

GAHC010152782024



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

Case No. : WA/374/2024

PARTHA KUMAR NATH
SON OF PRODIP KUMAR NATH, RESIDENT OF AJACHAK PALLY, WARD NO.
1, HAILAKANDI, P.O. AND DIST.- HAILAKANDI, ASSAM, PIN- 788151.

VERSUS

1: THE STATE OF ASSAM AND 7 ORS REPRESENTED BY THE
COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF HOUSING AND URBAN AFFAIRS, DISPUR, GUWAHATI-6.

2: THE ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM
HOUSING AND URBAN AFFAIRS DEPARTMENT DISPUR GUWAHATI-6.

3: THE DIRECTOR
MUNICIPAL ADMINISTRATION DISPUR GUWAHATI-6.

4: THE DIRECTOR TOWN AND COUNTRY PLANNING
DISPUR GUWAHATI-6.

5: THE DISTRICT COMMISSIONER HAILAKANDI
P.O. AND DISTRICT- HAILAKANDI ASSAM PIN- 788151.

6: THE EXECUTIVE OFFICER HAILAKANDI MUNICIPAL BOARD
P.O. AND DISTRICT- HAILAKANDI ASSAM PIN- 788151.

7: THE EXECUTIVE ENGINEER TECHNICAL CELL HAILAKANDI
MUNICIPAL BOARD DEPARTMENT OF HOUSING AND URBAN AFFAIRS
(DOHUA) P.O. AND DISTRICT- HAILAKANDI ASSAM PIN- 788151.

8: THE CHAIRMAN HAILAKANDI MUNICIPAL BOARD
P.O. AND DISTRICT- HAILAKANDI ASSAM PIN- 788151

For the Appellant(s) : Mr. P.K. Roychoudhury, Advocate.
Mr. H.I. Choudhury, Advocate.

For the Respondent(s) : Mr. A.M. Barbhuiya, Advocate for respondent No.8.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

29.11.2024

(Vijay Bishnoi, CJ)

This writ appeal is preferred on behalf of the petitioner challenging the order dated 07.06.2024 passed by learned Single Judge in WP(C) No.6843/2024, whereby the learned Single Judge has dismissed the writ petition.

The brief facts relevant for adjudication of the matter are that the appellant, who is representing Ward No.1 of the Hailakandi Municipal Board (hereinafter to be referred as the "Municipal Board"), has approached the Writ Court while raising a grievance that the Municipal Board, in its special meeting held on 28.08.2023, has adopted a resolution that the funds received by the Municipal Board basing on the recommendations of the 15th Finance Commission for the year 2023-24, both tied and untied grants, will be equally distributed among the wards constituting the said Municipal Board, illegally.

The stand of the appellant before the learned Single Judge was that as per the provisions of Clause 3(b) of the Operational Guidelines for implementation of the 15th Finance Commission on urban local bodies grants provides that the grants shall be distributed to each of all such urban local body on the basis of the accepted recommendations of the latest State Finance Commission. However, in absence of non-availability of the recommendations of the State Finance Commission for distribution within a particular category, the allocation of fund is to be made on the basis of the population in the area in the ratio of 90:10. It was the case of the appellant before the Writ Court that by adopting the resolution dated 28.08.2023, the Municipal Board has violated the

Operational Guidelines for implementation of the 15th Finance Commission.

The claim of the appellant was opposed by the Chairman of the Municipal Board while claiming that the Operational Guidelines for implementation of the 15th Finance Commission speaks only in respect of devolution of funds to the urban local bodies and nowhere it provides that how the said fund credited to the fund of a particular urban local body shall be distributed. It is contended on behalf of the Chairman of the Municipal Board that once the fund is credited in the Municipal fund of a local body, it is upto the Municipal Board to evolve a criteria for distribution of the said fund as per the consensus amongst the Members of the Board. It is contended that the Municipal Board has taken a decision to distribute the fund received from the 15th Finance Commission to each ward equally and, therefore, the same is not liable to be interfered with.

The learned Single Judge, after taking into consideration the rival arguments, has dismissed the writ petition while observing as under:-

“25. The provisions of Section 58 of the Assam Municipal Act, 1956, mandates formation of a fund to be called the “Municipal Fund”, for each of the Municipal Board and it is to the said fund that the grants-in-aid as sanctioned by the Government from time to time, is credited. The manner in which the fund is to be so utilized, is also provided under the provisions of the Assam Municipal Act, 1956.

26. A perusal of the provisions of the Assam Municipal Act, 1956, does not reveal the manner in which the Municipal Board is to devolve the funds from the “Municipal Fund” amongst the wards constituting the Municipal Board. The “Municipal Fund” being so credited for the Municipal Board, it is the Board that is now required to take a decision as to the manner in which the said funds is required to be devolved amongst the various wards for carrying-out the permitted development activities. The Hailakandi Municipal Board in its special meeting held on 28.08.2023, having decided that the said funds is now required to be devolved equally amongst each of the wards constituting the said Municipal Board and the minutes of the special meeting, having revealed that the same has also taken into account the

views expressed by the petitioner, herein, as the Ward Commissioner of Ward No. 1 that the funds is to be so devolved by reckoning the guidelines of the 15th Finance Commission; the decision arrived at in its special meeting held on 28.08.2023, being a decision of the Hailakandi Municipal Board and it having been stated to have been so unanimously arrived at; the Ward Commissioners of each of the ward constituting the said Municipal Board, is to be held to be bound by such decision as arrived at by the Board of which they are individually, constituents of.

27. *The guidelines as relied upon by the petitioner, more particularly, Clause 3(b) thereof, is for the purpose of determining the manner in which the grants is to be distributed to each of the urban local bodies by the State Government. It provides that the grants is to be so distributed on the basis of accepted recommendations of the latest State Finance Commission.*

28. *In the case of non-availability of recommendations from the State Finance Commission for distribution of such funds, it provides that allocation of funds by the Government to each urban local body, is to be so made on the basis of the population and area in the ratio of 90:10. In other words; the said guidelines only mandates the manner in which the grants is to be released to the urban local body. The said guidelines do not regulate in any manner, the devolution of the funds by the Municipal Board to each of its wards. The said provisions of Clause 3(b) of the guidelines thereof, cannot be held to be binding upon the Municipal Board. The Municipal Board being constituted by the Ward Commissioners of each of its wards; it is the Board which would now require to take a decision with regard to the manner in which the funds allocated to it including the grants-in-aid so received by it as an urban local body in pursuance of the recommendations of the 15th Finance Commission.*

29. *In the case on hand, the Hailakandi Municipal Board, in a democratic manner in a special meeting of its Ward Commissioners, Chairman, and other invitee members; having arrived at a unanimous conclusion that the funds are to be distributed equally amongst each of the wards; in the considered view of this Court, the said decision cannot be held to be an erroneous one and/or so arrived at in violation of the provisions of the Assam Municipal Act, 1956.*

30. *The provisions pertaining to the urban local bodies as found in the Constitution of India, also does not prescribe the manner in which the funds of an urban local body is to be so distributed amongst its constituents.”*

Having heard the learned counsel appearing for the parties and after taking into consideration the material available on record, we are of the view that the learned Single Judge has rightly observed that the Operational

Guidelines for implementation of the recommendations of the 15th Finance Commission only mandates the manner in which the grant is to be released to the urban local bodies and the said Guidelines do not regulate, in any manner, devolution of fund by the Municipal Board to each of its wards. Hence, we do not find any case for interference. Resultantly, this writ appeal stands dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant