

GAHC010154702024



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

Case No. : WP(C)/3891/2024

RUPA DUTTA SAIKIA
W/O- SRI KUSHEWAR SAIKIA,
RESIDENT OF VILLAGE- TANTI GAON,
P.O.- TITABOR, WARD NO.1 (PURANA TITABOR),
DISTRICT- JORHAT, ASSAM,
PIN- 785630.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
URBAN DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-6, DISTRICT- KAMRUP(M),
ASSAM.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
URBAN DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DIRECTOR OF MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GUWAHATI-6.

4:THE DISTRICT COMMISSIONER
JORHAT
ASSAM.

5:THE SUB DIVISIONAL OFFICER (CIVIL)
TITABOR
JORHAT

ASSAM.

6:THE TITABOR MUNICIPAL BOARD
JORHAT.

7:THE EXECUTIVE OFFICER
TITABOR MUNICIPAL BOARD
TITABOR
JORHAT
ASSAM

For the petitioner (s) : Mr. B. Buragohain, Advocate

For the respondent (s) : Ms. M. Barman, Govt. Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

05.08.2024

Heard Mr. B. Buragohain, the learned counsel appearing on behalf of the petitioner and Ms. M. Barman, the learned counsel appearing on behalf of the respondent Nos.3, 4 & 5.

2. The instant writ petition is taken up for disposal at the motion stage itself taking into account the facts involved.

3. The petitioner herein is aggrieved by the No Confidence Motion held on 25.07.2024 whereby the petitioner who was the Chairperson of Titabor Municipal Board was removed on the basis of the said resolution.

4. From the perusal of the materials on record and submission of the learned counsel for the petitioner it is apparent that the Titabor Municipal Board has 10 Ward Commissioners. Out of the 10 Ward Commissioners, 8 Ward Commissioners have expressed their No Confidence upon the petitioner, and as such, had issued a notice on 28.06.2024 for holding a Special Body Meeting to

discuss the No Confidence upon the petitioner. Admittedly, the petitioner did not hold the said meeting within the period of 20 days. It is also seen that the Additional District Commissioner in-Charge, Titabor had also requested the petitioner to go ahead to hold the meeting in terms with the requisition so made, by a communication dated 02.07.2024. Under such circumstances, on 18.07.2024, after the expiry of 20 days, the 8 Ward Commissioners informed the petitioner by another communication that as the petitioner failed to hold the Special Meeting on 20.07.2024 within the stipulated period of 20 days, the said Ward Commissioners would be holding a meeting in terms of Section 43 (3) of the Assam Municipal Act, 1956 (for short, 'the Act of 1956'). The date stipulated was on 20.07.2024 at 02:00 PM. However, on account of the death of a Government nominee, the said meeting was rescheduled on 25.07.2024 at 02:00 PM and admittedly the petitioner was duly informed on 24.07.2024. Thereupon, on 25.07.2024, the 8 Ward Commissioners have expressed their No Confidence against the petitioner and adopted a resolution and on the basis thereof, the petitioner has been removed from the post of the Chairperson of the Titabor Municipal Board. It is under such circumstances, the instant writ petition has been filed challenging the resolution dated 25.07.2024.

5. The Court has duly heard the learned counsel appearing on behalf of the petitioner who submitted that the petitioner was only given one day notice, and as such, the said resolution dated 25.07.2024 is not in accordance with law. To substantiate the submission, the learned counsel for the petitioner submitted that Section 46 (4) of the Act of 1956 stipulates that the notice has to be a three days notice.

6. This Court has duly perused the provision of Section 46 (4) of the Act of 1956 and in the opinion of this Court, the said provision is not applicable in the

present circumstances. On the other hand, what is applicable is Section 43 (3) of the Act of 1956 which stipulates that if the Chairman or the Vice-Chairman fails to call a Special Meeting to meet within 20 days after such a requisition has been made, the meeting may be called by the persons who signed the requisition.

7. Under such circumstances, this Court does not find that there is any infirmity in the resolution dated 25.07.2024.

8. Be that as it may, this Court however observes that in terms with Section 41 (2) of the Act of 1956, there is a requirement of filling up the vacancy of the Chairperson within 45 days of the post falling vacant. The petitioner herein though has been removed vide the resolution dated 25.07.2024 shall be entitled to contest for the post of Chairperson.

9. In view of the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant