

GAHC010088762024



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

Case No. : CRP(IO)/139/2024

NRIPENDRA BHUYAN
S/O LATE MITHARAM BHUYAN, O/O ASST. EXECUTIVE ENGINEER, PWD,
BOKOLIA NH SUB DIVISION, BOKOLIA, WEST KARBI ANGLONG, ASSAM
782482

VERSUS

ASSAM PWD ENGINEERS SERVICE ASSOCIATION
HAVING ITS REGISTERED OFFICE AT HOUSE NO. 7, SAPTA SWAHID PATH,
RIGHT BYE LANE,
MATHURA
NAGAR, GUWAHATI,
DISTRICT.
KAMRUP (M), PIN 781006,
ASSAM AND IS REPRESENTED BY
ITS PRESIDENT SRI PRANAB KR.
RABHA.

2:SRI BHABEN SHARMA
O/O
EXECUTIVE ENGINEER
PWRD
SOUTH KAMRUP TERRITORIAL ROAD
DIVISION
MIRZA
ASSAM
PIN
781101.

3:SRI SUBRATA BORA
O/O TH
CHIEF ENGINEER

PWD
(BUILDING)

CHANDMARI

GUWAHATI-03
ASSAM.

4:SRI KHANIN BORO
O/O THE
SUPERINTENDENT ENGINEER

PWD KOKRAJHAR BUILDING CIRCLE

KOKRAJHAR
ASSAM
PIN
783370.

5:SRI ASHIM CHAKRABORTY
O/O
THE EXECUTIVE ENGINEER
PWRD
GOALPARA EAST AND JOLESWAR
TERRITORIAL
GOALPARA

ROAD DIVISION

ASSAM
PIN 783121.

6:SRI BHASKAR MISHRA BHAGAWATI
O/O THE EXECUTIVE
ENGINEER

PWRD
NEW
GUWAHATI TERRITORIAL
ROAD
DIVISION

BAMUNIMAIDAN

GUWAHATI-21
ASSAM.

7:SRI SANTANU DAS
O/O THE
EXECUTIVE ENGINEER
PWRD
JALUKBARI TERRITORIAL ROAD
DIVISION
FANCY BAZAR

GUWAHATI-01
ASSAM.

8:SRI SIDDARTHA SHARMA
O/O
THE CHIEF ENGINEER
PWD (NH
WORKS)
CHANDMARI
GUWAHATI-
03
ASSAM.

9:SMT. MOUCHUMI KALITA
O/O
THE CHIEF ENGINEER
PWD
(BUILDING)

CHANDMARI

GUWAHATI-03
ASSAM.

10:SRI MUNIN DEKA

O/O THE
EXECUTIVE ENGINEER
PWRD
DISPUR DIMARIA TERRITORIAL ROAD
DIVISION

BAMUNINMAIDAN

GUWAHATI-21
ASSAM.

11:SRI HIRANYA DUTTA
O/O THE
CHIEF ENGINEER

PWD (NH
WORKS)
CHANDMARI
GUWAHATI-
03
ASSAM.

12:SRI CHANDAN KATAKI
O/O
ASSISTANT EXECUTIVE ENGINEER

PWRD
JALUKBARI TERRITORIAL
ROAD
SUB
DIVISION-II

BAMUNIMAIDAN
GUWAHATI-21

ASSAM.

13:SMT. JAYAMONI HAZARIKA
O/O THE ASSISTANT EXECUTIVE
ENGINEER
PWRD DIMARIA
TERRITORIAL ROAD SUB-DIVISION

BAMUNIMAIDAN
GUWAHATI-21

ASSAM.

14:SRI SONIT DAS
O/O THE
EXECUTIVE ENGINEER

PWRD
BRAHMAPUTRA
BRIDGE
CONSTRUCTION
DIVISION NO.1

GUWAHATI - 25
ASSAM.

15:SRI HIRANYA KR DAS
O/O THE

EXECUTIVE ENGINEER
PWRD
HOJAI DISTRICT TERRITORIAL ROAD
DIVISION
HOJAI
ASSAM
PIN
782435.

16:SRI KHALLEKUDDIN AHMED
O/O THE EXECUTIVE ENGINEER

PWRD DHING AND RUPOHIHAT
TERRITORIAL ROAD DIVISION

NAGAON
ASSAM
PIN 782001

17:SRI MRIDUL TALUKDAR
O/O
THE CHIEF ENGINEER
PWRD
GUWAHATI-03

CHANDMARL

ASSAM.

18:SRI KUSHAL KAKATI
O/O THE
EXECUTIVE ENGINEER
PWRD
RANGIA TERRITORIAL
ROAD

DIVISION
RANGIA
ASSAM
PIN
781354.

19:SRI HIMANGSHU DAS
O/O
THE EXECUTIVE ENGINEER
PWRD
HAJO AND SUALKUCHI TERRITORIAL
ROAD DIVISION

AMINGAON

GUWAHATI
ASSAM
PIN
781039.

20:SRI MANIRUL ISLAM
O/O THE
EXECUTIVE ENGINEER
PWRD
BAJALI TERRITORIAL ROAD DIVISION

PATHSALA
ASSAM
PIN 781325

21:SMT. BANDITA SHAMRA
O/O
THE CHIEF ENGINEER
PWRD
CHANDMARI
GUWAHATI - 03

ASSAM.

22:SRI AMLANJYOTI DHING
O/O
THE DIRECTOR
PWRD AAR AND TI

FATASIL AMBARI
GUWAHATI - 25

ASSAM.

23:SRI DEBAJIT BARUA
O/O THE
EXECUTIVE ENGINEER
PWRD
HAJO AND SUALKUCHI TERRITORIAL
ROAD DIVISION
AMINGAON

GUWAHATI
ASSAM
PIN

781039.

24:SRI BUDHADEB MILL
O/O THE
EXECUTIVE ENGINEER
PWD
JORHAT NH DIVISION
JORHAT

ASSAM
PIN 785001.

25:SRI DIMPAL SAIKIA
O/O THE
EXECUTIVE ENGINEER
PWRD
NEW GUWAHATI TERRITORIAL ROAD
BAMUNIMAIDAN

DIVISION

GUWAHATI-21
ASSAM

26:SMT. ANKITA PATOWARY
O/O
THE SUPERINTENDING ENGINEER

PWRD CITY ROAD CIRCLE

BAMUNIMAIDAN
GUWAHATI-21

ASSAM.

27:SRI ALION BASUMATARY
O/O
THE EXECUTIVE ENGINEER
PWRD
DISPUR DIMARIA TERRITORIAL ROAD
DIVISION

BAMUNIMAIDAN

GUWAHATI-21
ASSAM.

28:SRI BEDANTA BEZBARUA

O/O
THE SUPERINTENDING ENGINEER

GUWAHATI NH CIRCLE

PWD
CHANDMARI

ASSAM.
GUWAHATI-03

29:SRI MOHARNAB CHIRING

O/O
THE EXECUTIVE ENGINEER
PWD
DIBRUGARH
DIBRUGARH

NH
DIVISION

ASSAM

PIN 786001.

30:SRI ANKUR GOGOI
O/O THE
EXECUTIVE ENGINEER
PWRD
SOUTH KAMRUP TERRITORIAL ROAD
DIVISION
MIRZA
ASSAM
PIN
781101.

31:SRI ABANI SARMA
O/O THE
COMMISSIONER AND SPECIAL
SECRETARY TO THE GOVT. OF
ASSAM
PWRD
DISPUR

GUWAHATI-06
ASSAM

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent : MR. A DAS

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 03.05.2024

Heard Mr. D. Das, learned Senior Counsel assisted by Mr. B. D. Deka, learned counsel for the petitioner. Also heard Mr. A. Das as well as Mr. N. I. Khan, learned counsel for the respondents.

2. This is an application under Article 227 of the Constitution of India against the Order dated 29.04.2024, passed by the learned Additional District & Sessions Judge No. 2, Kamrup (M) at Guwahati in Misc. Appeal No. 39/2024, dismissing the appeal, as well as the Order dated 10.04.2024, passed by the learned Civil Judge (Sr. Division) No. 1, Kamrup(M) at Guwahati in Misc (J) Case No. 351/2024, arising out of Title Suit No. 189/2024.

3. In brief, the case of the petitioner is that the respondent No. 1 is a Society registered under the Societies Registration Act, 1860 and the same is an association of Engineers of Assam Public Works Department under the Government of Assam. The Society is governed by its Bye-laws or the Constitution which besides regulating the affairs of the Society lays down the provisions for the formation of the State Executive Committee, which is the apex Governing Body. The last Executive Committee of the respondent No.

1/Association was formed on 05.04.2015 comprising *inter alia* one Shri Dilip Kr. Pathak as President, one Shri Pranab Kr. Rabha as Vice President and one Shri Nipendra Bhuyan (petitioner herein) as one of the Joint Secretaries. The tenure of the said Executive Committee was for 1 (one) year and as per the Clause 14 of the Constitution, it mandates holding a General Body Meeting each year where the office bearers of the State Executive Committee are elected. The erstwhile President Shri Dilip Kumar Pathak had superannuated from his service on 28.02.2017, but no nomination of any of the Vice President to act as President In-Charge was ever made by the State Executive Committee. Shri Pranab Kr. Rabha, who was one of the three elected Vice Presidents, started posing as a self-styled President of the Association and began meddling with the affairs of the respondent No. 1/Association.

4. Even after the expiry of the tenure of the said Executive Committee in the year 2016, the erstwhile Committee Members did not initiate any action as mandated under Clause 8 and Clause 14 of the Constitution for formation of new State Executive Committee. Non-holding of elections for a long period of 8 years naturally led to a lot of resentment amongst the members of the Association and on protest being raised, the erstwhile President convened a meeting and adopted a resolution dated 12.06.2021 to hold the AGM in the year 2022 and unilaterally passed an additional resolution that the said Executive Committee will continue until the elections are held in the year 2022. But the election was not convened in the year 2022 and hence, several members, along with the petitioner, decided to convene a meeting on 03.04.2024 for the purpose of formation of new State Executive Committee. Accordingly, a notice was circulated amongst all the members and scheduled the meeting on

03.04.2024 at 6.00 p.m. But Shri Pranab Kr. Rabha, in a desperate attempt to scuttle the democratic process of election and as an afterthought, issued as notice on 31.03.2024 declaring that the AGM would be held on 09.06.2024. But the members already decided to attend the meeting to be scheduled on 03.04.2024 and accordingly, after deliberation and discussion, a new State Executive Committee of respondent No. 1/Association was elected. Nearly 450 numbers of members participated in the meeting physically and in virtual mode. Apprehending that the said election would be put to challenge, the petitioner lodge a Caveat on behalf of the Association in the capacity of the General Secretary and accordingly, it was found that Title Suit No. 189/2024 was filed in the name of the Association before the Court of learned Civil Judge (Sr. Division) No. 1, Kamrup(M) at Guwahati, represented by Shri Pranab Kr. Rabha, who posed himself to be the President of the Association, though he was never elected or nominated as President or as President In-Charge and his tenure as a Vice President had already expired way back in the year 2016. After the institution of the said case, a notice was also served to the Caveator and the Title Suit was also supported with an application for injunction under Order XXXIX Rule 1 & 2 CPC, which was also registered as Misc (J) Case No. 351/2024. In the said case, a temporary injunction was sought for restraining the petitioner and other opposite parties from giving effect to the formation of the Committee formed in the extra-ordinary general meeting dated 03.04.2024 and also from acting upon the resolution adopted in the said meeting. Accordingly, the learned Civil Judge (Sr. Division) No. 1, Kamrup (M), Guwahati passed an ad-interim injunction order restraining the opposite parties, including the petitioner herein, from giving effect to the formation of the Committee formed in the extra-ordinary general meeting dated 03.04.2024 and also from

acting upon the resolution adopted in the said meeting.

5. On being highly aggrieved and dissatisfied with the order dated 10.04.2024, passed by the learned Civil Judge (Sr. Division) No. 1, Kamrup (M), Guwahati in Misc (J) Case No. 351/2024, the present petitioner, as an appellant, had preferred an appeal, which was registered as Misc. Appeal No. 39/2024 before the Court of learned Additional District and Sessions Judge No. 1, Kamrup (M), Guwahati. On 29.04.2024, after hearing both sides, the learned Additional District and Sessions Judge No. 1, Kamrup (M), Guwahati had dismissed the appeal and declined to interfere with the order dated 10.04.2024 and preponed the date of appearance before the learned Trial Court from 06.05.2024 to 03.05.2024. On being highly aggrieved and dissatisfied with the order dated 29.04.2024, the present petition has been preferred by the petitioner.

6. It is submitted by Mr. Das, learned Senior Counsel for the petitioner, that the First Appellate Court had affirmed the order of the learned Trial Court only on the ground that the three golden principles for granting an order of injunction were discussed, but failed to address the question of perversity as raised by the petitioner. The preponement of the date of appearance is virtually of no consequence inasmuch as there are nearly 30 other defendants to whom the notices are yet to be served.

7. Further, the learned Senior Counsel raised the following issues:-

(i) That the learned Court below failed to appreciate that the order of

injunction caused prejudice to the petitioner and failed to discuss the question of perversity raised by the petitioner.

- (ii) That the learned Court below also failed to consider the issue of maintainability of the suit wherein it was raised that Shri Pranab Kr. Rabha has no requisite authority to institute the suit on behalf of the Association when his tenure as a Vice President was already expired.
- (iii) That the election of the Executive Meeting is the internal management matter of the Society and in such cases, the Court should normally refrain passing interim order restraining the office bearers from discharging their official duties.
- (iv) That the learned Court below also totally ignored the misrepresentation made in the Cause Title wherein the Association was shown to be represented by a person who had absolutely no *locus standi* to institute the suit.
- (v) That as per the Constitution of the Society, the General Secretary or in his absence, the Joint Secretary shall convene all the meetings including the General Body Meeting and in the case in hand, on superannuation of the General Secretary Shri Hiten Kalita on 13.11.2023, the petitioner herein, being the Joint Secretary, has the power to discharge the function as General Secretary as per the terms of Clause 11.2(b) *read with* Clause 11.2(d) to call for meetings. But the said Pranab Kr. Rabha, who was a Vice President, had committed illegality by issuing notice dated 31.03.2024

scheduling the meeting on 09.06.2024.

8. The learned Senior Counsel for the petitioner further submitted that the learned Civil Judge (Sr. Division) No. 1, Kamrup(M) as well as the learned First Appellate Court did not consider the issue on maintainability while passing the order of injunction as well as while upholding the same by dismissing the appeal.

9. In support of his case, Mr. Das, learned Senior Counsel, relied on a decision of the Hon'ble Supreme Court passed in **Supreme Court Bar Association & Ors. Vs. B. D. Kaushik**, reported in **(2011) 13 SCC 774**, wherein the Hon'ble Apex Court has expressed the view that no relief, which has tendency to allow the final relief claimed in the proceedings, should be granted lightly. Further it is held that in matters of internal managements of the Association, the Courts normally did not interfere leaving it upon to the Association and its members to frame a particular bye-law, rule or regulation which may provide for eligibility and or qualification for the membership and/or providing for limitations/restrictions on the exercise of any right by and as a member of the said association.

10. Relying on the above referred judgment, it is submitted by the learned Senior Counsel that as per Clause 11.2(b), the General Secretary assisted by Joint Secretary can call for a State Executive Committee or the President and in his absence, the Joint Secretaries can perform the function of the General Secretary in absence of the General Secretary in any manner like retirement or resignation etc. and as per Clause 11.2(d), the General Secretary can convene

the meeting and record the proceedings etc. Further he submitted that the President can be elected only by the members through Zonal Committee by casting vote in sealed ballot paper or in absence of President, one of the Vice President may exercise all powers of President, but the Association has to nominate the Vice President as the President under Clause 11.1 of the Constitution. But, here in the instant case, the said Pranab Kr. Rabha was acting as a self-styled President without any nomination after the superannuation of the President and 2 (two) other Vice Presidents. The said Pranab Kr. Rabha, who was acting as a Vice President, has no authority to issue notice for convening a meeting without being nominated.

11. Mr. Das, learned Senior Counsel, further relied on another decision of Hon'ble Supreme Court passed in **Ramdev Food Products (P) Ltd. Vs. Arvindbhai Rambhai Patel & Ors.**, reported in **(2006) 8 SCC 726**, and further emphasized on paragraph Nos. 126, 127 & 128 of the judgment, which are read as under:

"126. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate courts will usually not interfere with it. However, appellate courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the court has ignored settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this court time and time again. [See for example [Wander Ltd. v. Antox India P. Ltd](#) (1990) Supp SCC 727, [Lakshmikant V. Patel v. ChetanBhai Shah](#) (2002) 3 SCC 65 and [Seema Arshad Zaheer v. MC of Greater Mumbai](#) (2006) 5 SCALE 263]

127. The appellate court may not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a

contrary conclusion.

128. However, in this case the courts below proceeded on a prima facie misconstruction of documents. They adopted and applied wrong standards. We, therefore, are of the opinion that a case for interference has been made out.'

12. Relying on the said judgment, it is submitted by the learned Senior Counsel for the petitioner that the grant of ad interim injunction is in exercise of discretionary power and hence, generally the Court will not interfere with. But if the discretion is exercised arbitrarily, capriciously, perversely, or where the Court has ignored the settled principle of law regulating the grant of refusal of interlocutory injunction, Court has the power to interfere with the order of interim relief.

13. The learned Senior Counsel for the petitioner further relied on a decision of Hon'ble Madras High Court, which is reported in **2015 0 Supreme(Mad) 2701 (M. Sekar & Ors. Vs. The Tamil Nadu State Council of the Communist Party of India & Ors)**, and also relied on a judgment of Hon'ble Delhi High Court, which is reported in **AIR 1981 Del 157 (Delhi Cloth and General Mills Co. Ltd., Delhi & Anr. Vs. Dharam Singh)**. Citing those 2 (two) judgments, it is submitted by Mr. Das, learned Senior Counsel, that the Hon'ble Delhi High Court has held that "*interference in the democratic process of elections, particularly at the interim stages, should be sparing. The democratic process should not be stopped in between, because the final result can always be challenged. It is also well established that where the election is challenged, the elected representative should be allowed to perform his duties.*"

14. Accordingly, it is submitted by Mr. Das, learned Senior Counsel for the petitioner, that the learned First Appellate Court did not consider all the facts of the case and simply disposed of the Misc. Appeal No. 39/2024 only with the observation that the learned Civil Judge (Sr. Division) No. 1, Kamrup(M) had discussed in detail about three golden principles and hence, the learned First Appellate Court did not interfere with the order passed by the learned Civil Judge (Sr. Division) No. 1, Kamrup(M) and disposed the matter without considering the issue raised before the Court in regards to maintainability.

15. In this context, Mr. A. Das, learned counsel for the respondents, has submitted that on superannuation of the President of Association, namely, Shri Dilip Kr. Pathak, on 28.02.2017, Shri Kushal Kumar Saikia, who was the senior most Vice President for the session 2015-17, took over the charge of President of the respondent No. 1/Association and after his superannuation, the post of the President of the Association was taken over by Shri Pranab Kr. Rabha w.e.f. 01.01.2020. However, due to outbreak of Covid-19 pandemic, no executive meeting could be held for last 7-8 years and thereafter an Executive Body Meeting was held on 12.06.2021, wherein it was resolved that AGM will be held in the year 2022 and the present Executive Committee would continue to function. But, in the year 2022 also, the meeting could not be held and with a view to hold the meeting, notice was circulated by the President of the Association on 30.03.2024 and the meeting of General Body was scheduled to be held on 09.06.2024. But, with some *mala fide* intention, it was circulated that extra-ordinary general body meeting of the Association was held on 03.04.2024 and new Executive Committee was constituted. Further it is submitted that the notice dated 30.03.2024 was only for conducting general body meeting of the

Association for discussion of forming a new Committee and the meeting was fixed within 3 (three) days notice on 03.04.2024 and some of the members with some *mala fide* intention to grab the affairs of the Association had constituted a Committee, which was not constituted as per the Constitution of the Association. The general body meeting was held on 03.04.2024 in spite of the knowledge that a meeting was scheduled to be held on 09.06.2024 and accordingly, it was notified to all the members of the association. He further submitted that as per the Constitution, the process of selection of the President should be initiated 2 (two) months prior before the meeting as per the Clause 9 of the Constitution. More so, as per Clause 10.5 of the Constitution, 7 (seven) days prior notice is necessary for convening a meeting of the State Executive Committee, though the President has the power to convene an emergent meeting of the Committee on short notice. But, here in the instant case, the notice was circulated on 30.03.2024 and the meeting was held on 03.04.2024 with a very short notice of 3 (three) days. As per Clause 11.1 of the Constitution, in absence of the President, one of the Vice President can exercise the power of the President and the respondent Shri Pranab Kr. Rabha was one of the Vice President in the earlier Committee and in absence of the President, who left the Association on superannuation and in absence of the other 2 (two) Vice President, Shri Pranab Kr. Rabha, being the Vice President, has the authority to discharge his duty as a President as per the Clause 11.1 of the Constitution and the General Secretary has no independent authority to call for a meeting. More so, as per the certificate issued by the Association in the year 2015, the name of Pranab Kr. Rabha is shown as a Vice President and till the formation of the new Committee, he is authorized to act as a President as per the Clauses of the Constitution. The meeting was already fixed on 09.06.2024

and the notice was accordingly issued on 30.03.2024 and the present petitioner, coming to know about the scheduled date for the meeting, with some *mala fide* intention, had convened an extra-ordinary meeting and issued a notice on 30.03.2024 fixing the date of meeting on 03.04.2024 without even giving 7 (seven) days notice to the members. As the meeting was already fixed on 09.06.2024, all the members including the present petitioner could have raised their issues and objection in the general meeting and for what reasons, without giving even 7 (seven) days prior notice, the executive meeting was held on 03.04.2024. He further submitted that the reason behind for the urgent meeting was only to withdraw W.A. No. 244/2022, which is pending against one of the member, i.e. one Shri Debojit Das, whose name is also withheld in the name of the members present in the meeting/resolution, who is presently holding the post of Chief Engineer P.W.D.

16. Mr. A. Das, learned counsel for the respondents, further submitted that the issue of maintainability was not raised before the learned Court below, i.e. the learned Civil Judge (Sr. Division) No. 1, Kamrup(M), while making submission by the petitioner side and after hearing the caveator at length, the order of temporary ad interim injunction was passed by the learned Trial Court and thus, there is no illegality or irregularity committed by the learned Court below while passing the ad interim injunction order. More so, the learned First Appellate Court did not interfere in the order passed by the learned Civil Judge (Sr. Division) No. 1, Kamrup(M). However, considering the urgency, the case was preponed from 06.05.2024 to 03.05.2024.

17. Further it is submitted by the learned counsel for the respondents that

there is no jurisdictional error to entertain the case under Article 227 of the Constitution of the Indian and no perversity is caused to the petitioner to entertain an application under Article 227 of the Constitution of India.

18. In support of this submissions, the Mr. A. Das, learned counsel for the respondents, relied on the followings decisions:-

- (i) **Home Care Retail Marts Private Limited Vs. New Era Fabrics Limited**, reported in **(2009) 17 SCC 429**.
- (ii) **M/s. Estralla Rubber Vs. Dass Estate (P) Ltd.**, reported in **2001 0 AIR(SC) 3295**.
- (iii) **Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala**, reported in **1988 0 AIR(SC) 184**.

19. Relying on above referred judgments, it is submitted by the learned counsel for the respondents that under Article 227 of the Constitution of India, the Court should not set aside the concurrent orders of the Court below which is not perverse or arbitrary.

20. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. **(2001 0 AIR(SC) 3295)**.

21. The learned counsel for the respondent further relied on another decision of this Court passed in **Jogendra Chandra Shill Vs. Anukul Chandra Shill & Ors.**, reported in **2004 3 GLT 696**, and emphasized on paragraph No. 9 of the judgment, which reads as under:

"9. I am not unmindful of the fact that the petitioner is taking resort to [Article 227](#) of the Constitution of India for redressal of his grievance since he has no remedy of a civil revision. But the power of superintendence of this Court under the aforesaid Article is extraordinary in nature and must be exercised most sparingly and only in appropriate cases and could not be invoked to correct an error of fact or of law which only a superior court could do on appeal. The High Court also would not in the guise of exercising such jurisdiction convert itself into a Court of appeal, and its function would be limited to ensuring that the subordinate court or tribunal functioned within the limits of its authority. In [Surya Devi Rai v. Ram Chander Bal](#), (2003) 6 SCC 675, the Apex Court held that be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied ; (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby."

22. Accordingly, it is submitted by the learned counsel for the respondents that no perversity is caused to the parties by the order of the learned Court below, i.e. learned Civil Judge (Sr. Division) No. 1, Kamrup(M) as well as the learned First Appellate Court. Rather, it is seen that considering the urgency of the matter, the learned First Appellate Court had preponed the date from 06.05.2024 to 03.05.2024.

23. In reply, Mr. B. D. Deka, learned counsel for the petitioner, has submitted that the statement in regards to maintainability was not recorded by the learned

Court below while passing the order of ad interim injunction. More so, though it is stated that the caveator was heard at length, but no submission was recorded from the petitioner side nor there is any mention about the maintainability issues which were raised by the present petitioner while appeared before the learned Court below as a caveator. Further he submitted that the present petitioner was arrayed as a defendant No. 5 in the suit as well as in the injunction petition and thus, it cannot be said that he has no *locus standi* to file the present petition. He further submitted that though the name of one Shri Debojit Das is named by the learned counsel for the respondent, but there is no pleading that the entire election process as well as the meeting was held only in connivance with said Shri Debojit Das, who is discharging his duty as Chief Engineer of PWD Department. He is not even a party to the said case. More so, the learned First Appellate Court did not decide the issue of maintainability and overlooked the same and decided the appeal only considering the ground that the learned Trial Court had rightly discussed the three golden principles in favour of the respondent. Accordingly, B. D. Deka, learned counsel for the petitioner, has submitted that the order passed by the learned First Appellate Court as well as the learned Trial Court is perverse and thus, the present petition under Article 227 of the Constitution of India is maintainable.

24. I have considered the submissions made by the learned counsels for both sides and also perused the case record as well as the annexures and the Constitution of the Society, which is annexed along with the petition.

25. It is basically the case of the petitioner that the said Shri Pranab Kr. Rabha, the plaintiff/respondent who filed the Title Suit No. 189/2024 along with

injunction petition, is not authorized to call for a meeting and he was never nominated or authorized to discharge his function as a President of the Society. So, basically it is the contention of the petitioner that as per the Clause 9 of the Constitution of the Association, the President has to be elected through ballot paper from all the members from all zones and further as per the Clause 11.1, the Vice President has to be nominated as President by the Association as per decision of the State Executive Committee and the President In-Charge shall be the head of the Association. But, Shri Pranab Kr. Rabha, who was the Vice President, was never authorized or nominated by any Committee or Executive Body to discharge the function of a President even in absence of the President or other Vice President on their superannuation. His tenure was already expired in the year 2016 after the lapse of 1 (one) year. Further, it is admitted that no AGM was held for last 7-8 years, though it was resolved that the General Body Meeting will be conducted in the year 2022. Thus, as he is not authorized to call for the meeting or to act as a President of the Association, the said Shri Pranab Kr. Rabha cannot file the suit against the Association representing the Society and thus, the suit is not at all maintainable even to grant the injunction. But the learned Court below, while passing the ad interim injunction order, did not consider the issue raised on the maintainability and passed the order without even considering the submission made by the present petitioner as caveator. In the same time, the learned First Appellate Court did not also consider the issue of maintainability though the submission of the petitioner was discussed, but arrived at a wrong decision and dismissed the appeal only considering the ground that the learned Trial Court had rightly passed the order of ad interim injunction after a detail discussion of the three golden principles, which were in favour of the plaintiff- Shri Pranab Kr. Rabha.

26. On the other hand, it is the case of the respondent that being a Vice President, Shri Pranab Kr. Rabha is authorized to held the meeting and in absence of the President, as one of the Vice President, he can exercise the power of President under Clause 11.1 of the Constitution.

27. But, from the Clause 11.1, it is seen that the Vice President has to be nominated as President by a decision of State Executive Committee. But, in the present case, it is seen that no such decision could be produced by the respondent that Mr. Pranab Kr. Rabha was nominated as President or In-Charge President in absence of the elected President. However, in the same time, it is seen that one notice was issued by the earlier Committee and as a strength of the President, Mr. Pranab Kr. Rabha also issued a notice fixing a general body meeting on 09.06.2024 and the notice was also circulated to all the members of the Society. But, prior to the said meeting, the present petitioner had circulated another notice with short notice fixing the general executive committee meeting on 03.04.2024, wherein the body was also constituted. As per the Clause 11.2(b)(d), the General Secretary and in absence of General Secretary, the Joint Secretary can convene an urgent executive body meeting. But the notice of 7 (seven) days is necessary for convening a meeting of State Executive Committee. But, here in the instant case, it is seen that the meeting of executive committee was held with a very short notice of 3 (three) days, which is not as per terms and conditions of Clause 10.5 of the Constitution.

28. Further, the learned counsel for the petitioner mainly stressed on the point that they raised the issue of maintainability before the Civil Judge (Sr. Division)

No. 1, Kamrup(M) at Guwahati as well as before the learned First Appellate Court, but those were not considered and even the submission made on behalf of the caveator was also not considered while passing the ad interim injunction order.

29. So, considering all above aspects of the case, I hereby dispose the present civil revision petition at the motion stage itself by setting aside the ad interim temporary injunction order dated 10.04.2024, passed by the learned Civil Judge (Sr. Division) No. 1, Kamrup(M) at Guwahati in Misc (J) Case No. 351/2024, arising out of Title Suit No. 189/2024, with a direction to both the parties to maintain status quo as on 02.04.2024, i.e. prior to formation of the Executive Committee of the Association on 03.04.2024, till disposal of Misc (J) Case No. 351/2024 and the learned Civil Judge (Sr. Division) No. 1, Kamrup(M) at Guwahati will hear the injunction matter and will pass an appropriate order after hearing both the parties and also considering the point raised by the petitioner regarding the issue of maintainability.

30. In terms of above, the civil revision petition stands disposed of.

JUDGE

Comparing Assistant