

GAHC010056502024



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

Case No. : WP(C)/168/2024

SHARMISTHA DEB AND 7 ORS
W/O- BENU DEB

R/O- SILAPATHAR

P.O AND P.S- SILAPATHAR
DIST- DHEMAJI
PIN-787059

2: JITENDRA KUTUM
S/O- JUGESWAR KUTUM

R/O- SILAPATHAR SONOWAL GAON

P.O AND P.S- SILAPATHAR
DIST- DHEMAJI
PIN-787059

3: ADITYA SONOWAL
S/O- PADMADHAR SONOWAL

R/O- JUNAKI NAGAR

P.O AND P.S- SILAPATHAR
DIST- DHEMAJI
PIN-787059

4: DINESH DAS
S/O- LATE NARESH DAS

R/O- KALYANPUR

P.O AND P.S- SILAPATHAR
DIST- DHEMAJI
PIN-787059

5: DIPANKAR DIHINGIA
S/O- DIPAK DIHINGIA

R/O- SILAPATHAR BONGAON

P.O AND P.S- SILAPATHAR
DIST- DHEMAJI
PIN-787059

6: SHILPI CHOWDHARY
W/O- UTPAL CHOWDHARY

R/O- AMRITPUR

P.O AND P.S- SILAPATHAR
DIST- DHEMAJI
PIN-787059

7: RATUL GOGOI
S/O- LATE PRADIP GOGOI

R/O- MAJGAON

P.O AND P.S- SILAPATHAR
DIST- DHEMAJI
PIN-787059

8: TARUNIMA DUTTA ROY
W/O- RAMESH ROY

R/O- NO-2 MAJGAON

P.O AND P.S- SILAPATHAR
DIST- DHEMAJI
PIN-787059
VERSUS

THE STATE OF ASSAM AND 9 ORS
THROUGH THE PRINCIPAL SECRETARY URBAN DEVELOPMENT
DEPARTMENT
DISPUR-06

2:THE DIRECTOR
MUNICIPAL ADMINISTRATION

HENGRABARI
GHY-06
3:THE DISTRICT COMMISSIONER
DHEMAJI
ASSAM
PIN-787057
4:THE SUPERINTENDENT OF POLICE
DHEMAJI
ASSAM
PIN-787057
5:THE OFFICER IN CHARGE
SILAPATHAR POLICE STATION

SILAPATHAR
ASSAM
DIST- DHEMAJI
PIN-787057
6:THE SILAPATHAR MUNICIPAL BOARD
REP. BY THE EXECUTIVE OFFICER
SILAPATHAR
DHEMAJI
ASSAM
PIN-787057
7:LABANYA PAIT DOLEY
CHAIRPERSON

SILAPATHAR MUNICIPAL BOARD
SILAPATHAR

R/O- MISSING GAON

P.S AND P.O- SILAPATHAR
DHEMAJI
ASSAM
PIN-787059
8:BABUL CHAKRABORTY
S/O- NRIOPEN CHAKRABORTY

R/O- PAULPATTY SUBASH PALLY

P.S AND P.O- SILAPATHAR
DHEMAJI
ASSAM
PIN-787059
9:RITA DAS
W/O- SUKHEN DAS

R/O- AMRITPUR

P.S AND P.O- SILAPATHAR
DHEMAJI
ASSAM
PIN-787059
10:MONURAMA DAS DEY
W/O- SAJAL DEY

R/O-SOCIETY ABHAY PALLY

P.S AND P.O- SILAPATHAR
DHEMAJI
ASSAM
PIN-787059

Advocate for : MR. R P SARMAH
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 9 ORS

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 29.04.2024

Heard Mr. R.P. Sarmah, learned senior counsel, assisted by Mr. D. Doley, learned counsel for the petitioner. Also heard Ms. S. Sarma, learned Govt. advocate appearing for respondent nos. 1 to 6 and Mr. M. Biswas, learned counsel for respondent nos.7 to 10.

2. The petitioners herein are the elected members of Silapathar Municipal Board. By letter dated 01.01.2023, nine elected Ward Commissioners made a complaint to the Deputy Commissioner, Dhemaji (now District Commissioner, Dhemaji), ventilating their no-confidence against the Chairperson. This was followed by another letter dated 07.12.2023 for making an inquiry regarding the no-confidence motion. By a letter dated 12.12.2023, the District Commissioner, Dhemaji forwarded the petition submitted by the

Ward Commissioners expressing their no- confidence motion against her i.e. the Chairperson, Silapathar Municipal Board, which is held by respondent no. 7 was given fifteen days' time to hold a Board Meeting from the date of receipt of the said letter.

3. Accordingly, the Vice-Chairperson, Silapathar Municipal Board (petitioner no.1), issued a notice convening a Special Board Meeting of Silapathar Municipal Board, purportedly under the provisions of Section 28 of the Assam Municipal Act, 1956. The District Commissioner, Dhemaji by an order dated 04.01.2024 appointed Sri Biswajit Phukan, ACS as his representative to attend the meeting.

4. Sri Jugeswar Kutum, the father of petitioner no.2 had lodged an FIR on 05.01.2024 before the Officer-in-Charge, Silapathar PS, alleging that the petitioner no.2 was kidnapped at around 3.00 PM on 05.01.2024 in broad day light and is untraceable. In the complaint dated 06.01.2024 lodged by the petitioner no.1 before the Superintendent of Police, Dhemaji, it was stated that at about 2.30 PM on 05.01.2024, while she was on way to attend the Board Meeting of Silapathar Municipal Board, at around 3 PM she was forcefully dragged-out of her vehicle by the police personnel and taken away in a police vehicle and thereby prevented her from attending the meeting. The petitioners by a representation dated 06.01.2024 addressed to the District Commissioner, Dhemaji, ventilated their grievance against the abduction of two Ward Commissioners, preventing them from attending the Board Meeting held on 05.01.2024.

5. The meeting of the Silapathar Municipal Board was held on 05.01.2024 and six Ward Commissioners as well as the concerned Member of Parliament and the concerned Member of Legislative Assembly, who are ex-

officio Board Members, had voted against the motion. Two other persons, who were present in the Board Meeting, were the nominees of the Deputy Commissioner, Dhemaji and the other was a Government nominee, who did not have the power to vote. Accordingly, the motion failed and the respondent no.7 continues to be the Chairperson of the Silapathar Municipal Board.

6. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioners seeking that the actions taken by the respondent no.7 and her men and agents be declared to be illegal and arbitrary and to direct the respondent nos. 3 to 10 to abide by the legal provisions and not to cause any obstruction and hindrances in the conduct of Special Meeting called for no-confidence against the respondent no.7 and to restrain the respondent no.7 from making any transaction during the pendency of this writ petition.

7. The District Commissioner, Dhemaji (respondent no.3) has filed an affidavit-in-opposition on 20.03.2024, wherein it is stated that on the basis of written complaint received by him, a report was sought from Superintendent of Police, Dhemaji, who gave a report dated 08.03.2024 indicating that at 9.45 AM on 05.01.2024 a meeting was to be held at Silapathar Municipal Board regarding no-confidence motion and it was anticipated that the law and order situation would arise and on the same date at about 3 PM, reliable information was received that one Ward Commissioner (name withheld herein), who is an FIR named accused in Silapathar PS Case No. 71/2022 along with the petitioner no.1, would participate in the no-confidence motion and will come together in the same vehicle and accordingly, during nakka checking, they were stopped, but they refused to go to the police station and created a ruckus. Therefore, the Officer-in-charge of Silapathar PS, in order to control the situation, took the

petitioner no.1 to the police station and later she was identified as Vice-Chairperson of Silapathar Municipal Board, and she was released as she was not the desired person.

8. The respondent nos. 7 to 10 have also filed their affidavit-in-opposition and it is projected therein that the copy of the letter dated 01.12.2023 in the subject of no-confidence motion against the respondent no.7 was not served on her and that after a lapse of 12 days, the District Commissioner, Dhemaji by an e-mail dated 12.12.2023, directed the respondent no.7 to hold a Board Meeting within 15 days. Thereafter, the Vice-Chairperson, by a letter dated 29.01.2023 which was served on her on 02.01.2024, called a Special Board Meeting to discuss the no-confidence motion against the respondent no.7. The respondent no.7 has also disputed the power of the District Commissioner, Dhemaji under the Assam Municipal Act, 1956 to instruct the Chairperson of the said Silapathar Municipal Board to convene a meeting and in this regard a reference is made to the provisions of Section 43 of the Assam Municipal Act, 1956 and it is also stated that when the FIR was lodged for kidnapping of the petitioner no.2, no names were disclosed in the FIR but in this writ petition, allegations were made against the respondent no.7 to be responsible for kidnapping. Hence, according to the said respondent, the lodgment of the FIR is also questionable.

9. The learned senior counsel for the petitioners has made his submission in support of the writ petition. Similarly, the learned counsel for the respondent nos. 7 to 10 has also made his submission in support of their contention. It would not be necessary to burden this order on the nature of submissions made.

10. It would be appropriate to quote the provisions of Section 28, 47 and

296 of the Assam Municipal Act, 1956.

“28. Removal of Chairman and Vice-Chairman:-

(1)[Deleted].

(2) An elected Chairman or Vice-Chairman may be removed from his office by a resolution of the Board in favour of which not less than half of the whole number of commissioners shall have given their votes at a meeting specially convened for the purpose.

(3) The State Government, after giving an opportunity to explain, may remove the Chairman or Vice-Chairman from his office if he is persistently omitting or refusing to carry out or disobeying the provisions of this Act and the rules thereunder or any lawful orders issued thereunder or he becomes incapable of so acting or is declared insolvent or is convicted by a Criminal Court for any offence involving moral turpitude.

47. Minutes of proceedings:-

(1) Minutes of the proceedings of all meetings of the Board shall be entered in a book to be kept for the purpose, and shall be signed by the President of the meeting and shall be published in such manner as may be prescribed and shall, at all reasonable times and without charge, be open to the inspection of the tax payers.

(2) A copy of the minutes of the proceedings of all meetings of the Board shall forthwith be forwarded by the Board to the Deputy Commissioner and the Commissioner of Division and another copy submitted to the State Government.

(3) The minutes shall be laid before the next meeting of the Board for confirmation and shall also be signed at such meeting by the President if the same has been correctly entered.

296. Power to suspend action under the Act:-

The State Government, the Commissioner of Division, the Deputy Commissioner, the Director of Municipal Administration, the Additional Deputy Commissioner or the Sub-divisional Officer-in-charge of a sub-division may, by order in writing, suspend the execution of any resolution or order of the Board or prohibit the doing of any act which is about to be done or is being done, in pursuance of, or under cover of, this Act, or in pursuance of any sanction or permission granted by the Board in the exercise of their powers under this Act, if in its or his opinion, the resolution, order or act militates against the fundamental rights conferred by Part III of the Constitution of India and the State policy on the directive principles laid down in Part IV of the Constitution of India is in exercise of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is likely to lead to a serious breach of the peace, or to cause serious injury or annoyance to the public or to any class or body of persons.

When the Commissioner of Division or the Deputy Commissioner, the Director of Municipal Administration, the Additional Deputy Commissioner of the Sub-divisional Officer in-charge of a sub-division makes any order under this section, he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the State Government, which may thereupon rescind the order or direct that it continues in force with or without modification, permanently or for such period as it thinks fit."

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 sub-section (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.

13. Therefore, on the issue as to whether the District Commissioner has any power or authority to issue any direction to the (1) Municipal Boards (2) Chairperson (3) Vice Chairperson to hold a Special Meeting for removal of Chairperson or Vice-Chairperson, it is seen from the scheme of Section 43(2) of the Assam Municipal Act, 1956 only on requisition signed by not less than 3 members, a Special Meeting shall be convened either by the Chairperson and in his/ her absence, the Vice-Chairperson may call for Special Meeting and under sub-Section (3) of Section 43 of the Assam Municipal Act, 1956, if the Chairperson or the Vice-Chairperson fails to call a Special Meeting within 15 days after any such requisition has been made, such a meeting is permissible to be called by the persons who have signed the requisition. Therefore, the manner in which the meeting was convened in this case in respect of Board Meeting of Silapathar Municipal Board cannot be said to be in valid exercise of power.

14. We now deal with the alleged kidnapping of petitioner no.2 and preventing the petitioner no.1 from attending the said Board Meeting. In this regard, we find that the Officer-in-charge of Silapathar PS was well aware that a Board Meeting of the Silapathar Municipal Board was scheduled to be held on

05.01.2024. As per the report of the Superintendent of Police, Dhemaji, addressed to the District Commissioner vide letter no. DMJ/CRIME/WP(C) No. 168-2024/2024/2091 dated 08.03.2024, there is a mention in paragraph 2 thereof that a meeting of Silapathar Municipal Board was to be held on 05.01.2024 at about 9.45 AM. There is no document to show that a meeting was convened at 9.45 AM. Even if it is assumed that the meeting was to be convened at 9.45 AM, then there was no necessity for the police to have nakka checking made at 3 PM, and to arrest the petitioner no.1 by removing her from her vehicle and to send her to Silapathar PS. Thus, the entire exercise was to prevent her from attending the meeting of the Board of Silapathar Municipal Board and thereafter, to verify her identity and then to have it confirmed that she was the Vice-Chairperson of Silapathar Municipal Board and then to release her shows intention on part of the Officer-In-Charge of Silapathar PS to have petitioner no.1 taken and detained in police station without first verifying her identity. The said action cannot have the approval of the Court and has to be deprecated in a strongest manner as the police personnel had interfered with the functioning of Silapathar Municipal Board by preventing the petitioner no.1 from attending the Board Meeting.

15. If the police had specific information that an accused in an ejahar and is a Ward Commissioner who is to attend the Board Meeting, there is no reason for the police not to know his/ her identity and could not have arrested the petitioner no.1 instead.

16. The observations of the Court in the foregoing paragraphs shall not be interpreted to mean that an elected Ward Commissioner cannot be arrested while going to attend the Board Meeting. In this case the petitioner no.1 was not arrested in any case involving her, and thereby the petitioner no.1 has been

prevented to attend Special Meeting of the Board of Silapathar Municipal Board.

17. Therefore, while the initiation of the no-confidence motion against the respondent no.7 is not found to be in accordance with law and at the same time the intervention of the District Commissioner, Dhemaji and the high-handedness of Officer-in-Charge of the Silapathar PS cannot be approved. The bottom line is that there is no bar under the Assam Municipal Act, 1956 to once again move a no-confidence motion against the Chairperson and/ or Vice-Chairperson. Such motion is not barred.

18. However, it is made clear that whatever actions that the respondent authorities intend to take must be strictly in accordance with the provisions of Assam Municipal Act, 1956 and the prescription of law must be adhered to.

19. Accordingly, with the observations as made hereinbefore this writ petition stands closed.

JUDGE

Comparing Assistant