

MC 4040/2007

BEFORE

HON'BLE MR. JUSTICE RANJAN GOGOI

This miscellaneous application has been filed seeking vacation/ modification/ alteration of the interim order dated 30.10.2007 passed by this Court in WP(C) No. 5675 of 2007. By the aforesaid interim order an order dated 22.10.2007 passed by the Deputy Commissioner, Barpeta has been stayed. By the order dated 22.10.2007 the Deputy Commissioner had suspended the financial transactions including bank transactions by the writ petitioner who is the Chairman of the Howly Town Committee. The above order was passed by the Deputy Commissioner in a situation, where out of a total of six members of the Town Committee three had voted in favour of the no confidence motion against the writ petitioner and three had voted against the said motion.

Section 45 of the Assam Municipal Act provides that in the event of a tie the matter would be decided by draw of lots. However, Sri A. M. Mazumder, learned senior counsel appearing for the petitioner, has submitted that the aforesaid provision of the Act will not be applicable as in the present case one of the members who was in hospital and who had voted against the motion had sent his vote through a notary. According to Sri Mazumder the said vote has to be excluded in which event the no confidence against the petitioner must be deemed to have been defeated. The point raised by Sri Mazumder would require an in depth examination. The final verdict of the Court could be either way. In such a situation the Court is of the view that to balance the conflicting interest of the parties the just and proper order would be to modify the interim order dated 30.10.2007 to the extent that financial transactions pertaining to the Town Committee shall now be performed by the Deputy Commissioner, Barpeta or his nominee of the until the writ petition is heard and disposed of.

Having regard to the issues involved, office is directed to list the writ petition for hearing on 8th of January 2008.

Misc. Case is disposed of.