

GAHC010109432024



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

Case No. : WP(C)/2868/2024

LABANYA PAIT DOLEY
W/O- SRI PUSPA DOLEY, ADDRESS- SILAPATHAR NATUN MISHING GAON,
WARD NO. 06, P.O. AND P.S. SILAPATHAR, PIN- 787059, P.O. AND P.S.
SILAPATHAR, DIST. DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM AND 11 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, GOVT. OF
ASSAM, DEPARTMENT OF HOUSING AND URBAN AFFAIRS, DISPUR,
GUWAHATI.

2:THE DIRECTORATE OF MUNICIPAL ADMINISTRATION

GOVT. OF ASSAM
REPRESENTED BY ITS DIRECTOR
DISPUR
GUWAHATI
PIN- 781006
ASSAM

3:THE DEPUTY COMMISSIONER
DHEMAJI
P.O.
P.S. AND DIST. DHEMAJI
ASSAM

4:THE EXECUTIVE ENGINEER
SILAPATHAR MUNICIPAL BOARD
DHEMAJI.

5:THE VICE-CHAIRPERSON

SILAPATHAR MUNICIPAL CORPORATION
P.O. AND P.S. SILAPATHAR
DIST. DHEMAJI
ASSAM
PIN- 787059.

6:SARMISTHA DEB
WARD COMMISSIONER OF WARD NO. 07
W/O- SHRI BENU DEB
WARD NO. 07
SILAPATHAR TOWN
NATUN GAON
P.O. AND P.S. SILAPATHAR
DIST. DHEMAJI
ASSAM
PIN- 787059.

7:RATUL GOGOI
WARD COMMISSIONER OF WARD NO. 01
S/O- LATE PRODIP GOGOI
WARD NO. 01
SILAPATHAR TOWN
MAJGAON
P.O. AND P.S. SILAPATHAR
DIST. DHEMAJI
PIN- 787059.

8:TARUNIMA DUTTA ROY
WARD COMMISSIONER OF WARD NO. 02
D/O- SRI MANIK DUTTA
WARD NO. 02 SILAPATHAR TOWN
GANDHINAGAR
P.O. AND PS.. SILAPATHAR
DIST. DHEMAJI
PIN- 787059.

9:SHILPI CHOWDHURY
WARD COMMISSIONER OF WARD NO. 04
D/O- SHRI SIBU CHOUDHURY
WARD NO. 04
SILAPATHAR TOWN
AMRITPUR
P.O. AND P.S. SILAPATHAR
DIST. DHEMAJI
ASSAM
PIN- 787059.

10:ADITYA SONOWAL

WARD COMMISSIONER OF WARD NO. 08
S/O- LATE PADMA SONOWAL
WARD NO. 08 SILAPATHAR TOWN
SONOWAL PATHAR
P.O. AND PS. SILAPATHAR
DIST. DHEMAJI
PIN- 787059.

11:JITENDRA KUTUM
WARD COMMISSIONER OF WARD NO. 09
S/O- SHRI JUGESWAR KUTUM
WARD NO. 09 SILAPATHAR TOWN
KANGKAN NAGAR
P.O. AND P.S. SILAPATHAR
DIST.- DHEMAJI
ASSAM
PIN- 787059.

12:DINESH DAS
WARD COMMISSIONER OF WARD NO. 10
S/O- SRI NARESH DAS
WARD NO. 10 SILAPATHAR TOWN
LACHIT NAGAR
P.O. AND P.S. SILAPATHAR
DIST. DHEMAJI
PIN- 787059

Advocate for the Petitioner : Mr. M. Biswas, Advocate

Advocate for the Respondents : Mr. N. Goswami, Govt. Advocate
Mr. R. P. Sharma, Sr. Advocate
Mr. D. Doley, Advocate
Mr. A. Deka, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 23.07.2024

Date of Judgment : 23.07.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. M. Biswas, the learned counsel appearing on behalf of the petitioner. Also heard Mr. N. Goswami, the learned Government Advocate

appearing on behalf of the respondent Nos.1 to 4 as well as Mr. R. P. Sharma, the learned senior counsel assisted by Mr. D. Doley, the learned counsel appearing on behalf of the private respondents.

2. The instant writ petition has been filed challenging the minutes of the special meeting held on 29.05.2024 at 10:30 AM whereby the petitioner who was the Chairperson of the Silapathar Municipal Board was removed.

3. The facts leading to the filing of the instant writ petition is that the petitioner herein was elected as the Chairperson of the Silapathar Municipal Board on 12.04.2022. It is relevant to take note of that the Silapathar Municipal Board constituted of 12 elected Ward Commissioners, 2 Ex-Officio members who are the concerned MLA and the MP. It is an admitted fact that out of the 12 elected Ward Commissioners, one elected Ward Commissioner had resigned.

4. A letter was issued on 01.12.2023 by 7 Ward Commissioners requesting the District Commissioner, Dhemaji Town to terminate the petitioner from the post of the Chairperson. In pursuance to the said communication, the District Commissioner, Dhemaji vide an email dated 12.12.2023 directed the petitioner to convene a Board meeting within 15 days from the receipt of the said letter. Pursuant thereto, a meeting was called on 05.01.2024 at 2:30 PM. The said meeting was decided in favour of the petitioner. Being aggrieved, the private respondents filed a writ petition which was registered and numbered as WP(C) No.168/2024. The said writ petition was disposed of vide the judgment and order dated 29.04.2024 holding inter-alia that the District Commissioner has no jurisdiction or authority to issue direction to call for the meeting. However,

taking into account the provisions of the Assam Municipal Act, 1956 (for short, 'the Act of 1956'), this Court left it open to the private respondents to take steps for calling for a special meeting in accordance with the provision of the Act of 1956 for a No Confidence Motion against the Chairperson or the Vice-Chairperson, if so desired.

5. Pursuant thereto, the private respondents who were 7 in numbers submitted a request for convening a special meeting under Section 28 of the Act of 1956 for discussion of No Confidence Motion against the Chairperson. The petitioner upon receipt of the said communication informed the Executive Officer of the Silapathar Municipal Board vide a communication dated 17.05.2024 that he has called the meeting at 11:00 AM on 24.05.2024 pursuant to the said request so made. The Executive Officer on receipt of the said communication issued by the petitioner informed the petitioner vide the communication dated 20.05.2024 that in view of the Lok Sabha election, 2024 and the Model Code of Conduct being operational, the meeting should be withheld till 04.06.2024 and the petitioner was accordingly directed to cancel/withdraw the special meeting which was scheduled to be held on 24.05.2024. Immediately on receiving the said communication from the Executive Officer of the Silapathar Municipal Board, the petitioner vide the communication informed the various Ward Commissioners about the cancellation of the said meeting.

6. It is also seen that on 23.05.2024, the Executive Officer of Silapathar Municipal Board also informed the Chairperson, the Vice-Chairperson as well as Ward Commissioners of Silapathar Municipal Board that he advised against the convening of the special meeting on account of the Model Code of Conduct and that he would not be able to join the meeting in

connection with Silapathar Municipal Board. The private respondents thereupon on 27.05.2024 requisitioned another meeting on account of the failure on the part of the petitioner to hold the meeting as per the requisition and fixed 29.05.2024 at 10:30 AM to discuss about the No Confidence Motion against the Chairperson, Silapathar Municipal Board. This aspect of the matter was also duly informed by the Vice-Chairperson of the Silapathar Municipal Board to the petitioner vide the communication dated 27.05.2024. On 29.05.2024 at 10:30 AM, the special meeting was convened wherein the private respondents herein had duly participated. In the said meeting, it was decided by the 7 Ward Commissioners present that the petitioner be removed from the Office of the Chairperson of Silapathar Municipal Board. Being aggrieved by the said resolution so taken in the special meeting held on 29.05.2024 at 10:30 AM whereby the petitioner was removed from the post of Chairperson of the Silapathar Municipal Board, the petitioner approached this Court by filing the present writ petition.

7. This Court vide an order dated 31.05.2024 issued notice and further stayed the said resolution dated 29.05.2024 in so far as the termination of the petitioner as Chairman/Chairperson and directed that the same shall be implemented without the leave of the Court. It was also made clear vide the said order that the petitioner will not assume the Office of the Chairperson to take any policy decision in any meeting or in any financial matter save and except when the participation of the petitioner is necessary as a joint signatory along with Executive Officer of the Silapathar Municipal Board.

8. The record reveals that the private respondents have filed their

affidavit-in-opposition thereby supporting the meeting held on 29.05.2024 at 10:30 AM and justifying that there was no bar in holding the said meeting. It was also brought to the notice of this Court by filing the said affidavit that on the same day at 2:30 PM, another meeting was held whereby one Sri Jitendra Kutum was elected as the new Chairperson of the Silapathar Municipal Board. The said affidavit was filed on 12.06.2024. However, no reply to the said affidavit was filed by the petitioner.

9. The record further reveals that on 19.07.2024, an affidavit was filed by the District Commissioner, Dhemaji wherein it was mentioned that in terms with Section 11 (3 a) of the Act of 1956, the Members of the House of people and the Legislative Assembly of the State of Assam representing the constituencies which comprise fully or partly the Municipal Area shall be the Ex-Officio Members of the Board and under Section 25 of the Act of Act of 1956, both MP and MLA were also considered as Commissioners of the Board. It was also mentioned that in view of the Model Code of Conduct, the Chairperson of the Silapathar Municipal Board was requested to cancel/withdraw the special meeting by the Executive Officer, Dhemaji.

10. This Court duly takes note of that an Interlocutory Application was filed by the private respondents for vacation and modification of the order passed by this Court on 31.05.2024. However, the said application was withdrawn on 18.07.2024.

11. I have heard the learned counsel for the petitioner as well as the learned counsels appearing on behalf of the respondents.

12. Mr. M. Biswas, the learned counsel appearing on behalf of the petitioner submitted that in the instant case, the petitioner being the

Chairperson was not adverse to calling for the special meeting as per the requisition. However, it was on account of the directions issued by the Executive Officer, Silapathar Municipal Board as would be seen from the affidavit filed by the respondent No.3 and the communication dated 20.05.2024 that the petitioner had to cancel the meeting which was scheduled to be held on 24.05.2024. The learned counsel for the petitioner further submitted that the Election Commission of India had also issued a communication on 02.01.2024 in respect to the meeting of the Municipalities and Panchayats and decided that there would be no objection on the part to holding of the statutory meeting which cannot be avoided by the Municipalities and the Panchayats and other local bodies subject to the condition that no new policy decision and announcement shall be made in such meeting till the elections are over and only the decision relating to routine day-to-day management issues and on emergency issues may be taken in such meeting. The learned counsel for the petitioner further submitted that this is a case which would not fall within the exception to hold the meeting during the period of Model Code of Conduct was in force.

13. On the other hand, Mr. R. P. Sarma, the learned senior counsel appearing on behalf of the private respondents submitted that the petitioner was issued the requisition on 06.05.2024 for calling the meeting in question. The petitioner though called for the meeting on 24.05.2024 but subsequently cancelled. It was under such circumstances the meeting was called in terms with Section 43 (3) of the Act of 1956 and as more than the majority had voted in favour of the No Confidence Motion and against the petitioner, the question of interference with the minutes of the

meeting dated 29.05.2024 at 10:30 AM ought not to be made. The learned senior counsel for the private respondents further submitted that on the very date at 2:30 PM, another meeting was held whereby one Sri Jitendra Kutum was appointed as the Chairperson of the Silapathar Municipal Board and in that regard has referred to the said minutes which have been enclosed to the affidavit-in-opposition as Annexure-B. the learned senior counsel further submitted that it is no longer res integra that the Model Code of Conduct would have no role to play in respect to the meeting of the present nature and referred to the judgment of the Coordinate Bench of this Court in the case of ***Himangshu Roy vs. The State of Assam & 12 Others***, reported in ***2019 (5) GLT 796***. The learned senior counsel further submitted that the Division Bench of this Court had also approved the said judgment.

14. Mr. M. Biswas, the learned counsel appearing on behalf of the petitioner rejoining his earlier submission submitted that the meeting dated 29.05.2024 at 2:30 PM on the face of it is nonest and it is completely contrary to the provisions of the Act of 1956. The learned counsel for the petitioner drew the attention of this Court to Section 41 (2) of the Act of 1956 which stipulates that for calling for a meeting for election of Chairperson, such meeting has to be called within 45 days of the occurrence of the vacancy. He submitted that there was no notice whatsoever issued and the same would be apparent from the perusal of the materials on record. The learned counsel for the petitioner submitted that the said meeting which was held at 2:30 PM on 29.05.2024 was nothing but an afterthought and as such is to be rendered as nonest.

15. This Court before deciding the respective contentions found it

relevant to make a query upon Mr. R. P. Sarma, the learned senior counsel appearing on behalf of the private respondents as to whether the meeting dated 29.05.2024 at 2:30 PM was preceded by any notice or whether there was any agenda for appointment of a Chairperson by issuing any notice. The learned senior counsel for the private respondents fairly on instructions submitted that the meeting which was held on 29.05.2024 at 2:30 PM was neither preceded by any notice nor there was any agenda for appointment of a fresh Chairman.

16. In the backdrop of the above, the following points for determination arise for consideration:-

(i) Whether the impugned minutes of the Special Board Meeting held on 29.05.2024 at 10.30 AM requires any interference?

(ii) Whether the minutes of the Special Board Meeting held on 29.05.2024 at 2:30 PM requires any interference is nonest and void ab initio calling for interference?

(iii) What relief/reliefs the parties herein would entitle to?

17. The first point for determination which has been formulated herein above is in respect to the minutes of the Special Board Meeting which was held on 29.05.2024 at 10:30 AM. It is seen that on 06.05.2024, the private respondents who were 7 in numbers had made a requisition to the petitioner for calling for a meeting to discuss the No Confidence of the Silapathar Municipal Board. The petitioner herein though convened the meeting on 24.05.2024 at 11:00 AM as would be seen from the records, but subsequently on the instructions issued by the Executive Officer, the same was cancelled. The question arises as to whether the petitioner on

the instruction of the Executive Officer could have cancelled a statutory meeting. The reason assigned by the petitioner is two folds. First, that there was a direction issued by the Executive Officer of Silapathar Municipal Board and the second that there was the Model Code of Conduct was operational till 04.06.2024.

18. This Court has duly taken note of the provisions of the Act of 1956 which have been amended vide the amendment carried out by the Assam Municipal (Amendment Act), 2024 which came into effect from 14.03.2024. A conjoint reading of the Act of 1956 as well as the amendment so carried out, nowhere shows that the Executive Officer has the authority to intermeddle with the proceedings for removal of the Chairman or the Vice-Chairman in question. In this regard, this Court finds it very relevant to take note of the observations so made by the Coordinate Bench of this Court in its judgment dated 29.04.2024 passed in WP(C) No.168/2024. Paragraph Nos.11 & 12 of the said judgment being relevant, are reproduced herein under:-

“11. The learned senior counsel for the petitioners contend that in view of the provisions of Section 296 of the Assam Municipal Act, 1956 the District Commissioner has the supervisory power over the Municipal Board constituted under the Assam Municipal Act, 1956 and therefore, the said authority had the sanction of law for issuing letters to the Chairperson and Vice-Chairperson of the Silapathar Municipal Board to hold Special Board Meeting for no-confidence motion. We are unable to accept the said submission in view of the provisions of Section 296 of the Assam Municipal Act, which does not grant any power to the District Commissioner to issue directions to either the Chairperson or the Vice Chairperson to hold the meeting to discuss the no-confidence motion against the Chairperson or Vice-Chairperson. The provision for removal of

Chairperson and Vice-Chairperson is contained in Section 28 has been quoted hereinbefore. It is been stated at the Bar by the learned counsel for all sides that vide Assam Municipal (Amendment) Act, 2011, the words "not less" appearing in subsection (2) of Section 28 has been deleted and substituted by the word "more".

12. From the scheme of sub-section (2) of Section 43 of the Assam Municipal Act, 1956, the Chairperson and in his/ her absence, the Vice Chairperson is required to call for Special Meeting. As per Section 28(2), the removal of the Chairperson/Vice-Chairperson is to be through a specially convened meeting. Therefore, as per the Assam Municipal Act, 1956, such a meeting is only required to be called on a requisition made by not less than three Ward Commissioners. The learned senior counsel for the petitioners and the learned counsel for the appearing respondents could not show any provision in the Assam Municipal Act, 1956 which empowers a District Commissioner of any District to entertain any application made by any Ward Commissioners in respect of removal of Chairperson or Vice-Chairperson. Therefore, the District Commissioner shall also not have any power even to make a request to the Chairperson or Vice-Chairperson to convene a Special Meeting for the removal of Chairperson or Vice-Chairperson."

19. From a perusal of the observations so made by the Coordinate Bench of this Court, it is apparent that the District Administration has no power to interfere with the proceedings for removal of a Chairperson or Vice-Chairperson. The same analogy duly applies also to the case of the Executive Officer in as much as the provisions of the Act of 1956 as amended upto date also do not show that the Executive Officer of the Municipal Board had any control over the removal of the Chairperson or the Vice-Chairperson or holding of such meeting.

20. The next point which arises therefore is as to whether the Model

Code of Conduct which was operating till 04.06.2024 acted as a bar to hold the Special Body Meeting. Mr. R. P. Sarma, the learned senior counsel referring to the judgment of the Coordinate Bench of this Court in the case of **Himangshu Roy** (supra) and placed reliance to paragraph No.8 of the said judgment. The learned senior counsel for the private respondents further submitted that the said judgment passed by the Coordinate Bench of this Court was also upheld by the Division Bench of this Court in its judgment and order dated 30.09.2019 in WA No.182/2019.

21. This Court has perused the instruction issued by the Election Commission of India dated 02.01.2024 on which reliance was placed by the learned counsel for the petitioner and more particularly to Clause (vii) of the said instructions. It is seen that the Coordinate Bench of this Court had also taken a parimateria instructions which was issued on 05.04.2011 and held that a meeting to discuss the No Confidence against the Chairman is not prohibited during the Model Code of Conduct was in force. Paragraph No.8 of the said judgment passed by the Coordinate Bench in the case of **Himangshu Roy** (supra) is reproduced herein under:-

“8. Let us now deal with the objections raised by the petitioner, first one being holding of special meeting when model code of conduct was in force; second, as noted in the order dated 03.05.2019 i.e., non presence of the officials; and the third one raised in the course of the hearing i.e., voting. Regarding holding of special meeting to discuss no confidence motion when the model code of conduct was in force, Election Commission of India vide its letter dated 05.04.2011 had clarified that there would be no objection on its part to the holding of statutory meetings by municipalities and panchayats during the period when model code of conduct is in force subject to the condition that no policy decision should be taken and announced in such meeting. Calling of the

special meeting is provided under the statute. It was a meeting to discuss no confidence motion against the Chairman. Question of discussing any policy did not arise. Therefore, such meeting was not prohibited during the period when the model code of conduct was in force as clarified by the Election Commission itself. Coming to the second ground of assailment, it is seen that calling for special meeting is provided under Sub-sections (2) and (3) of Section 43. Manner of removal of Chairman and Vice Chairman is provided in Sub-section (2) of Section 28. In none of these provisions there is any requirement that the Deputy Commissioner or his representative and the Chief Executive Officer should be present. This special meeting is only for the purpose of deciding no confidence against the Chairman. Only the elected Ward Commissioners and ex-officio members are eligible to participate in such meeting. Therefore, question of the Deputy Commissioner or Chief Executive Officer remaining present in such meeting does not arise."

22. In view of the above law as settled by the Coordinate Bench of this Court which has been upheld by the Division Bench, it is clear that the Model Code of Conduct would not come into play for deferring/cancelling of the meeting which was requisitioned. The entire edifice of the direction of the Executive Officer was also on the basis of the Model Code of Conduct. The affidavit which has been filed by the respondent No.3 is also on the Model Code of Conduct. Therefore, the justification for not holding the meeting by the petitioner on the basis of the Model Code of Conduct was misconceived and was not at all tenable. The consequential effect of the above observations and findings is that the meeting which was held on 29.05.2024 at 10:30 AM cannot be said that it was in consonance with the Act of 1956. Moreover, nothing else was shown during the course of hearing which would render the Special Body Meeting held on 29.05.2024 at 10:30 Am liable for interference. Under such circumstances, the first

point for determination is decided thereby holding that the impugned Special Board Meeting held on 29.05.2024 at 10:30 AM does not require any interference.

23. The second point for determination arises as to whether the Special Board Meeting held on 29.05.2024 at 2:30 PM requires any interference. It is seen from the reading of Section 41 (2) of the Act of 1956 that upon the removal of the Chairman, the Vice-Chairman is required to call for a meeting to complete the election within 45 days of the occurrence of the vacancy. For calling for a meeting, it is the requirement that notice has to be issued. Admittedly, there was no notice issued. Even a perusal of the minutes of the Special Board Meeting held on 29.05.2024 at 10:30 AM also not show that there was a deferment of the said meeting to discuss as regards the election of the Chairperson. There was also no agenda for doing so. It is seen that the second meeting which was held on 29.05.2024 at 2:30 PM is completely contrary to Section 41 (2) of the Act of 1956 seems to be an afterthought which renders this Court to opine that the Special Body Meeting held on 29.05.2024 at 2:30 PM is nonest and void ab initia.

24. This leads this Court to the third point for determination as to what relief/reliefs the parties herein would be entitled to. Taking into account that this Court has not interfered with the minutes of the meeting held on 29.05.2024 at 2:30 PM, the removal of the petitioner from the post of Chairperson of the Silapathar Municipal Board is not interfered with. Secondly, in view of holding that the Special Body Meeting dated 29.05.2024 at 2:30 PM was nonest and void ab initio, the appointment of Shri Jitendra Kutum as Chairperson of Silapathar Municipal Board is

interfered with.

25. It is seen that the Vice-Chairperson is required to fill up the vacancy of the Chairperson in accordance with Section 41 (2) of the Act of 1956. The same is required to be done within a period of 45 days from the date on which the vacancy has arisen.

26. This Court has also taken note of that the vacancy arose on 29.05.2024 and more than 45 days had passed. However, in view of the interim order passed, the said resolution dated 29.05.2024 at 10: 30 AM was not to effect. Be that as it may, the Silapathar Municipal Board was not functioning with a full fledged proper Chairperson all this while in view of the stipulation contained in the interim order dated 21.05.2024. Under such circumstances, though it is the mandate of Section 41 (2) of the Act of 1956 for filling up the vacancies within 45 days, this Court directs the Vice-Chairperson of the Silapathar Municipal Board to fill up the vacancy by calling for a meeting on or before 21.08.2024.

27. This Court further observes that during this period, in terms with Section 39 of the Act of 1956, the Vice-Chairperson would be in a position to exercise the power of the Chairperson. However, as there are various disputes, this Court for the ends of justice observes that though the Vice-Chairperson will be performing the function of the Chairperson, but the same being temporary, no major decision should be taken which would have any impact on the policy as well as the finance of the Silapathar Municipal Board.

28. It is made clear that the non-interference to the minutes of the meeting dated 29.05.2024 at 10:30 AM by this Court would not act as a

bar for the petitioner to contest in the election to the Chairperson of the Silapathar Municipal Board.

29. In view of the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant