
(2006) 03 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 2488 of 2005

Surajitdas

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Assam Town and Country Planning (Constitution of Authority) Rules, 1961 — Rule 6
Assam Town and Country Planning Act, 1959 — Section 8
Criminal Procedure Code, 1973 (CrPC) — Section 195, 340
Penal Code, 1860 (IPC) — Section 191, 192, 193

Citation : (2006) 2 GLT 324

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : N. Dutta, D. Saikia, Anita Verma and R. Baruah, for the Appellant;
B.R. Dey, A.K. Paul, D. Choudhury, A. Dasgupta, P. Kataki and D. Bagchi, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The Petitioner who was nominated as the Chairman of Bongaigaon Municipal Board has assailed the action of the Respondents towards his removal as the Chairman. The facts, which have emerged on a total reading of the writ petition and number of affidavits filed by the parties are as follows:

2. The Government of Assam in the Urban Development Department constituted the Bongaigaon Development Authority (BDA) vide Annexure-A notification dated 21.1.2004. and the Petitioner became the chairman and he assumed charge on 22.12.2004. According to the Petitioner, the Respondent No. 5 an elected member of the Legislative Assembly from Abhayapuri Constituency was opposed to the nomination of the Petitioner as the Chairman of the B.D.A., since he was interested in his brother-in-law (Respondent No. 6) to occupy the position. With that mindset, the Respondent No. 5 became active by using his political power to remove the Petitioner as Chairman of B.D.A. paving the way for his brother-in-law to occupy the position.

3. Referring to the various provisions of the Assam Town and Country Planning Act, 1959 and Assam Town and Country Planning (Constitution of Authority) Rule 1961, it is the case of the Petitioner that his purported removal as Chairman of B.D.A. is illegal inasmuch as before such an action, no notice was issued to him and he was not given any opportunity of being heard. Be it stated here that the term of office of the Chairman in the normal circumstances is three years. It will be apposite to refer to the relevant provisions relating to removal of the members of the Municipal Board.

Assam Town and Country Planing Act. 1959

8.B (4) Removal of Members

The State Government may remove from the authority any member including the Chairman who-

A) Refuses to act or becomes of incapable of acting or absents himself from three consecutive meetings of the Authority and is unable to explain such absence to the satisfaction of the Authority;

B) Has so flagrantly abused in any manner his position as a member of the authority as to render to continuance detrimental to the public interest;

Provided that when the State Government proposes to take any action under any of the above provisions, no opportunity shall be given to the matter concerned to show causes why action as proposed should not be taken against him;

C) Ceases to be a member of the local authority from which he was elected.

Assam Town and County Planing (Constitution of Authority) Rules, 1961

Rule 6. Removal of non-official members. The State Government may remove from the Authority any member who-

a) Refuses to act or becomes incapable of acting of absents himself from three consecutive meetings of the Authority and is unable to explain such absence to the satisfaction of the Authority.

b) Has so flagrantly abused in any manner his position as a member of the Authority as to render his continuance detrimental to the public interest.

Provided that when the State Government proposes to take action under the foregoing provisions of this rule an opportunity of explanation shall be given to the member concerned and when such action is taken, reasons thereof shall be placed or recorded;

(c) If he was elected as being a commissioner of the Municipality and if he ceases to be a member of such a Municipality;

(d) A member removed under Sub-clause (a) and

(e) Shall not eligible for re-appointment reelection until the State Government

declares him to be eligible.

4. According to the Petitioner, he having come to know about the move initiated by the State Government at the behest of the Respondent No. 5 to remove him as the Chairman of the B.D.A., he visited the office of the Commissioner and Secretary, Urban Development Department on 23.3.2005 and personally met him. The purpose of such visit was to ascertain the position, but the Commissioner Secretary refused to divulge anything. It is the case of the Petitioner that there being nothing adverse against him, there could not have been any move to remove him, but the same was resorted to at the behest of the Respondent No. 5, who was interested in his brother-in-law. (Respondent No. 6)

5. In view of the aforesaid situation, the Petitioner being apprehensive of his removal invoked the writ jurisdiction of this Court by filing W.P. (C) No. 2434/2005. When the writ petition was listed for motion hearing on 28.3.2005, same had to be adjourned as the vital facts regarding the issue came to light as on that day the Petitioner could come to know about the issuance of the impugned notification dated 14.3.2005, purportedly removing him as the Chairman and appointing the Respondent No. 6 in his place. According to the Petitioner, till then he was not furnished with the copy of the impugned notification dated 14.3.2005.

6. In the aforesaid circumstances the Petitioner filed the present writ petition on 29.3.2005 and this Court by its order, dated 30.3.2005 upon hearing the learned Counsel for the parties was inclined to pass an interim order by way of allowing the Petitioner to continue as the Chairman of the B.D.A. The basic grievance raised by the Petitioner is in respect of the manner and method in which, he has been sought to be removed as Chairman. It is the specific case of the Petitioner that no notice was served on him and he was not given any hearing towards his removal. Even the copy of the impugned notification dated 14.3.2005 was not served on him. In paragraph 10 of the writ petition, the Petitioner has stated thus:

10. That it is respectfully stated that the State Respondents had not issued any notice to the Petitioner and/or granted him any opportunity of hearing prior to issuance of the impugned notification which ousted him from the Office of the Chairman, Bongaigaon Development Authority. In fact, the Petitioner had been kept completely in dark not only before passing of the order contained in the impugned notification to remove him from the post in reference but also he has not been served with a copy of the said impugned notification till date i.e. even after elapse of 2 weeks from the date of issue of the impugned notification. As such the Petitioner could not furnish a copy of the impugned notification dated 14.3.05 along with this writ petition.

7. As against the aforesaid case of the Petitioner that, no notice was served bringing out any allegation against him and there was gross violation of the

principles of natural justice, it is the case of the both official Respondents as well as the private Respondent (Respondent No. 6) that the Petitioner was provided with reasonable opportunity of being heard, but he failed to avail the same. The official Respondents in their counter affidavit have stated about the public complaints against the Petitioner. According to them, on receipt of the complaints, charges were framed against the Petitioner and the show cause notice was issued asking him to show cause as to why action against him in respect of the charges should not be taken. The Petitioner was also intimated that the matter would be heard by the Commissioner and Secretary of the Department during his visit to Bongaigaon on 5th and 6th March, 2005, however, the Petitioner neither Respondent to the notice nor presented himself before the Commissioner and Secretary.

8. The Respondent No. 6 by his first affidavit filed on 4.4.2005 took the same stand as that of the official Respondents. In paragraph 7 of the counter affidavit, the Respondent No. 6 has stated that the Government of Assam in the Urban Development Department issued the show cause notice dated 23.2.2005 to the Petitioner, under the signature of the Under Secretary. The show cause notice contained the charges of violation of official decorum, Government policy and encouragement of corruption etc. against the Petitioner. The Respondent No. 6 has also made certain other allegations against the Petitioner. According to him, the Commissioner and Secretary visited Bongaigaon on 5.3.2005 and conducted an enquiry, but the Petitioner remained absent. Along with the counter affidavit, the Respondent No. 6 has enclosed the copy of the show cause notice dated 23.2.2005 and the notification dated 14.3.2005 reconstituting the B.D.A. with the Respondent No. 6 as the Chairman. It will be pertinent to mention here that the copy of the show cause notice annexed as Annexure-V to the counter affidavit bears endorsement of receipt of the same in the office of the B.D.A. on 26.2.2005 by one Smt. Sunita Das under serial No. 473.

9. The Petitioner by his reply affidavit filed on 5.4.2005 denied the stand of the Respondent No. 6 and for that matter the official Respondents as well. While denying the allegations made against him, the Petitioner has also categorically stated that the show cause notice dated 23.2.2005 was never served on him and he could come to know about the existence of the same for the first time through the counter affidavit filed by the Respondent No. 6. As the Petitioner was not aware of the show cause notice, there was also no question of his attending the enquiry conducted by the Commissioner and Secretary. The Petitioner has asserted that the Superintendent of Police, Bongaigaon never informed the Petitioner to be present at the venue of the enquiry scheduled to be held on 5th of March, 2005. This stand has been taken against the stand of the Respondent No. 6 that the Superintendent of Police was directed to inform the Petitioner to be present at the venue of the enquiry on 5th of March, 2005. It is the categorical stand of the Petitioner that there was no question of receiving the show cause notice in the office by said Smt. Sunita Das, an office staff on 26.2.2005 same being a holiday, being the 4th Saturday of the month. The

Petitioner has categorically stated that the endorsement seal and the signature of Smt. Sunita Das are both forged. The Petitioner has also made allegations about the involvement of the Respondent No. 6 in criminal cases with the further stand that the Respondent No. 6 being the owner of a Wine Shop is not entitled to become the Chairman of B.D.A.

10. After filing of the aforesaid reply affidavit by the Petitioner, the Respondent No. 6 filed another affidavit-in-reply on 13.4.2005. As per the stand in this affidavit, the Superintendent of Police, Bongaigaon directed the Officer-in-charge of Bongaigaon Police Station to serve the show cause notice dated 23.2.2005 on the Petitioner, who in turn directed the Sub-inspector of Police Sri Dipen Das to do the job. On 26.2.2005, the SI submitted a report that he made several attempts to contact the Petitioner at his residence but upon failure to meet him, affixed the copy of the notice on the wall of the Petitioner's residence in presence of three witnesses. The Respondent No. 5 himself in this affidavit has stated that due to the absence of the Petitioner from Bongaigaon Town, the show cause notice could not be served on him.

11. As regards the allegation of the Petitioner that the seal and signature of Smt. Sunita Das are both forged and manufactured, the Respondent No. 6 has denied the same and reiterated and reaffirmed his earlier stand in the first affidavit stating that the signature of Smt. Sunita Das is the genuine one. The Respondent No. 6 has also referred to the purported affidavit sworn by Smt. Sunita Das, before the Chief Judicial Magistrate, Bongaigaon acknowledging receipt of the show cause notice under receipt No. 473 dated 26.2.2005 giving the official stamp of the office of the B.D.A.

12. After the aforesaid stand of the Respondent No. 6, the Petitioner by an additional affidavit-in-opposition filed on 27.9.2005 brought out certain more facts relating to the issue as to whether in fact the show cause notice was served on the Petitioner or not and as to whether the signature of Smt. Sunita Das and the seal of the office are forged one. In this connection the Petitioner has contended that in the Receipt Register of the office of the B.D.A., the receipt No. 473 dates back to 31.8.2001, 16.11.2002 and 29.10.2003 and that at the time when the show cause notice was issued, the Receipt Register contained serial Nos. 989 to 998 and the period has been specified as 22.2.2005 to 28.2.2005. Thus it is the case the Petitioner that there was no question of receiving the show cause notice vide serial No. 473 dated 22.3.2005, which, according to the Petitioner, clearly establishes the act of forgery resorted to by the Respondent No. 6. The Petitioner has also annexed two documents to this affidavit bearing the signatures of Smt. Sunita Das so as to contend that the signature of Smt. Sunita Das appearing in the copy of the show cause notice annexed to the counter affidavit filed by the Respondent No. 6 is a forged one. As regards the purported affidavit sworn in by Smt. Sunita Das before the Chief Judicial Magistrate, Bongaigaon, the Petitioner has contended that such an affidavit was sworn under compelling circumstances.

13. In view of the aforesaid serious allegation against the Respondent No. 6 and denial of the Petitioner that the order dated 14.3.2005 removing him from the office of the Chairman, B.D.A. was served on him, this Court during the course of hearing of the case passed the following order on 30.9.2005. "After hearing the learned Counsel for the parties at some length, I am of the considered opinion that the matter needs further hearing with the following information/instruction:

1. The Commisstoner and Secretary, Govt. of Assam in the Urban Development Deptt. who purportedly issued the order dated 14.3.05 removing the writ Petitioner from the office of the Chairman, Bongaigaon Development Authority shall file an affidavit as to whether the said order was made public and the copy of the same was sent to the Petitioner and he had received the same. Affidavit shall be filed within 2 weeks from today. Records in this regard shall be produced.

2. Although in Annexure V. Letter dated 23.2.05 annexed to the counter affidavit filled by the Respondent No. 6 there is an endorsement bearing No. 473 dated 26.2.05 with the signature of Smt. Sunita Das, prima facie it appears that the said signature of Smt. Sunita does not tally with the signature of Smti. Sunita Das, who has sworn the affidavit on 8.04.05, a copy of which has been produced by to learned Counsel for the Respondent No. 6.

3. Certain documents which are on record also mark the difference in the hand writing. In such a situation, Smti. Sunita Das who is presently serving as L.D. Asstt. in the office of the Bongaigaon Development Authority, Bongaigaon shall appear in person before this Court on 8.11.05 to clarify the position.

Smti Sunita Das shall also bring the records pertaining to the case along with her and shall clarify as to whether the endorsement appearing in the Notice dated 23.2.05 annexed to the affidavit filled by the Respondent No. 6 was given by her and the signature appearing in the said endorsement is in fact her signature.

Learned Counsel for the Petitioner has produced the Receipt Register of the Authority along with Photostat Copy of page 368 of Register. On the other hand learned Counsel for the Respondent No. 6 has produced the original affidavit as sworn by Sunita Das on 8.4.05. All these records shall be kept in sealed cover in the custody of the Registry.

A copy of this order be sent to Smti Sunita Das immediately in the address as LDC, Bongaigaon Development Authority, Bongaigaon.

Learned Counsel for the Petitioner and the Respondent No. 6 may also apprise Smt. Das about this enabling her to appear in this Court on 8.11.2005.

Bring this order to the notice of the Deputy Registrar (J) Copies of this order shall also be furnished to the learned Counsel for the Petitioner and the Respondent No. 6.

14. As per the aforesaid direction of this Court, Smt. Sunita Das, Lower Division Assistant of the office of the B.D.A., appeared in person before this Court. She

was also represented by her engaged counsel Mr. S.S. Sarma, learned Sr. Counsel assisted by Mr. G. Jalan, learned Advocate. Smt. Das denied her signature in the show cause notice purportedly received in the office of the B.D.A. on 26.2.2005 under receipt No. 473. According to her, she had nothing to do with the receipt Section. Further statement made by her was that the show cause notice could not have been received on 26.2.2005, same being a holiday (4th Saturday). As regards the purported affidavit sworn in by her testifying receipt of the show cause notice, she categorically stated that the Respondent No. 6 obtained her signature in the pretext of requirement of the same in connection with Court cases and that she had never gone to the Court to swear any affidavit. She also stated that at that relevant point of time, it is the Respondent No. 6, who functioned as the Chairman of B.D.A.

15. In view of the above revelations made by Smt. Das, this Court passed the following order:

In terms of the order passed by this Court on 17.11.2005, Smt Sunita Das, Lower Divisional Assistant working in the office of the Bongaigaon is present before this Court along with Mr. S.S. Sharma, learned Senior counsel assisted by Mr. G. Jalan, learned Advocate. To the specific questions put to her in terms of the earlier order dated 30.9.05. She has stated as under:

(1) The signature appearing in Annexure-V, the show-cause notice dated 23.2.2005 annexed to the affidavit-in-opposition dated 4.4.2005 filed by the Respondent No. 6, Sri Chandan Dutta by which the show-cause notice was purportedly accepted under Receipt No. 473 dated 26.2.2005 is not her signature.

(2) She has further stated that 26.2.05 being the fourth Saturday, Office was closed and there is no question of accepting the notice on that date. The statement has been made on verification of the attendance register of Bongaigaon Development Authority which has been produced by Mr. N. Dutta, learned Senior Counsel.

(3) She has also stated that she has nothing to do with the Receipt Section of the office and she is not entrusted with the job of receiving documents.

(4) As regards affidavit dated 8.4.2005 stated to be sworn in by her stating that she received the said notice on 26.2.2005 under Receipt No. 473, she has stand that although the signature appearing in the affidavit belongs to her, she signed the affidavit on the request of Respondent No. 6, Sri Chandan Dutta without verifying the contents of the affidavit. She has also stated that for the purpose of swearing the affidavit, she did not go to the paper was obtained by Sri Chandan Dutta on the pretext of requirement of the same in connection with some Court cases. She has stated that at that time Sri Chandan Dutta was the Chairman of Bongaigaon Development Authority.

Since Smt. Sunita Das has made the aforesaid statement after appearing in person before this Court, it will be appropriate to file an affidavit testifying the

aforesaid statement. She will file the affidavit during the course of the day.

During the course of hearing, Mr. D. Saikia, learned Counsel assisting Mr. N. Dutta, learned Senior Counsel appearing on behalf of the Petitioner has produced the attendance register of Bongaigaon Development Authority pertaining to the years 2005-06 on verification of the same it appears that 26.2.2005 was a holiday and accordingly no staff was present on that day except the Chowkidar.

Mr. R.K. Mushahary, learned Senior Govt. Advocate prays for further 7 (seven) days time to comply with the order dated 30.9.2005 in terms of which the Commissioner and Secretary, Govt. Advocate Assam in the Urban Development Department was to file an affidavit in respect of the impugned order dated 14.3.2005.

Let the matter be listed after 1(one) week. Personal appearance of Smt. Sunita Das shall be dispensed with upon filling the affidavit during the course of the day.

The records, which were earlier kept in sealed cover, shall be so kept along with the attendance register of Bongaigaon Development Authority which has been produced today.

16. In terms of the above order dated 6.12.2005, Smt. Sunita Das filed an affidavit on the same date and the same is reproduced below:

AFFIDAVIT

I, Smti. Sunita Das, W/o Shri Bhagirath Das, aged about 33 years, resident of Borpara, Bongaigaon, District-Bongaigaon, (Assam) do hereby solemnly affirm, declare and swear as follows:

1. That I am the permanent resident of Bongaigaon and am working as LDA in the office of Bongaigaon Development Authority and I am swearing this affidavit as per direction of this Hon"ble Court dt 06.12.05.
2. That I state that the endorsement given in my name in Annexure-V in the Affidavit-in-opposition filed by Respondent No. 6, i.e. Shri Chandan Dutta in W.P. (C) No. 2488 of 2005 on 04.04.05 is not mine.
3. That on 26.02.05, being fourth (4th) Saturday, the office was closed, as such, there is no question of my attending the office on said date.
4. That I am not entrusted with the work/job of receiving of official documents in the office, as such I have never received any document or documents vide receipt No. 473 dt.26.02.05.
5. That as regards the affidavit sworn before the Court of Chief Judicial Magistrate, Bongaigaon on 08.04.05 is concerned I state that Sri Chandan Dutta, Chairman of Bongaigaon Development Authority approached me and asked me to sign the said affidavit by stating that the same is required in connection with some Court case and I have signed it, without going through the contents. Neither I read the document nor the copy of said affidavit was given to me and

by taking the statement of the Chairman, I put my signature, as required by him.

6. I do not go to any Court to swear the affidavit and the same was signed by me at my residence and I could not deny the request of Mr. Chandan Dutta to sign the document since he was the chairman and I had to work under him. I even did not dare to ask for a copy of the same nor could insist that I would not sign without reading the contents. I took the statement of Mr. Dutta at face value.

I am swearing this affidavit on this the 6th day of December, 2005 in Court at Guwahati.

17. The Commissioner and Secretary to the Government of Assam in the Urban Area Development Department also filed an affidavit on 5.1.2006. According to this affidavit, the notification dated 14.3.2005 was sent to the Deputy Director, Town and County Planning, Goalpara District exercising jurisdiction over Bongaigaon Town. The copy of the notification was also sent to the Member Secretary, B.D.A. Further statement made is that the notification was also sent to the Assam Government Press for its publication in the official gazette. A copy of the notification, dated 14.3.2005 re-constituting the B.D.A. with the Respondent No. 6 as the Chairman published in the Assam Gazette dated 7.4.2005 was produced during the course of hearing. However, there is no whisper in the affidavit as to whether the copy of the notification, dated 14.3.2005 was sent to the Petitioner and/or served on him.

18. Be it stated here that the order dated 30.9.2005 interalia directing the Commissioner and Secretary to file an affidavit as to whether the order dated 14.3.2005 removing the writ Petitioner from the office of the Chairman was made public and as to whether the same was sent to the Petitioner and he had received the same, was passed in view of the revelation made from the records produced by the learned State Counsel. As per the said records, an order dated 14.3.2005 was passed under the signature of the Commissioner and Secretary removing the Petitioner as Chairman. This order is separate and independent of the notification dated 14.3.2005 reconstituting the B.D.A. with Respondent No. 6 as the Chairman. The order for filing the affidavit was passed in relation to the order of removal. However, the Commissioner and Secretary in his affidavit has maintained silence about the said order and as to whether the same was served on the Petitioner or not.

19. Mr. D. Saikia, learned Advocate led by Mr. N. Dutta, learned Sr. Counsel made submissions on behalf of the Petitioner, while Mr. B.R. Dey, learned Sr. Counsel, assisted by Mr. P. Katakey argued on behalf of the Respondent No. 6. Mr. M.U. Mahmud, learned Counsel represented the Respondent No. 5 and Mr. P.K. Musahary, learned Sr. Govt. Advocate, Assam along with Ms. R. Chakraborty, learned State Counsel represented the official Respondents. Learned Counsel for the respective parties made their elaborate submissions on the basis of the aforesaid materials.

20. The basic issue, which is required to be answered is, as to whether there was

due compliance of the aforesaid provisions of Section 8 of the Act and Rule 6 of the Rules, which envisage opportunity to show cause and furnish explanation in case of seeking to remove the Chairman or the members of the Board before completion of the normal tenure. By the show cause notice dated 23.2.2005, certain allegations were made against the Petitioner and he was directed to appear before the Commissioner and Secretary on 5.3.2005 at 3.00 P.M. at the venue indicated in the show cause notice. It is the definite case of the Petitioner that the notice was ever served on him, nor he was informed of the purported hearing on 5.3.2005. On a total reading of the materials available on records, the irresistible conclusion is that the notice was never served on the Petitioner and he was also not intimated about the hearing fixed on 5.3.2005. Thus, there was no question of the Petitioner responding to the notice and/or appearing at the venue fixed for the hearing.

21. In the counter affidavit, filed by the official Respondents, they have not even stated as to when the show cause notice was issued. Even the date of the show cause notice has not been indicated. Only statement made is that the show cause notice was issued to the Petitioner asking him to explain as to why action should not be taken against him and to appear before the Commissioner and Secretary on 5.3.2005 at the venue fixed for the enquiry. It is the Respondent No. 6, who has annexed the copy of the show cause notice dated 23.2.2005 bearing the receipt seal with serial No. and date with the signature of Smt. Sunita Das. There is no dispute that 26.2.2005 was a holiday being 4th Saturday and thus there was no question of receiving the notice in the office on that day. The attendance Register of the Office of the B.D.A. produced by the Petitioner clearly bears the testimony of the same.

22. Apart from the above, the very person who has been attributed to have received the notice has denied her signature. Upon verification of her signatures appearing in two documents annexed to the additional affidavit-in-opposition filed by the Petitioner on 27.9.2005 and the one in the show cause notice, prima facie it appears that the signature of Smt. Sunita Das appearing in the show cause notice is not her signature. This prima facie satisfaction is further fortified from the signature of Smt. Sunita Das appearing in the affidavit filed by her on 6.12.2005 pursuant to the order of this Court on the same date. This position is also reflected from the affidavit purportedly sworn by her on 8.4.2005 acknowledging receipt of the show cause notice dated 22.3.2005 on 26.2.2005 under receipt No. 473, which was produced before this Court on 30.9.2005 and as recorded in the order dated 30.9.2005. The signature appearing in this affidavit while tallies with her other signatures in the aforementioned documents and the affidavits, same does not tally with the signature in the show cause notice. The Receipt Register produced during the course of hearing also prima facie bears the testimony of the allegations made by the Petitioner in the affidavit about which a mention has been made above. All these factors drive us to the irresistible conclusion that the Respondent No. 6 being over enthusiasm in his endeavour to show that in fact the show cause notice was served on the

Petitioner resorted to falsehood and manipulation of records and to cover up the same, resorted to further manipulations.

23. In view of the aforesaid revelations from the records, there is no manner of doubt that the show cause notice was never served on the Petitioner and the affidavit purportedly sworn by Smt. Sunita Das on 8.4.2005 acknowledging receipt of the notice by her is of no consequence, more so, when she has disowned the same by her statement before the Court on 6.12.2005 supported by the affidavit filed by her on the same date. She has explained the circumstances leading to purported swearing of the affidavit dated 8.4.2005. In fact as per her statement she had never gone to the Court to swear the affidavit but the Respondent No. 6 intimating her that the same was required in connection with Court cases obtained her signature. The position of Smt. Sunita Das and the circumstances in which she had to sign the document can well be understood, she being the Lower Division Assistant of the office under the deep and pervasive control of the Chairman who at that point of time happened to be the Respondent No. 6. Be it stated here that the stand of Smt. Sunita Das has not been denied by the Respondent No. 6.

24. Apart from the above conclusion that the show cause notice was never served on the Petitioner, there are other aspects of the matter. Even assuming that the show cause notice was received by the Smt. Sunita Das, in absence of anything to show that she in turn had handed over the same to the Petitioner, it cannot be said that the show cause notice was served on the Petitioner. As per the statement made by the Respondent No. 6 in his affidavit, the show cause notice was directed to be served on the Petitioner through the Superintendent of Police, who in turn authorized the task to the Officer-in-charge, Bongaigaon Police Station. According to the Respondent No. 6 the officer-in-charge entrusted the job to Sri Dipen Das, S.I. of Police. It is not understood as to why such a course of action towards service of the show cause notice on the Petitioner at the very first instance had to be resorted to. The Petitioner being the Chairman of B.D.A., in the normal circumstances ought to have been served with the notice as per the normal routine procedure. It is only on refusal to accept the notice, the kind of procedure as reflected in the affidavit filed by the Respondents No. 6 could have been resorted to. All these factors, lead to the irresistible conclusion that even the official Respondents being influenced by extraneous consideration resorted to actions in high haste and in the process, eventually, damaged their own case.

25. The records produced by Mr. Musahary, learned Sr. Government Advocate, contained the order dated 14.3.2005 bearing No. UDD(T)24/2001/Pt/38. It was by this order, the Petitioner was removed as Chairman. There is nothing to show that the order was circulated. This is precisely the reason as to why by order dated 30.9.2005, the Commissioner and Secretary was directed to file an affidavit as to whether the said order was made public and also as to whether the same was sent to the Petitioner and he had received the same. The affidavit

filed by the said Commissioner and Secretary is totally silent about the said order and the same simply confines to the notification dated 14.3.2005 by which the B.D.A. was reconstituted with the Respondent No. 6 as the Chairman. This leads us to the irresistible conclusion that the order dated 14.3.2005 as contained in the file purportedly removing the Petitioner, as Chairman of B.D.A. was never made public not to speak of issuance of the same to the Petitioner. Law is well settled that, in order to be effective, an order passed by the State or its functionaries must be communicated to the person who would be affected by that order and until the order is so communicated the said order is only provisional in character and cannot be acted upon.

26. The decisions on which Mr. Dey, learned Sr. Counsel appearing for the Respondent No. 6 placed reliance namely Rattan Chand Hira Chand Vs. Askar Nawaz Jung (Dead) by Lrs and Others, ; Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi, ; Tarak Singh and Another Vs. Jyoti Basu and Others, and Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), are on the emphasis on substantial justice. Placing reliance on these decisions, it was argued that the procedural irregularity may not be weighed and balanced when the substantial justice is pitted against the same. When there is no quarrel with this proposition of law so well established, same is of no help to the case of the Respondent No. 6, who apart from being precluded to talk about substantial justice has also not been able to make out a case as to how the concept of substantial justice is applicable to his case. In the name of substantial justice he cannot be allowed to resort to the kind of action, as reflected above, for his personal gain.

27. Above being the position of fact as well as of law, I have no hesitation to set aside and quash the order and the notification both dated 14.3.2005 and consequently, the Petitioner shall continue to function as the Chairman, B.D.A. till completion of the normal tenure or he is removed from the office with due compliance of the provisions of the Act and the Rules.

28. This now leads us to another very important aspect of the matter, which the Petitioner insisted upon by filing Misc. Case No. 4114/2005. By this application, the Petitioner referring to the aforesaid aspects of the matter has prayed for necessary direction to the Registry of this Court or any other authority or person to lodge a complaint before the competent Court of law for holding an enquiry under the provisions of Section 340 read with Section 195 Code of Criminal Procedure in respect of the purported offence committed by the Respondent No. 6 u/s 191 and 192 IPC punishable u/s 193 IPC in respect of the present writ proceeding. It will be pertinent to mention here that in spite of opportunity given, the Respondent No. 6 did not respond to the Misc. Case.

29. As noticed and observed above, there is prima facie materials against the Respondent No. 6. Coming to the writ Court, prima facie he reported to falsehood and manipulation of records. He has even filed false affidavit relating to service of the show cause notice on the Petitioner. Emphasizing the importance of

verification of affidavit, the Supreme Court in A.K.K. Nambiar Vs. Union of India (UOI) and Another, stated thus:

The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records, the incorporate of verification is to rest the genuineness and authenticity of alligations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence.

30. Justice oriented approach does not permit a party to tamper with the records and resort to falsehood. Tampering with the relevant record making interpolations with forging of signature etc. and then being caught, resorting to further falsehood in the writ proceeding and for that matter in any Court proceeding is something which is wholly impermissible and any amount of leniency shown would tantamount to putting a premium on such malpractices which not only pollute the sanctity of oath but also pollute the Court proceeding.

31. The writ petition is allowed with cost of Rs. 5,000/- awarded against the Respondent No. 6 to be realized by the Registry in accordance with Rules.

32. In view of the above, I am of the considered opinion that adequate criminal proceeding be drawn up against the Respondent No. 6, for which the Registry is directed to take appropriate steps in accordance with the provisions of Section 340 read with Section 195 of the Code of Criminal Procedure for the Prima facie offence committed by the Respondent No. 6 u/s 191 and 192 IPC punishable u/s 193 IPC. In such proceeding, any of the observations made in this judgment and order shall not affect the merit and rights and contentions of the parties.

33. Bring this judgment and order to the notice of the Deputy Registrar (J).