

GAHC010240392023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/166/2023

DISPUR BAROWARI PUJA SAMITI AND JYOTI KALA KENDRA AND 2 ORS.
REGISTERED SOCIETY HAVING ITS OFFICE AND PRINCIPAL PLACE OF
BUSINESS AT GANESHGURI, DISPUR, GUWAHATI- 6 AND IS REPRESENTED
BY ITS PRESIDENT SHRI RANJIT BARMAN

2: RANJIT BARMAN
S/O LATE HAREN BARMAN
R/O K.P. ROAD
HOUSE NO.2

1ST BYE LANE
JYOTIA
GUWAHATI-6
KAMRUP(M)
ASSAM
PRESIDENT
DISPUR BAROWARI PUJA SAMITI AND JYOTI KALA KENDRA

3: AJAY GUPTA
S/O LATE SACHIDANAND GUPTA
R/O DISPUR GANESHGURI
NEAR KAR BHAWAN
GUWAHATI - 6
GENERAL SECRETARY OF PETITIONER NO. 1
IMPLEADED IN THE SUIT AS PLAINTIFF NO. 3 VIDE ORDER DATED
28/06/2023 OF CIVIL JUDGE NO.1
KAMRUP(M)
GUWAHAT

VERSUS

DWIJEN MOHAN DEKA AND 23 ORS.
S/O NOT KNOWN,
RESIDENT OF SANKARPUR, HENGRABARI, GUWAHATI- 6

2:MAHESH BAISHYA
S/O LATE KIRTAN BAISHYA

RESIDENT OF C/O KRISHNA PHARMACY
GANESHGURI
GUWAHATI- 6

3:DWIJENDRA CHANDRA GOSWAMI
S/O LATE RAJENDRA CHANDRA GOSWAMI

RESIDENT OF BYE LANE 2
HILL SIDE
JYOTIA
P.S- DISPUR
GUWAHATI- 19

4:BISHNU BORO
S/O NOT KNOWN

RESIDENT OF R.P. ROAD
GANESHGURI
GOWAHATI-06

5:MANAB MIHIR PATHAR
S/O NOT KNOWN

RESIDENT OF LALITA MARKET
GANESHGURI
GUWAHATI-06

6:AJIT BORO
S/O LATE PARBAT BORO

RESIDENT OF KACHARI BASTI
GANESHGURI
NEAR DISPUR COLLEGE
DISPUR
GUWAHATI- 6

7:JAYANTA KUMAR DAS
S/O LATE DEVEN DAS

RESIDENT OF HENGRABARI
SANKARPUR
PS DISPUR
GUWAHATI- 6

8:ANITA DEKA
W/O INDRA DEKA

RESIDENT OF HENGRABARI
SANKARPUR
POLICE STATION- DISPUR
GUWAHATI-06

9:DIPAMANI DAS
W/O JATIN DAS
RESIDENT OF SAPTA SAHEED PATH
BYE LANE NO 2
SORUMOTORIA
NEAR BAGESHWARI MANDIR
POLICE STATION
DISPUR
GUWAHATI - 6

10:MINAKSHI BAISHYA
W/O DILIP BAISHYA
RESIDENT OF GANESHGURI CHARIALI
PS DISPUR
GUWAHATI-6

11:SOMESHWAR TERON
S/O NOT KNOWN

RESIDENT OF HENGRABARI
GUWAHATI-06

12:PRATIVA BORA
W/O NOT KNOWN

RESIDENT OF WALFORD
CHRISTAN BASTI
GUWAHATI-05

13:RABIN DAS
S/O NOT KNOWN

RESIDENT OF JYOTIA
POLICE STATION- DISPUR
GUWAHATI - 19

14:HEMANTA SWARGIARY
S/O NOT KNOWN

RESIDENT OF KACHARI BASTI

GUWAHATI-05

15:ANJALI BORO
W/O NOT KNOWN

RESIDENT OF KACHARI BASTI
GUWAHATI-05

16:RAJESH BARMAN
S/O LATE AUROBINDO BARMAN

RESIDENT OF JYOTIA
POLICE STATION- DISPUR
GUWAHATI- 19

17:BIDYUT BORO
S/O NOT KNOWN

RESIDENT OF KACHARI BASTI
GUWAHATI-05

18:SAIBAL DAS
S/O NOT KNOWN

RESIDENT OF NEAR JAIN MANDIR
GUWAHATI-06

19:BHASKAR BORO
S/O NOT KNOWN

RESIDENT OF NEAR DISPUR COLLEGE
GUWAHATI-06

20:NIRMAL BAISHYA
S/O NOT KNOWN

RESIDENT OF JYOTIA
POLICE STATION- DISPUR
GUWAHATI- 06

21:BHADRESHWAR TUMUNG
S/O NOT KNOWN

RESIDENT OF HENGRABARI
POLICE STATION - DISPUR
GUWAHATI - 06

22:BHABEN SINGH BASUMATARY

S/O NOT KNOWN

RESIDENT OF G. S ROAD
GANESHGURI
DISPUR
LABU NIVAS
GUWAHATI -06

23:DULAL BORO
S/O NOT KNOWN

RESIDENT OF DISPUR KACHARI BASTI
GANESHGURI
NEAR DISPUR COLLEGE
DISPUR
GUWAHATI- 06

24:PRANJYOTI BAYAN
S/O NOT KNOWN

RESIDENT OF SANKARPUR
HENGRABARI
GUWAHATI- 0

Advocate for the Petitioner : MR. S P ROY

Advocate for the Respondent : MR. B D DEKA

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 19.10.2023

Heard Mr. S.P. Roy, learned counsel for the petitioners. Also heard Mr. B.D. Deka, learned counsel for the respondents.

2) The petitioners are the plaintiffs in T.S. No. 397/2021, which is

pending for adjudication in the Court of Civil Judge (Senior Division) No. 1, Kamrup (M), Guwahati. In the said suit, the petitioners have, amongst others, prayed for declaration to the effect that its Executive Committee, including its office bearers and members was legally and validly formed in the General Meeting dated 29.10.2021 of the petitioner no. 1 society and that the respondents herein have no right to hold the election of the said society; for declaration that the notices vide document nos. 7 to 9 and notification dated 06.12.2021 was illegal, void, inoperative, *ultra vires* to the Constitution of the appellant no. 1 society; for permanent injunction; etc.

3) Along with the said suit, the petitioners had also filed an injunction application under Order XXXIX, Rules 1 and 2 read with Section 151 CPC, which was registered as Misc. (J) Case No. 628/2021. In the said interlocutory application, it was prayed, *inter alia*, to restrain the respondents, their servants, employees, workmen and agents from claiming themselves as office bearers and members of the Executive Committee of petitioner No. 1; and to restrain them from causing any nuisance, annoyance, threat, initiation (*sic.*) to the petitioner no. 2 in running the affairs of the petitioner no. 1 in any manner.

4) Initially *ad interim* injunction was granted by order dated 09.12.2021, restraining the respondents from causing any nuisance, annoyance, threat, initiation (*sic.*) to the petitioner no. 2 in running the affairs of the petitioner no. 1 in any manner. The respondents had filed their written objection against the injunction application. It appears that the learned counsel representing both sides had made oral submissions and also filed written note of submissions. However, after hearing the learned counsel for the petitioners and respondents, vide order dated 18.03.2023, the said *ad interim* order of

injunction dated 09.12.2021 was vacated and the said Misc. (J) Case No. 628/2021 was dismissed.

5) The petitioners had preferred an appeal under Order XLIII, Rule 1(r) CPC, which was registered as Misc. Appeal No. 7/2022 before the Court of the learned District Judge, Kamrup (M), Guwahati, which was made over to the Court of learned Additional District Judge No.2, Kamrup (M), Guwahati for disposal. Along with the said appeal, the petitioners had also filed an injunction application under Order XXXIX, Rules 1 and 2 read with Section 151 CPC, which was registered as Misc. (J) Case No. 40/2023. The said appeal was dismissed by order dated 07.10.2023.

6) The said order is assailed by the petitioners by filing this application under Article 227 of the Constitution of India.

7) Heard the oral submissions made by the learned counsel for both sides and perused the materials on record. They have both relied on their respective written notes of submissions filed before the learned first appellate Court.

8) Moreover, with the permission of the Court, the learned counsel for the respondents has provided photocopy of the evidence of three witnesses examined by the petitioners before the learned Trial Court in connection with Misc. (J) Case No. 628/2021, namely, Ranjit Barman (PW-1) (appellant no.2), Ajay Gupta (PW-2), and Khagen Das (PW-3). The same is retained on record.

9) In brief, the submissions of the learned counsel for the appellant are that the judgment of the Courts below is perverse, because of factual errors contained in the order. In this regard, it was stated that the illegal elections and counting was notified to be held on 12.12.2021 from 08.00 am. To 2.00 pm., but

the results of the illegally held elections was hurriedly declared on 06.12.2021, but in the order, it was mentioned that election result was declared on 12.12.2021.

10) It was also submitted the Constitution of the petitioner society did not envisage election of office bearers of the Executive Committee, but the Constitution provided for appointment of President and other office bearers and members of the Executive Committee by selection in the annual general meeting. It was submitted that the election was not called by the President or the General Secretary of the Society, but without having any power of lawful authority, the respondents along with few members of the petitioner no. 1 society had unauthorisedly held annual general meeting, assumed power and authority illegally and illegally appointed a three member Election Authority. It was submitted that the election notifications and notices annexed to this application do not contain any date of issue. In continuation, several other examples were cited to bring home the point that the elections for which results was announced on 06.12.2021 was unauthorized, illegal and the procedure adopted was contrary to the Constitution.

11) It was also submitted that a mere perusal of the impugned orders passed by the learned Trial Court as well as the learned First Appellate Court would disclose their lack of knowledge of how proceeding books of meetings of a society are prepared and kept. In this regard, it was submitted that the Courts below had found fault in the status of the petitioner no.2 as Chief Secretary, General Secretary and President. In the said context, it was submitted that the Constitution of the petitioner no. 1 Society is in Assamese and in Assamese the post of General Secretary is called *Sadharan Sampadak*. Before the selection of the petitioner no. 2 as President of petitioner no. 1 society, he was the

Sadharan Sampadak. But sometimes he was referred to as General Secretary and sometimes as Chief Secretary. The petitioner no. 2 had called the General Meeting of petitioner no. 1 Society on 27.10.2021, and a section of newspaper had published the news including *Dainik Pratidin*, an Assamese daily newspaper. On 27.10.2021, when the Annual General Meeting (AGM for short) of petitioner no.1 society was held, one Kumud Das was the said Society's President. On 27.10.2021, the petitioner no. 2 had submitted his "*Sampadakiya Pratibedan*" from 02.11.2016 to 31.03.2021 before the AGM (English translation would be Secretary's Report, but in typed copy thereof produced as Annexure-6 to this application, the said report has been referred to as "Editorial Report" which tentatively seems to be a translation error, but no final opinion is expressed thereon). Thereafter, the selection process was undertaken and the petitioner no. 2 was selected as the President. In the minutes book of the AGM held on 27.10.2021, three resolutions, (i) acceptance of editorial report; (ii) past calculations were accepted; (iii) President of the Committee resigned on behalf of the Committee. Moreover, the formation of the new committee was announced with 7 (seven) office bearers and 12 working members. The said proceeding was signed by the petitioner no. 2 as outgoing General Secretary. Thereafter, on taking charge of the office of President of petitioner no. 1 Society, the respondent no. 2 could have referred himself as President and that till charge was not taken, he would remain as General Secretary. However, the Courts below found fault in the petitioner no. 2 referring himself as General/ Chief Secretary on 27.10.2021. This, according to the learned counsel for the petitioners was lack of working knowledge of the Courts below on functioning of the society. Hence, it was submitted that the finding of the Courts below is perverse due to misreading of the pleadings.

12) It was submitted that the entire election process of the respondents was never entered in the proceeding books of the petitioner no. 1 society.

13) It was also submitted that the respondents in their written statement did not deny that the petitioner no. 2 was the General Secretary of the petitioner no. 1 society and therefore, the respondents cannot be permitted to question the status of the petitioner no. 2 as General Secretary upto 27.10.2021 and also as President of petitioner no. 1 society on and from 27.10.2021, from the point he had assumed charge of the said post.

14) It was submitted that the learned Courts below had found fault with the minutes book of the petitioner no. 1 society merely on the ground that the AGM meeting notice was pasted in the minutes and it was blown out of proportion to accuse the petitioners of manufacturing the proceeding and that the learned Courts below did not consider that it could not be improper to paste the agenda of the meeting and thereafter to record the proceeding. Moreover, it was submitted that the learned Courts below committed perversity on their failure to take note of the fact that after 27.10.2021, the proceeding of AGM and meeting of the Executive Committee was not held and therefore, the person who would preside in the next meeting can only approve the last minutes and sign the same. It was submitted that the then President of petitioner no. 1 Society, Kumud Das had signed in the agenda on 27.10.2021, but at the bottom of the end page of the minutes, the petitioner no. 2 had put his seal and signature as General Secretary of the petitioner no. 1 society.

15) Submissions were also made by the learned counsel for the petitioner on several other discrepancies, which is contained in the revision petition, but not referred to in this order but those discrepancies as referred to

by the petitioners in the grounds of this petition has been considered.

16) The learned counsel for the respondents has referred to the statements made in the injunction application filed before the learned Trial Court and written objection submitted by the respondents. It was submitted that the three PWs could not sustain their stand during their respective cross-examination. Accordingly, it was submitted that the petitioners had no ground to stand.

17) It *prima facie* appears that the learned Trial Court had committed an error in referring to the election held on 123.12.2021, whereas the outcome of the election was notified on 06.12.2021. However, the said error does not affect the merit of the decision and therefore, the Court is unable to accept that the said clerical error had vitiated the concurrent decision of both the learned Courts below, refusing injunction.

18) The other point raised that the petitioner no. 2 did not sign as President, but had signed as Secretary, appears to be an issue which ought to be decided in the suit. Similarly, whether the selection/ Election of President and other office bearers and members of the Executive Committee by the petitioner's side or by the respondent's side was lawful or not also ought to be decided in the suit. A summary decision of this Court on the said two points is likely to irreparably prejudice one of the two sides. Therefore, the Court has refrained from making any observations on the same.

19) This application being one under Article 227 of the Constitution of India, the Court would only have jurisdiction to examine whether the decision rendered by both the learned Courts below are perverse or suffers from any jurisdictional error.

20) In the quest to understand the scope of jurisdiction under Article 227 of the Constitution of India, some cases had been examined, which are discussed herein below.

21) In the case of *Pandurang Dhondi Chougule v. Maruti Hari Jadav & Ors. AIR 1966 SC 153*, the Constitution Bench of the Supreme Court of India had held that when the error of lower court in question of law is not related to question of its jurisdiction, interference in revision was not justified.

22) In the case of *The Managing Director, Hindustan Aeronautics Ltd. Vs. Ajit Prasad Tarway, AIR 1973 SC 76*, the Full Bench of the Supreme Court of India had held that if the lower appellate court order is within its jurisdiction, the High Court should not interfere even if the order is right or wrong or in accordance with law or not, unless jurisdiction is exercised illegally or with material irregularity.

23) In the case of *Bhojraj Kunwarji Oil Mills v. Yograjsinha Shankersinha Parihar, AIR 1984 SC 1894 (para-4)*, the Supreme Court of India had held that interference with the judgment of Courts below in exercise of revisional jurisdiction is impermissible on the ground that a different view on facts elicited was possible.

24) In this case, the learned counsel for the respondents has been able to show from the record that the petitioner no. 2 had been signing sometimes as Chief Secretary and sometimes as General Secretary.

25) It would be appropriate to refer to the relevant part of the cross examination of the petitioner no. 2 (as PW-1) where he had stated that-

“Prior to the meeting of 21.10.2021, I was holding the post of Chief Secretary. There is no post of Chief Secretary as per Constitution of the plaintiff no. 1 Society/ Petitioner no. 1 society. In the minut (sic. should have been “minutes”) of the

meeting dt. 27.10.2021, I had signed as General Secretary. I had called for the meeting dated 27.10.2021.

* * *

One Sri Khagen Das was the General Secretary at the relevant point of time prior to the meeting dt. 27.10.2021. There was no election held in the meeting dt. 27.10.2021, but selection was there. After selection there was a dispute amongst us and Digen Deka. There were several persons who raised objection. Those persons had demanded election. They had proposed the name of Digen Deka as President and demanded election. But no election was held since there is no provision of election in the Constitution.

* * *

... An addition sheet containing the agenda was subsequently pasted in the proceeding book.

* * *

The President has not signed the resolution adopted in the meeting dt. 27.10.2021. The President did not sign the resolution because I became the President. However, I signed as General Secretary on the same day i.e. 27.10.2021. I had signed Document No. 6 as Chief Secretary.

... Several persons who had signed in the attendance sheet of 27.10.2021 had also signed the subsequent Gohari- Document No. 7 containing the demand for election. These members who were present in the meeting dt. 27.10.2021 also wanted election.

* * * ...”

26) In the relevant part of his cross examination, the PW-2 had stated as under:-

“... When two or more name are proposed for a post any member can select. However, all members need not select. There are roughly 92 members out of some members are died. There is no concept of election by majority. The moments member clapped the hand selection is done. We do not keep a count of how many members clap and how many did not clap for the selection of Ranjit Barman. I do not know which member has pasted the additional sheet in the minut (sic.) book over the minutes of 27.10.2021. The resolutions were written after the members had signed.

* * *

... I cannot say whether the signature appeared in Document no. 5 are the genuine signature of the members.

* * * ...”

27) In the relevant part of his cross examination, the PW-3 had stated as under:-

“... No member is holding the post of as General Secretary. Ranjit Barman was holding the post of Chief Secretary. There is no post of Chief Secretary of (sic.) the Constitution but in the AGM the post of Chief Secretary was created.

I do not remember if the Constitution was amended to that effect.

... The additional sheet pasted on the proceeding book over the proceeding book (sic.) was done by the Treasurer Indra Dekha.

** * **

... The selection is required to be done through majority. Selection by majority is not election according to me. We did not keep count of the majority. The moment majority members clapped the person is selected.

** * * ...”*

28) Thus, the relevant part of cross-examination, which is extracted above, speaks for itself. It demonstrates that the learned Courts below had justifiable reasons not to extend and/or grant the *ad interim* injunction in favour of the petitioners. The said cross-examination also exposes the illegality that is writ large in the selection process adopted by the petitioners, which appears to be only aimed to the benefit of the petitioner no. 2. The Court is constrained to hold that amicable selection process does not and cannot mean arbitrariness in the process of not keeping count of support garnered by a candidate. It appears that if the persons who are in-charge of election even hears one clap, he may select one candidate and refuse to acknowledge a candidate to have won even if he manages more clap support. This Court cannot give approval of such arbitrariness on part of the petitioners and therefore, no interference is called for in respect of the orders impugned in this application. We have also seen the reason why the President of the Executive Committee of petitioner no.1, Society had not signed the proceeding book from the cross-examination of PW-1 and the probable cause why agenda was pasted in the proceeding book. Be that as

it may, these are matters for trial.

29) Now, coming to the declaration of result of election held by the respondents on 06.12.2021, i.e. before 12.12.2021, the date fixed for election and counting, on very strenuously reading page 107 of this application, which is a part of notification dated 06.12.2021 regarding outcome of the election process, marked as Annexure-10, it can be seen that wherever there were more than one candidates, one had withdrawn, for which no election was warranted. Therefore, the election authority had declared the results on 06.12.2021, which was the date fixed for withdrawal of nominations as per election notice (Anenxure-9).

30) The Court strongly deprecates the practice adopted by the learned counsel for the petitioner to provide illegible copy of Annexure-10. The petitioner had provided two incomplete typed sheets of Annexure-10, where the illegible copies of Annexure-10 consists of three sheets at page nos. 105 to 107 of this application. The intention of the petitioners and their learned counsel is obvious that they do not want the Court to read the annexed documents in its entirety. One of the Court staff has been requested to put his signature on the pages 105 to 107 of this application for easy identification of those three unreadable pages of Annexure-10.

31) The petitioners had examined three witnesses in support of the injunction application, but the copy of evidence-in- chief and the cross-examination was also withheld from the Court. The reason is obvious that the petitioners and their learned counsel do not want the Court to peruse materials which may be adverse to their interest.

32) Therefore, these two herein before mentioned act of the

petitioners and their learned counsel to suppress material facts from this Court not only deserves the such practice to be strongly deprecated, but as in this case the suppression of material facts also amounts to playing fraud upon the Court. The Court cannot allow a litigant to suppress materials from the Court. A litigant before the Court is expected to disclose all materials before the Court, even if some of it may be adverse to their interest.

33) Hence, owing to fraud having been practiced on the Court, this application under Article 227 of the Constitution of India deserves to be dismissed *in limine*, at the motion stage, without issuing notice upon the respondents, which we hereby do. However, we are inclined to impose a cost of Rs.50,000/- (Rupees fifty thousand only), jointly and severally, on the petitioner nos. 2 and 3 for annexing an unreadable and illegible copy of Annexure-10 and for providing partly typed copy of Annexure-10, and concealing of the two later pages of the said document, which can be read unfavourable to the petitioners. It is clarified that the cost is not imposed on the petitioner no. 1 society, but only against the petitioner nos. 2 and 3. The said cost shall be deposited by the petitioners before the learned Court of Civil Judge (Senior Division) No.1, Kamrup (Metropolitan), Guwahati in the proceeding of T.S. No. 397/2021 within a period of 1 (one) month from today. On such deposit being made, the same can be withdrawn by the respondent no.1. If the cost is not deposited by the petitioner nos. 2 and 3 within the time allowed, the respondents are permitted to take steps in this Court for enforcement of cost.

34) It is seen that the documents were signed by Jyotish Das, Advocate under endorsement "Certified to be true". We refrain from taking harsh steps against him upon consideration that he has taken his enrolment in the Bar Council in the year 2021 and therefore, is a relatively new entrant in the

Bar. However, let this episode be an eye-opener to him to be cautious in future before certifying incomplete document or illegible document to be true. Next time the Court may not be so lenient to him.

35) It is clarified that the observations made herein would not prejudice the parties when the suit is decided on merit.

JUDGE

Comparing Assistant