

Prabln Barua Vs. State of Assam

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Court : Guwahati

Decided On : Jan-05-1981

Judge : B.L. Hansaria, J.

Acts : Assam Panchayati Raj Constitution Rules, 1973 - Rule 47(2); Assam Panchayati Raj Act, 1973 - Sections 17(5)

Appeal No. : Civil Rule No. 477 of 1979

Appellant : Prabln Barua

Respondent : State of Assam

Advocate for Def. : A.M. Mazumdar, S. Latiff and D.N. Konwar, Advs.

Advocate for Pet/Ap. : A.M. Mazumdar and B.C. Das, Advs.

Disposition : Petition allowed

Judgement :

B.L. Hansaria, J.

1. The petitioner was elected as a Councillor to the Tezpur Mahakuma Pari-shad, for short the Parishad from the Bor-bhogha Gaon Panchayat in the last election held for the councillors to the Parishad. He was subsequently elected as the Chief Executive Councillor of the Parishad in the first meeting held on 1-3-79. 14

Councillors thereafter addressed a communication to the Chairman of the Parishad on 22nd Sep., 1979 making certain allegation against the petitioner and demanded that he should face a no confidence motion. A meeting was accordingly convened on 16-10-79 to discuss about the proposed motion. In the meeting 41 Councillors including the President of the meeting were present; and 27 persons cast their votes in favour of the no confidence motion which was therefore taken to have been passed by the Parishad. The Government thereafter notified on 3-11-79 that the petitioner had ceased to hold office of Chief Executive Officer due to the passing of no confidence motion against him. This notification has been challenged by the petitioner by this application under Article 226 of the Constitution.

2. Sri Das has urged three points in the main on behalf of the petitioner. (1) The notice by which the meeting in question was convened was not legal inasmuch as requirements of Rule 47 (2) of the Assam Panchayati Raj Constitution Rules, 1973, for short the Constitution Rules, were not complied with. (2) The President of the meeting could not have cast his vote in the first instance and if his vote is excluded, the number of persons supporting the resolution would fall short of 2/3rds members present in the meeting, which is the minimum percentage required for carrying a no confidence resolution. (3) As notices of the meeting were not served on the ex-officio Councillors of the Parishad, the meeting was altogether vitiated.

3. Though apart from these grounds, it has also been submitted by Sri Das that the motion was not carried by two-thirds of the members present in the meeting, this point is ultimately not pressed, because two-thirds of 41 being $27 \frac{1}{3}$, the figure rounded up has to be taken as 27 and not 28. This is

the view expressed in *Samiruddin v. SDO*, AIR 1971 Assam & Naga 163.

3-A. The first submission of Sri Das as mentioned above cannot be accepted as the notice convening the meeting did say that it was to discuss 'about the no confidence motion against the Chief Executive Councillor of Tezpur Mahkuma Parishad'. What Rule 47 (2) of the Constitution requires in this regard is to state the 'purpose of the meeting'; and the notice does spell out the purpose. It is not

necessary according to me that the notice should also contain the reasons because of which no confidence motion was tabled.

4. I would not also agree with the second submission of the learned counsel which is related to the casting of vote by the President. Sri Das has however built up this argument on the basis of Section 17 (5) of the Assam Panchayati Raj Act, 1972, hereinafter called the Act, the relevant portion of which states that the President shall not cast his vote at the first instance, but when voting is equal, he shall have a casting vote. This provision gets attracted in the conduct of business of the Mahakuma Parishad by virtue of Section 27 (5) of the Act. The learned counsel has also placed reliance on Rule 47 (6) of the Constitution Rules, which read as a whole would show as per-the counsel, that the President functions more or less as a Returning Officer. The requirement of Section 17 (5) noted above can-not be applied in my opinion to the meeting of the type we are considering because Section 17 (5) visualises casting of vote in case of tie, whereas in case of no confidence, two-thirds of the votes is the minimum which is required to carry out the motion. So, there would be no necessity to break a tie to carry a no confidence resolution. Exclusion of President of the meeting, who almost in every case would be a Councillor, from having a right of vote in such an important matter, which would be the result if submission of Sri Das were to be accepted, cannot be conceded as the provisions relied on by Sri Das do not irresistibly lead to this conclusion because Rule 47 (b) does visualise voting by each councillor.

It is worth pointing out that Section 27 (5) of the Act has spoken of application of provisions inter alia of Section 17 (5) *mutatis mutandis* only meaning with necessary changes. So where context requires a departure from the rule contained in Section 17 (5) is permissible. It cannot be denied that a no confidence re-solution is a very important event and every councillor, even if he happens to be President of the meeting must be allowed to have his say in it. The function of the President cannot be equated to that of a Returning Officer, as even according to Sri Das, the President can cast vote in case of tie, whereas a Returning Officer has no right to vote in any contingency.

5. The third submission of Sri Das has however force. The basis of the submission is that ex-officio Councillors were not notified about the meeting. This averment was made for the first time in the affidavit in reply. It is because of this that when the matter came up for hearing on 18-9-80 two weeks' time as prayed for on behalf of the respondents to meet these averments was allowed. When the case was listed for further hearing on 15-12-80 prayer for further two weeks' time was made on behalf of the State which was also allowed. But no counter has been filed to the aforesaid averment in the affidavit in reply. So the same has to be accepted.

6. This being the factual basis the submission made is that the requirement of Rule 47 (2) of the Constitution Rules was violated inasmuch as it requires notice on each councillor, which would include ex-officio councillor also. To support his legal submission Sri Das first refers to Section 20 (1) of the Act, which makes it clear that ex officio councillors are also part and parcel of a Parishad. Attention is then invited to definition of 'Ex-officio member or Councillor' as appearing in Section 2 (11) of the Act, which does not leave any manner of doubt in this regard. So, when Rule 47 (2) requires service of notice on each councillor, the same has to include the ex-officio councillors also who are an integral part of a Parishad. Sri Mazumdar, appearing for respondent No. 3, realises the difficulty; but he submits that ex-officio councillors are not required to be notified about the meeting of the present nature. According to learned counsel this follows from what has been stated in second part of Section 2 (11) of the Act which reads :

'Such ex officio members or Councillors shall have no right to attend the meeting of the Gaon Panchayat or Mahakuma Parishad held for the purpose of electing office bearers.'

What applies to the meeting for electing office bearers, would get attracted to the meeting held for dealing with a no confidence motion, according to Sri Mazumdar, because the legislative intention behind the above provision grafted in Section 2 (11) is to exclude official influence in election of office bearers

and the same consideration should see absence of ex officio members from the meeting held for removing an office bearer.

7. I do not however think that the exclusion of which mention has been made in Section 2 (11) can be extended beyond its plain words. The embargo being unambiguously related to meeting held for the purpose of electing office bearers, cannot be applied to any other purpose. The question of legislative intention is not required to be gone into on the face of plain language. To add anything in the section would be legislating, a prohibitive field for the Courts.

8. Sri Das has referred me in this connection to what has been stated at page 235 of B. A. Masodhor's 'Law of Meetings in India' by referring to certain decisions which are not available because of which the learned counsel adopted the views of the author as his own. The submission is that a meeting held without notice to all members which will include co-opted member cannot be regarded as legally convened. I am inclined to think that when the connected rule requires service of notice on each councillor no person who is such a councillor can be excluded. From the provisions of the Act referred earlier I am satisfied that an ex-officio councillor cannot be excluded inasmuch as a councillor is an elected one. But as no notice of the meeting was taken out from the ex officio councillors in the present case the meeting in question cannot be regarded to have been validly convened; and the resolution adopted therein cannot have legal force. The impugned order passed on the basis of such a resolution cannot also be upheld and the same is therefore set aside.

9. The petition is allowed as aforesaid. Parties to bear their own costs.

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