Chairman is passed by the Board by not less than half of the whole number of Commissioners in a meeting specially convened for the purpose. For Dhubri Municipal Board, 9 member Commissioners would be the required number for removal of Chairman/Vice-Chairman from office.

3. It is not in dispute that 10 out of 18 members of the Board submitted a requisition dated 26.12.2006 for convening a special meeting of the Board u/s 43(2) of the Assam Municipal Act, 1956; for the purpose of considering the notice expressing want of confidence against the Respondent No. 4 the Chairman of Dhubri Municipal Board. The meeting, as contemplated u/s 43(2) of the Act, was to be convened either by the Chairman or in his absence by the Vice-Chairman. As the meeting was not being convened either by the Chairman or by the Vice-Chairman in terms of Section 43(2) of the Act, the Appellants, along with one another Commissioner, approached the High Court by filing W.P.(C) No. 1544/2007 which was disposed of by the learned Single Bench on 15.2.2008 with certain direction given in para 13 of the judgment and order. Para 13 is quoted below:

13. In the aforesaid factual background and keeping in view the provisions contained in Section 296A of the Act whereby and whereunder the State Government, Commissioner and Secretary to the Govt. of Assam in the Urban Development Department, Deputy Commissioner, Dhubri and the 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.

4. As directed by the court, a special meeting was convened on 13.3.2008, vide notification dated 7.3.2008 issued by the Deputy Commissioner, Dhubri, for consideration of no-confidence motion against the Respondent No. 4. One of the requisitionists of the notice for no-confidence, namely Smt. Tulshi Tior, submitted a letter dated 6.3.2008 to the Deputy Commissioner, Dhubri, informing him that she had never submitted her resignation paper as Commissioner of Ward No. 11 nor had she signed any paper for her resignation. She expressed her apprehension that some of the papers which were signed by her for development works, could be used as her resignation paper and accordingly she requested the Deputy Commissioner not to accept any such resignation letter, if submitted by any person, under any circumstances without giving her an opportunity of being heard. In other words, the Deputy Commissioner was kept well informed as to the mischief likely to be created by vested interest.

5. Pursuant to the notice dated 7.3.2008 issued by the Deputy Commissioner fixing 13.3.2008 as the date for consideration of the no-confidence motion against the Chairman, the special meeting was held with 9 members who are the Appellants before this Court. The proceedings of the meeting held in the presence of one Shri P.K. Sarma, Magistrate Dhubri, recorded that even the notice for the meeting was refused to be received by the Respondent No. 4 and it was, in fact, received by her husband as per report of the Process Server. All the 9 members present in the meeting voted in favour of the motion and motion was carried through. As no action has been taken by the Deputy Commissioner for removal of the Respondent No. 4 even after the no-confidence motion was carried through, the Appellants filed W.P.(C) No. 1395 of 2008 for directing the Deputy Commissioner to take appropriate action for removal of the Respondent No. 4 from the Chairmanship of the Dhubri Municipal Board and for filling up the office of Chairmanship of Dhubri Municipal Board. The learned Single Judge by his order dated 10.4.2008 disposed of the writ petition wherein it was recorded that Smt. Tulshi Tior who was alleged to have tendered her resignation was allowed to cast her vote in favour of the no-confidence motion. The allegation about the resignation was, of course, denied and disputed by the said Smt. Tulshi Tior. Accordingly, the Deputy Commissioner was directed by the learned Single Bench to resolve the controversy after hearing the interested parties within 30th April, 2008 and till then, the affairs of the Board was to be managed by the Deputy Commissioner, Dhubri either directly or through his representative. Pursuant to the aforesaid order dated 10.4.2008, the Deputy Commissioner, Dhubri decided to send a copy of the resignation letter along with signatures obtained from Smt. Tulshi Tior in the presence of Deputy Commissioner to the Director of Forensic Science Laboratory for confirmation as to whether the signatures appearing in the resignation letter is the signature of Smt. Tulshi Tior or not. As the original copy of the resignation letter was not available in the office of the Dhubri Municipal Board which was then being managed by one Shri P.K. Sarma, ACS, the Respondent No. 4 was requested by the Additional Deputy Commissioner vide his communication dated 12.5.2008, to produce the original resignation letter of the 10th Appellant.

6. The document marked Annexure-1, which is said to be the resignation letter dated 25.2.2008 of the 10th Appellant, was formally accepted on 7.3.2008 by the Chairman who is the Respondent No. 4 in this writ appeal.

7. The Respondent No. 4 filed a writ petition being W.P.(C) No. 1856 of 2008 with the following prayers:

In the premises aforesaid, it is humbly prayed that Your Lordships may be pleased to admit this petition, call for the records, and issue a rule, calling upon the Respondents to show cause, as to why a Writ in the nature of certiorari and/or any other appropriate writ or direction should not be issued to quash the impugned order dated 30.4.2008 issued under the signature of Deputy Commissioner, Dhubri whereby allowed one Sri P.K. Sarma, ACS, Assistant

Settlement Officer and Executive Magistrate, Dhubri to look after the affairs of the Dhubri Municipal Board in pursuance of the earlier order dated 18.4.2008 and present writ Petitioner shall remain as Chairperson of Dhubri Municipal Board without any administrative or financial power and on hearing the cause or causes to be shown and on perusal of the records your Lordships may be pleased to make the rule absolute and/or pass such other order or orders as your lordships may deem fit and proper to give full and complete relief to the Petitioner.

8. Perusal of the above extracted prayers would show that the Respondent challenged only the order dated 30.4.2008 issued by the Deputy Commissioner, by which the authority to manage the affairs of Dhubri Municipal Board was given to one Shri. P.K. Sarma, Assistant Settlement Officer and Assistant Magistrate, Dhubri. No other prayer is made in the above mentioned writ petition.

9. The aforesaid W.P.(C) No. 1856 of 2008 filed by the Respondent No. 4 was disposed of by the learned Single Bench on 16.6.2008 by directing the Deputy Commissioner to pass appropriate order in respect of the signature appended to the alleged resignation of Smt. Tulshi Tior on the basis of findings of the Forensic Science Laboratory and this judgment and order dated 16.6.2008 passed by the learned Single Bench is impugned in this writ appeal.

10. It is also brought on record by the learned Counsel appearing on behalf of the Government that pursuant to the impugned order, the learned Deputy Commissioner had already issued an order dated 23.6.2008, acting on the report of the Forensic Science Laboratory, holding that Smt. Tulshi Tior, Commissioner of Ward No. 11 would be deemed to have vacated her office w.e.f. 25.2.2008 as per provision of Section 27(3) of the Act and the unanimous resolution adopted in the special meeting, of the Board held on 13.3.2008 in favour of the no-confidence motion against the Chairperson, Dhubri Municipal Board would stand defeated as the vote of Smt. Tulshi Tior could not be counted.

11. In the backdrop of fact-situation as discussed above, we have to examine the scheme of Assam Municipal Act, 1956. The purpose of the enactment of the Act is to enable the democratically elected Commissioners representing different Wards in the Municipality, to plan development works for the city/town and manage the ever increasing urban needs and municipal affairs. The elected members again elect among themselves, two members to be the Chairman and Vice-Chairman and the Chairman and Vice-Chairman function and discharge their public duties in their respective capacity as long as they enjoy the majority support of the Commissioners. A procedure is provided u/s 28(2) as to how the Chairman and Vice-Chairman are to be removed from office in case they lose the confidence of the Commissioners. All the elected members are answerable to the urban dwellers who have elected them to represent their respective Wards and they are also answerable to Municipal Board which is nothing less than a mini assembly, wherein various issues for the development of the city/town, are discussed and debated before adopting any resolution.

12. Section 27 deals with resignation by Chairman or Vice-Chairman or Commissioner. Section 27(3) is the relevant provision for the case in hand as this provision deals how the resignation of a Commissioner is to be effected. Section 27(3) reads as follows:

27(3) A Vice-Chairman or a commissioner, may resign by writing under his hand addressed to the Chairman and thereupon the Vice-Chairman or the commissioner, as the case may be, shall be deemed to have vacated the office as such. The Chairman shall forthwith inform the Deputy Commissioner or the Sub-divisional Officer as the case may-be, of the resignation and also inform the next meeting of the Municipal Board or Town Committee of such fact.

13. Perusal of Section 27(3), as extracted above, will leave no doubt that a Commissioner may resign by writing under his hand addressed to Chairman and Chairman shall forthwith inform the Deputy Commissioner and also inform the next meeting of the Municipal Board. In the instant case, the alleged resignation letter dated 25.2.2008 was accepted by the Chairman on 7.3.2008 on which day the notification for consideration of the no-confidence motion against the Chairman was issued by the Deputy Commissioner as directed by the court. As admitted in para-9 of the writ petition of the Respondent No. 4, the alleged resignation letter dated 25.2.2008 was forwarded to the Deputy Commissioner only on 7.3.2008.

14. We do not find any explanation being given in the writ petition filed by the Respondent No. 4 or from any documents available before this Court as to why the alleged letter of resignation dated 25.2.2008/was kept with the Respondent No. 4 for 10 days before sending the same to the Deputy Commissioner in terms of Section 27(3) of the Act.

15. Indisputedly, the Respondent No. 4 is an interested person and she has substantial interest in the resignation and acceptance of a member as she stands to gain by such resignation. We are unable to understand, in the absence of any explanation, why the resignation letter had not been sent forthwith in terms of Section 27(3) of the Act. The purpose of informing the Deputy Commissioner forthwith is to ensure safeguards and prevent mischief, misuse, abuse of the provision provided for resignation. Section 27(3) envisages, safeguards, one of which shall be a summary enquiry by the Deputy Commissioner to find out and ascertain the genuineness and intent of a resignation submitted by an elected Commissioner. If the safeguards as discussed above is not contemplated in Section 27(3), Section 27(3) is capable of being misused and abused by person in authority and any one who opposes such authority, may face cessation of his/her Commissionership on the ground of some forged resignation letter. A Constitution Bench of the Apex Court in AIR 1961 SC 838 held in the following words:

...in case the court has to decide the legislative intent. Did the Legislature intend in making the statutory provisions that non-observance of this would entail

invalidity, or did it not? The decide this words used but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and the material danger to the public by the contravention of the same.

16. In the light of the above observation of the Apex Court and also on consideration of the scheme, as discussed above, the intention of the Legislature as provided in Section 27(3) is to be understood essentially involving some safeguards for protection of democratic institution and democratically elected members and therefore the conditions stipulated in Section 27(3) has to be strictly complied with, as non-observance would result to putting the democratic institution in jeopardy. Section 27(3) mandates that on receipt of the resignation of a Commissioner, the Chairman has to send the resignation letter forthwith to the Deputy Commissioner, i.e., without any loss of time and the purpose of sending the resignation letter forthwith, as discussed above, is to enable the Deputy Commissioner to hold a summery enquiry to find out the genuineness of the resignation letter or there was any genuine intention of the concerned Commissioner to resign and/or whether he or she was forced to sign a resignation letter at gun point or under coercion, etc. Thus, the safeguards as discussed above are to be read into Section 27(3).

17. The Communication dated 12.5.2008 issued by the Addl. Deputy Commissioner, Dhubri, requesting the Respondent No. 4 to produce the original resignation letter dated 25.2.2008 of Smt. Tulshi Tior would undoubtedly establish that the original letter of resignation was never sent to the Deputy Commissioner for his consideration till at least up to 12.5.2008. The very fact that the Respondent No. 4 had violated the provisions of Section 27(3) by not sending the resignation letter dated 25.2.2008 for 10 days, would vitiate the order dated 7.3.2008 under No. DM/420/2007-08 issued by the Respondent No. 4 accepting the resignation of Smt. Tulshi Tior. Further, in view of the letter dated 6.3.2008 submitted by Smt. Tulshi Tior to the Deputy Commissioner and also failure to hold a summer enquiry to ascertain as to whether the resignation letter was genuine or there was any intention of the elected Commissioner to resign, there is a failure to discharge the legal obligation cast upon the Deputy Commissioner, Dhubri.

18. Mr. Sarma, the learned Counsel appearing for the Appellant submits that the prayer of the Respondent No. 4 in W.P.(C) No. 1856 of 2008 as extracted above is only for restoring her the power arid authority to manage the affairs of Municipality and no other prayer is made in the writ petition and as such the direction given by the learned Single Bench is uncalled for and misdirected. It is also submitted that the Respondent No. 4 has never directly challenged the proceedings of the special meeting held on 13.3.2008 where she was voted out and as such there is no justification and reason for the learned Single Judge to issue a direction, now under question in this appeal, to the Deputy Commissioner.

19. The possibility of using her signature on some papers submitted for development works was not ruled out by Smt. Tulshi Tior herself but the question

is whether she had submitted any resignation letter with all the intention to resign. After having disputed tendering of the alleged resignation, the 10th appellant also requested the Deputy Commissioner not to act upon the alleged resignation, without giving opportunity of being heard.

20. It is amazing to find that a requisition dated 26.12.2006 for no-confidence motion against the Respondent No. 4, initially by 10 members and subsequently by 9 members, could not be considered and put to vote, for one reason or another, for nearly two years and as a result the Respondent No. 4 continued in office for nearly two years.

21. We have considered the rival submissions and also the matter in its entirety. We are of the opinion that the Respondent No. 4 who had the substantial interest in the resignation letter in question, failed to send the resignation letter forthwith to the Deputy Commissioner and by keeping the same for 10 days in her custody, she has violated the mandate of Section 27(3). It is also observed that Smt. Tulshi Tior has been deprived of the safeguards contemplated u/s 27(3) as no enquiry was held to find out the genuineness or intention of the alleged resignation letter and as such it can be safely concluded that the Respondent No. 4 as well as the Deputy Commissioner failed to observe strict compliance of Section 27(3) of the Act. Further, the power conferred to the Deputy Commissioner under Sections 293, 296 and 296A to ensure and enquire that the provisions of the Act are implemented without abuse and misuse, is not seen to have been exercised by the Deputy Commissioner in the instant case.

22. With regards to the submissions of the learned GA that pursuant to the order dated 16.6.2008 passed in W.P(C) No. 1856 of 2008, the Deputy Commissioner had already issued an order on 23.6.2008 holding Smt. Tulshi Tior, Commissioner of Ward No. 11 have vacated her office w.e.f. 25.2.2008 on the basis of the Forensic Science Laboratory and not having challenged the same, no effective order can be passed by this Court. This contention is rejected in view of the decision of the Apex Court reported in Badrinath Vs. Government of Tamil Nadu and Others,

23. The objection of the 10th Appellant Tuisi Tior as can be seen from the earlier letter written by her on 6.3.2008 is that the letter purporting to communicate the resignation of the said Appellant was a fabricate letter. We have already noticed that the original letter was never forwarded by the Chairman to the Deputy Commissioner but much later it was brought on record on 12.5.2008 at the instance of the Addl. Deputy Commissioner. Looking at the document the 10th Appellant also objected that the signature appended to the alleged letter of resignation is also forged signature, In substance the 10th Appellant took alternative pleas, firstly that the alleged letter of resignation is a fabricated one and secondly that the signature appended to the letter is a forged one.

24. The conduct of the Chairman (Respondent No. 4) at every stage in seeking to avert the No Confidence Motion creates any amount of doubt as to the

genuineness of the alleged letter of resignation by the 10th Appellant. It is settled law that in such matter the party disputing the document can take alternative pleas.

25. A learned Judge of this Court by order dated 16.6.2008 directed an enquiry only to the question of genuineness of the signature of the 10th Appellant. Consequentially only that aspect of the matter was enquired into by the Deputy Commissioner. The other question whether the document itself was the fabricated document, though the signature was genuine, still remains unexamined. The conduct of the Appellant is consistently one of negation to resignation. Though it transpires by virtue of the forensic laboratory opinion that the signature appended to the resignation letter is that of the 10th Appellant, such fact by itself does not conclusively determine the issue. The question whether the Appellant did in fact tender the resignation or not is required to be examined and such an examination is required to be conducted by the Dy. Commissioner. This aspect of the matter was not considered at all. In view of the fact that the signature appended to the alleged letter of resignation is established to be that of the 10th Appellant, the only legal consequence that follows is that the burden to establish that the document is a fabricated document shifts to the 10th Appellant.

26. In the circumstances we direct the Dy. Commissioner (respondent No. 3) to conduct an enquiry into the question whether the alleged resignation letter of the 10th Appellant produced by the 4th Respondent is a genuine document or a fabricated one after affording opportunity to both the 10th Appellant as well as the 4th Respondent. Depending upon the conclusion arrived at such an enquiry the validity of the vote given by the 10th Appellant in the No Confidence Motion and the consequences thereof would be decided by the 3rd Respondent.

27. We must also deal with the submission of the learned Counsel for the 4th Respondent that as the decision of the 3rd Respondent holding that the resignation of the 10th Appellant is a valid resignation is not challenged by an appropriate proceeding, the same issue cannot be considered in a collateral proceeding like the present appeal. We reject the submission for the reason that such a decision came to be taken during the pendency of the present appeal and we have already indicated while admitting the appeal that any decision taken by the 4th Respondent pursuant to the judgment under appeal would be subject to result of this appeal. We, therefore, see no merits in this submission.

28. In view of the directions issued we deem it appropriate that pending appropriate decision by the Deputy Commissioner pursuant to this order the 4th Respondent shall not continue to function as the Chairman of the Municipality and affairs of the Municipality shall be run by the Deputy Commissioner until the enquiry as ordered for, is completed.

29. In view of the above findings, order dated 23.6.2008 issued by the Deputy Commissioner shall be treated non est except in respect of the findings where it

was held that the signatures appended to the alleged resignation letter is found genuine. We accordingly modify the impugned judgment and order dated 16.6.2008 passed by the learned Single Bench.

30. Writ Appeal stands disposed of as indicated above. No costs.