

GAHC010265392023



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

Case No. : WP(C)/6843/2023

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

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

Advocate for the Petitioner : MR H I CHOUDHURY

Advocate for the Respondent : GA, ASSAM

Linked Case : I.A.(Civil)/3890/2023

THE CHAIRMAN
HAILAKANDI MUNICIPAL BOARD

P.O. AND DISTRICT- HAILAKANDI
ASSAM
PIN- 788151.

VERSUS

PARTHA KUMAR NATH AND 7 ORS
SON OF PRODIP KUMAR NATH
RESIDENT OF AJACHAK PALLY
WARD NO. 1
HAILAKANDI
P.O. AND DIST.- HAILAKANDI
ASSAM
PIN- 788151

2:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
DEPARTMENT OF HOUSING AND URBAN AFFAIRS
DISPUR
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HAILAKANDI MUNICIPAL BOARD
DEPARTMENT OF HOUSING AND URBAN AFFAIRS (DOHUA)

P.O. AND DISTRICT- HAILAKANDI
ASSAM
PIN- 788151.

Advocate for : MR. A M BARBHUIYA
Advocate for : MR H I CHOUDHURY appearing for PARTHA KUMAR NATH AND
7 ORS

Linked Case : I.A.(Civil)/249/2024

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

THE STATE OF ASSAM AND 9 ORS
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
DEPTT 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
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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

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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.

9:THE UNION OF INDIA

REP BY THE GOVT OF INDIA MINISTRY OF FINANCE DEPTT OF
EXPENDITURE FINANCE COMMISSION DIVISION 11TH BLOCK 5TH FLOOR
CGO COMPLEX LODHI ROAD NEW DELHI 110003

10:THE CHAIRMAN

STATE FINANCE COMMISSION ASSAM JANATA BHAWAN DISPUR
GUWAHATI 6

Advocate for : MR H I CHOUDHURY

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 9 ORS

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 07.06.2024

Date of Judgment & order: 07.06.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. P. K. Roy Choudhury, learned counsel, appearing on behalf of the petitioner. Also heard Ms. Usha Das, learned Addl. Senior Government Advocate, Assam, appearing on behalf of respondents No. 1, 2, 3, 4, 5, 6 & 7; and Mr. A. M. Barbhuiya, learned counsel, appearing on behalf of respondent No. 8.

2. The grievance raised by the petitioner in the present proceeding, pertains to the resolution adopted in a special meeting of the Hailakandi Municipal Board held on 28.08.2023, with regard to the manner in which the funds of the Municipal Board is to be distributed amongst the various wards of the said Municipal Board.

3. At the outset, this Court while issuing notice in the matter vide order, dated 24.11.2023, had restrained the Hailakandi Municipal Board from acting on the resolutions adopted in the special meeting of the Hailakandi Municipal Board held on 28.08.2023, with regard to the distribution of funds. The Chairman of the Municipal Board, had instituted the interlocutory application being IA(c)3890/2023, praying for vacation of the interim directions.

4. However, as agreed to by the learned counsels appearing for the parties; this Court had proceeded to take-up the writ petition itself for final consideration and disposal.

5. The grievance of the petitioner is that the Hailakandi Municipal Board in its special meeting held on 28.08.2023, had adopted a resolution that the funds as received by the Hailakandi Municipal Board basing on the recommendations of the 15th Finance Commission for the year 2023-2024, both tied and untied grants, will be equally distributed amongst the wards constituting the said Municipal Board.

6. The petitioner is an elected Ward Commissioner representing Ward No. 1 of the Hailakandi Municipal Board. It is the contention of the petitioner that the said Municipal Board consists of 16 wards and the population of Ward No. 1 is highest amongst the wards constituting the Hailakandi Municipal Board. It is also contended

by the petitioner in the writ petition that in pursuance of the recommendations made by the 15th Finance Commission; the Government of Assam in the Urban Development Department, in installments, had released an amount of Rs. 1,82,43,000/- and Rs. 1,26,00,000/-, respectively, to the Hailakandi Municipal Board for carrying-out various developmental works therein. The said amounts having been so received by the said Municipal Board and it having constituted the fund of the Board; the petitioner proceeded to submit a representation on 23.08.2023, requiring the departmental authorities to direct the Hailakandi Municipal Board for releasing the said amount amongst the various Ward Commissioners by reckoning the population ratio of each of the wards.

7. It is contended that with a view to discuss the manner in which the funds of the said Municipal Board was to be devolved, a special meeting of the Hailakandi Municipal Board was convened on 28.08.2023, and the petitioner, herein, also participated in the said meeting. In the said meeting, the petitioner had placed his views and had required the funds as received in pursuance of the 15th Finance Commission to be distributed amongst the wards of the Hailakandi Municipal Board by reckoning the population of each of the wards. However, basing on the majority view as had arisen in the matter with regard to the manner of distribution of the funds so available with the said Municipal Board; the Ward Commissioners contended that the grants be equally distributed amongst all the wards of the Hailakandi Municipal Board for developmental works and requested all the members to submit the list of schemes of their respective wards to the Municipal Board within a period of 7 days from the date of the said meeting. Accordingly, after discussion of the matter, the meeting unanimously resolved that the total fund of the 15th Finance Commission received against the financial year 2023-24, both tied and untied grants, be equally distributed at the rate of Rs. 16,70,250/- to all the wards under the said Municipal Board. The

petitioner being aggrieved by the said decision as arrived at in the special meeting of the Hailakandi Municipal Board held on 28.08.2023, approached the departmental authorities, raising his grievance in the matter and requiring a direction to the authorities of the said Municipal Board to effect the devolution of the funds by reckoning the population of each of the wards. The representations not having received a favourable response; the petitioner has instituted the present proceeding, presenting a challenge to the resolutions as adopted in the special meeting of the Hailakandi Municipal Board held on 28.08.2023.

8. Mr. Roy Choudhury, learned counsel for the petitioner, by referring to the operational guidelines for implementation of the 15th Finance Commission, on urban local bodies grants, has submitted that insofar as Category-II Cities are concerned; the said guidelines mandates that the grants be distributed to each of all such urban local body on the basis of the accepted recommendations of the latest State Finance Commission suitably modified to accommodate the Cantonment Boards. It was further contended that in case of non-availability of State Finance Commission recommendations for distribution within a particular category, the allocation of fund is to be made on the basis of population and area in the ratio of 90:10.

9. Mr. Roy Choudhury, learned counsel, by emphasizing on the said guidelines, has contended that the Municipal Board on receipt of the funds by it, has to devolve the funds amongst the various wards by also following the guidelines as mandated in the matter for devolution of funds to the urban local body under the provisions of the said operational guidelines for implementation of the recommendations of the 15th Finance Commission on urban local body grants.

10. Mr. Roy Choudhury, learned counsel, has further contended that the Hailakandi Municipal Board while considering the manner in which the devolution of funds received in pursuance of the recommendations of the 15th Finance Commission had failed to reckon the provisions in the guidelines involved which he has contended to be also applicable for devolution of the funds by the Municipal Board to each of the wards constituting the Hailakandi Municipal Board.

11. Mr. Roy Choudhury, has also contended that the population of Ward No. 1 represented by the petitioner, herein, being the largest amongst the wards constituting the Hailakandi Municipal Board, it is necessitated that a larger share of the grants-in-aid received by the Board, is to be devolved to Ward No. 1 and the devolution should be so based strictly on the basis of the population strength constituting each of the wards forming the Hailakandi Municipal Board.

12. In view of the above premises; Mr. Roy Choudhury, learned counsel for the petitioner, has contended that the decision as arrived at in the special meeting of the Hailakandi Municipal Board held on 28.08.2023, calls for interference from this Court with further direction to the said Board to devolve the funds received in pursuance of the 15th Finance Commission by reckoning the population strength of each of the wards constituting the Hailakandi Municipal Board.

13. Per contra, Mr. Barbhuiya, learned counsel appearing on behalf of respondent No. 8, by referring to the interlocutory application being IA(c)3890/2023 filed by the Chairman, Hailakandi Municipal Board, has contended that the petitioner, herein, has clearly misread and understood the operational guidelines referred to hereinabove in-as-much as the said guidelines is for the purpose of devolution of the funds in terms

of the recommendations of the 15th Finance Commission to the urban local bodies and not for the purpose of determining the manner in which the urban local bodies shall devolve such funds to the wards constituting such urban local bodies.

14. It is contended by Mr. Barbhuiya, learned counsel, that the funds received from the 15th Finance Commission, having been credited to the account of the Hailakandi Municipal Board; the same becomes the fund of the Board and the manner in which the said amount is to be utilized, is required to be so determined by the Board itself in a meeting to be convened for the said purpose. It is further contended by the learned counsel that there is no guidelines issued by any authority competent to issue the same prescribing the manner in which the funds of the Municipal Board is to be devolved amongst its various wards.

15. Mr. Borbhuiya, learned counsel, by referring to the provisions of Section 58 of the Assam Municipal Act, 1956, has contended that for each Municipal Board, a fund to be called "Municipal Fund" is to be formed and therein, the amounts so received shall be credited including the grants-in-aid as sanctioned from time to time by the Government. The purpose for which the said funds are required to be utilized, is also provided under the provisions of the Assam Municipal Act, 1956. The learned counsel has also contended that the Hailakandi Municipal Board having unanimously resolved to distribute the grants so received from the Government, equally, amongst the wards constituting the Municipal Board; the said decision cannot be said to be an erroneous one in-as-much as the same was arrived at in the manner required.

16. Accordingly, Mr. Barbhuiya, learned counsel for respondent No. 8, has contended that the claim made by the petitioner, herein, not being supported by any guidelines

issued in this connection by the competent authority and the Hailakandi Municipal Board being the authority to decide the manner in which its funds is to be utilized; the instant writ petition is required to be dismissed along with vacation of the interim order passed by this Court in the matter.

17. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

18. The claim of the petitioner is that the funds of the Hailakandi Municipal Board, more particularly, the grants as received by it, both tied and untied, is required to be distributed amongst the various wards by following the population strength of each of the wards, in question.

19. In this connection, Mr. Roy Choudhury, learned counsel for the petitioner, has placed reliance on the operational guidelines for implementation of the recommendations on urban local body grants contained in Chapter VII of the 15th Finance Commission Final Report. Mr. Choudhury, learned counsel, has placed reliance, more particularly, on Clause 3(b) pertaining to the devolution of funds for urban local bodies of Category-II cities.

20. Mr. Roy Choudhury, has contended that the devolution of funds to each urban local body in terms of the provisions of Clause 3(b) of the said guidelines having mandated that the same is to be so made on the basis of the recommendations of the State Finance Commission and in the absence of such recommendations, is to be made by reckoning the population and area in the ratio of 90:10.

21. Mr. Roy Choudhury, learned counsel for the petitioner, has also contended that the said guidelines would also apply to the devolution of the funds by the Municipal Board amongst its various wards. It is the specific contention of the learned counsel that in the absence of any guidelines in the matter being issued by the competent authority governing the manner in which the devolution of funds is to be so effected; the Municipal Board is to follow the guidelines, more particularly, the manner in which the devolution of funds upon each urban local body is to be so made under the provisions of Clause 3(b) of the said guidelines.

22. Mr. Roy Choudhury, learned counsel, has submitted that the Ward No. 1 having the highest population amongst the various wards constituting the Hailakandi Municipal Board; the said ward is required to be devolved a higher share of funds in comparison to the other wards for carrying-out the development works of Ward No. 1 in-as-much as the same would benefit a larger section of the people covered by the Hailakandi Municipal Board.

23. The Chairman, Hailakandi Municipal Board, on the other hand, by placing reliance on the minutes of the special meeting of the Board held on 28.08.2023, has contended that the funds as sanctioned by the Government to the Hailakandi Municipal Board in pursuance of the 15th Finance Commission for the year 2023-2024, having been resolved by the Board to be so distributed amongst the various wards constituting the Municipal Board in a particular manner; the petitioner, herein, who is a Ward Commissioner of Ward No. 1 cannot have a view in the matter other than the views as expressed by the majority of the members in the said special meeting.

24. It is also contended that the decision as arrived at in the special meeting of the Hailakandi Municipal Board held on 28.08.2023, is binding on each of the Ward Commissioner including the petitioner, herein.

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.

31. In the absence of any guidelines, the Hailakandi Municipal Board being the rightful owner of the "Municipal Fund" and it having decided in a special meeting of the Municipal Board held on 28.08.2023, after discussing every aspect of the matter so involved, to devolve the grants-in-aid so received from the State Government in pursuance of the recommendations of the 15th Finance Commission; the said decision so arrived at by the Municipal Board, cannot be held to be erroneous requiring an interference of this Court.

32. In view of the conclusions reached hereinabove; the writ petition is held to be bereft of any merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

33. The interim order passed, vide order, dated 24.11.2023, stands vacated.

JUDGE

Comparing Assistant