

(1997) 03 GAU CK 0002

In the Gauhati High Court

Case No : Civil Rule Nos. 905, 916, 949, 1066 and 1067 of 1997

Bahar Ali

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Assam Panchayat Act, 1994 — Section 130, 130

Assam Panchayati Raj Act, 1986 — Section 10(3), 10(3), 15(1), 15(1)

Constitution of India, 1950 — Article 226, 226

Citation : (1997) 1 GLJ 521 : (1997) 3 GLT 491

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : S.A.Laskar, M.Bhuyan, H.N.Sharma, H.B.Sharma, B.Dutta, A.Rachid, A.K.Phukan, N.S.Deka, Advocates appearing for Parties

Judgement

1. In this batch of writ petitions under Article 226 of the Constitution of India, the question which arises for determination is, as to whether the Gaon Panchayats and Anchalik Panchayats which were constituted in the year 1992, are entitled to continue beyond the period of five years from the date of their first meeting until new Gaon Panchayats and Anchalik Panchayats are elected and hold their first meeting or are liable to be dissolved by the State Government soon after the expiry of the period of five years from the date of their first meeting in the year, 1992.

2. The facts briefly are that elections to Gaon Panchayats and Anchalik Panchayats were held in the year 1992 under the Assam Panchayati Raj Act, 1986 (for short the 1986 Act). Thereafter, the Gaon Panchayats had their meeting on 14.3.92 and the Anchalik Panchayats had their first meeting on 25.5.92. By Constitution (Seventy Third Amendment) Act, 1992 various provisions relating to Panchayats were introduced in the Constitution in Article 243 to 243O in Part IX which was titled as "The Panchayats". Article 243N in particular provided for continuance of the law relating to Panchayats in force in any State for a period of one year until amended or repealed by the competent

Legislature or until expiration of one year from the commencement of the said Constitution Amendment. Thereafter, the Legislative Assembly of State of Assam enacted the Assam Panchayat Act, 1994 (for short the 1994 Act) with a view to make the law of the State relating to Panchayats consistent with the aforesaid provisions in Part IX of the Constitution. Article 243E in Part IX of the Constitution provides for the term of office of the Panchayats as five years from the date of their first meeting. Since five years from the date of the first meeting of the Gaon Panchayats were to expire on 14.3.97 and five years from the date of first meeting of the Anchalik Panchayats would expire on 25.5.97, the petitioners apprehended that the State Government would dissolve the Gaon Panchayats and Anchalik Panchayats and will constitute ad hoc bodies to function in their places until the elections are held to the Gaon Panchayats and Anchalik Panchayats and the elected Gaon Panchayats and Anchalik Panchayats have their first meeting.

3. Mr. AK Phukan, learned counsel for the petitioners in CR Nos.916 of 1997, 1066 of 1997 and 1067 of 1997, referred to paragraph 11 of the writ petition in CR No.916 of 1997 in which it was bpen averred that the Anchalik Panchayats and Gaon Panchayats as of right should remain in office until the date appointed for the first meeting of the newly elected Panchayats and such rights cannot be abridged by any action of the State Government. He also brought to my notice the reply to the said averments in paragraph 11 of the writ petition contained in paragraph 14 of the affidavitinopposition filed by the respondents to the effect that Gaon Panchayats and Anchalik Panchayats are entitled to remain in office as provided under the Constitution, the 1986 Act and the 1994 Act and submitted that the State Government has not acceded to the contention of the writ petitioners that"they are entitled to continue in office until elections are held and the newly elected Gaon Panchayats and Anchalik Panchayats held their first meeting. Mr. Phukan submitted that the apprehension of the petitioners, therefore, cannot be said to be totally unfounded and it is for this reason that the petitioners have approached this Hon"ble Court for a direction on the respondents not to take any action for removing the Gaon Panchayats and Anchalik Panchayats from their office until the appointed date of the first meeting of the newly elected Gaon Panchayats and Anchalik Panchayats. Mr. Phukan further submitted that so far as the petitioners Anchalik Panchayats and the Gaon Panchayats under its jurisdiction are concerned, they all have been constituted under the 1986 Act and, therefore, their term of office would be determined as per the provisions of 1986 Act. He pointed out that while under section 1 Of 3) of the 1986 Act, the term of the office of the Gaon Panchayats has been indicated to be five years from the date of first meetings of the Gaon Panchayats, it has been clearly provided in the proviso to subsection (3) of section 10 of the 1986 Act that such term of office shall be held to include any period which may elapse between the expiration of the said period and the date of the first meeting of the Gaon Panchayats newly constituted at which a quorum shall be present. Mr. Phukan submitted that similar provisions have been made in

section 15 of the 1986 Act with regard to Anchalik Panchayats and while it has been stated in subsection (1) of section 15 of the 1986 Act that term of office of Anchalik Panchayats shall be 5 years from the date of first meeting of the Anchalik Panchayats, the first proviso to subsection (1) of section 15 makes it clear that such term shall be held to include any period which may elapse between the expiration of the said period and the date of the first meeting of the Anchalik Panchayats newly constituted. Mr. AK Phukan then relied on the provisions of Article 243E introduced by the Constitution (Seventy Third Amendment) Act, 1992 and in particular the proviso thereto which indicates that all Panchayats existing immediately before the commencement of the said amendment shall continue till the expiration of its duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of the State. He pointed out that similar provisions have been made in section 130 of the 1994 Act to the effect that all the Panchayats existing immediately before the commencement of the Act, shall continue till the expiration of their duration as under the 1986 Act unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of the State. According to Mr. Phukan, since no resolution has been passed by the Legislative Assembly of the State of Assam dissolving all the existing Panchayats, the petitioners Anchalik Panchayats and Gaon Panchayats under its jurisdiction, are entitled to continue for their full duration which would mean not only the five year period as stated in subsection (3) of section 10 and subsection (1) of section 15 of the 1986 Act but the further period until the first meeting of the newly elected Gaon Panchayats and the Anchalik Panchayats is held as clearly stipulated in the proviso to subsection (3) of section 10 and in the first proviso to subsection (1) of section 15 of the 1986 Act. Mr. AK Phukan further submitted that in Article 243E, clause (1) a provision has been made that every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and "no longer". But the said provision contained in clause (1) of Article 243E has to be read alongwith clause (3) of the said Article which clearly states that an election to constitute a Panchayat shall be completed before the expiry of its duration specified in clause (1). He, therefore submitted that the provisions of clause (1) of Article 243E of the Constitution cannot be invoked for the purpose of dissolving a duly elected Panchayat after expiry of five years from term unless before the expiry of the said period of five years, elections are held to the Panchayats. Mr. AK Phukan submitted that the intention of the Legislature would be clear from the fact that in the Constitution Amendment Bill and, in particular, the draft clause (I) of Article 243, it was provided that the expiration of the said period of five years shall operate as a dissolution of the Local Authority. But when the Constitution Amendment was finally made, the provision at its draft stage that the expiry of period of five years shall operate as, dissolution of Local Authorities was dropped by the Legislature. Mr. Phukan also relied on the statement of objects and reasons appended to the Bill in support of his submission that the provisions in Part IX of the Constitution have been introduced by the Constitution (Seventy Third Amendment) Act, 1992 with a

view to prevent suppression of Local Authorities such as Panchayat Raj Institutions and Urban Local Bodies. He argued that if the State Government is allowed to dissolve the existing Panchayats which were duly elected in the year 1992, they will be allowed to continue the mischief which is sought to be prevented by the provisions contained in Part IX of the Constitution. He further contended that automatic dissolution has not been contemplated either under the 1986 Act or under the 1994 and in the circumstances, the Government cannot automatically dissolve the Panchayats on the expiry of five years from the date of their first meeting and not allow them to carry on the duties assigned to them by the said Acts until they are replaced by the new Panchayats elected in accordance with the 1994 Act. He cited the judgment of this Court in the case of *Manik Sarkar vs. State of Assam & others*, (1994) 2 GLR 431 (1994 (2) GLJ 180), in which similar provisions relating to Municipalities incorporated in Part IXA of the Constitution by the Constitution (Seventyfourth Amendment) Act, 1992 were interpreted and it was held that the State Government had no power to appoint a group of persons as ad hoc body to function till the elections are held in the Municipality. He stated that the said decision in the case of *Manik Sarkar vs. State of Assam & others* (supra) rendered by the Single Judge in the context of Part IXA introduced in the Constitution will apply equally to the scheme relating to Panchayats as contained in Part IX of the Constitution.

4. All the aforesaid submissions made by Mr. AK Phukan, were adopted by Mr. SA Laskar and Mr. NS Deka, learned counsel for the petitioners, in Civil Rule Nos.905 of 1997 and 949 of 1997. Mr. SA Laskar, however, added that the petitioners should go in the same way by which they had come and as the petitioner Panchayats had come through elections, they should also be replaced by elections and should not be substituted by the ad hoc bodies appointed by the State Government.

5. Mr. HN Sarma, Additional Senior Govt Advocate, Assam, in reply submitted that the apprehension of the petitioners that they will be removed from their offices contrary to the provisions of law is unfounded. He relied on the averments made in affidavits in opposition filed by the respondents to the effect that the existing Gaon Panchayats and Anchalik Panchayats would remain in their office as provided under the Constitution, the 1994 Act and the 1986 Act. He further submitted that under the Constitution and, in particular, Article 243E of the Constitution, a clear provision has been made in clause (1) thereof that every Panchayat shall continue for five years from the date appointed for their first meeting and no longer. He pointed out that Article 243I also provides that at the expiration of every five years, the Governor of a State has to constitute a Finance Commission to review the financial position of the Panchayats. He vehemently argued that Article 243N would make it abundantly clear that any provision contained in any law in force relating to Panchayats in the State immediately after the Constitution (Seventy Third Amendment) Act, 1992, which is inconsistent with the provisions of Part IX shall continue to remain in force until amended or repealed by the competent Legislature or other competent

authority or until expiration of one year from such commencement whichever is earlier. He contended that the provision contained in the proviso to subsection (3) of section 10 of the 1986 Act in so far as it extends the period of Gaon Panchayats beyond the period of five years is inconsistent with the Article 243E (1) of the Constitution and similarly the provision in the first proviso to subsection (1) of section 15 extending the term of the Anchalik Panchayats beyond the period of five years from the date of its first meeting is inconsistent with clause (1) of Article 243E of the Constitution. The said provisions contained in the proviso to subsection (3) of section 10 and the first proviso to subsection (1) of section 15 of the 1986 Act, therefore, had to be read down and cannot be allowed to operate after the said period of one year. Mr. Samra further argued that in any case the aforesaid proviso contained in subsection (3) of section 10 and the first proviso contained in subsection (1) of section 15 of the 1986 Act cannot be interpreted in such a way as to negate the main provisions contained in subsection (3) of section 10 and subsection (1) of section 15 of the 1986 Act that the term of office of the members of the Gaon Panchayats and Anchalik Panchayats would be for the five years. In support of his aforesaid submissions, he cited the decisions of the Apex Court in the case of T. Devadasan vs. Union of India, AIR 1964 SC 179, Commissioner of Income Tax, Madras vs. The Ajax Product Ltd, AIR 1965 SC 1358 and Dwarka Prasad vs. Dwarka Das Saraf, AIR 1975 SC 1758 as well as The All Saints High Schools etc vs. The Government of Andhra Pradesh, AIR 1980 SC 1042. He further argued that it has now been settled by series of decisions of the Apex Court as well as decision of Single Judge of this Court in the case of Smti Tapati Rani Mahanta vs. Union of India, 1997 (1) GLT 230 that the statement of objects and reasons appended to a Bill cannot be an aid for interpreting the statutory provisions when the language of the statute is clear or unambiguous. In the present case, therefore, the Statement of Object and Reasons appended to the Bill as well as the provisions of Article 243I at its draft stage on which reliance has been placed by Mr. AK Phukan cannot be looked into when the very language of the Constitutional provisions in Article 243E, 243I and 243N are clear that a Panchayat cannot continue beyond the period of five years. Mr. Sarma further contended that it is well settled now that the provisions of the Constitution have to be harmoniously construed and accordingly the proviso to Article 243N cannot be construed in a manner inconsistent with the provisions in clause (1) of Article 243E of the Constitution that the term of the Panchayats cannot exceed five years.

6. I agree with Mr. Sarma that when the language of the Constitutional or statutory provisions are clear and unambiguous, the Court will find out the intention of Legislature from the provisions of the Constitution and the statute, Article 243E and 243N are quoted herein below :

"243E. Duration of Panchayats etc ; (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed :

(1) before the expiry of its duration specified in clause (1);

(a) before the expiration of a period of six months from the date of its dissolution;

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for continuing the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.

243N. Continuance of existing laws and Panchayats: Notwithstanding anything in this part, any provisions of any law relating to Panchayats in force in a State immediately before the commencement of the Constitution (Seventy Third Amendment) Act, 1992, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier :

Provided that all the Panchayats existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State, or in the case of a State having a Legislative Council, by each House of the Legislature of that State."

The main provision of Article 243N would show that it has clearly provided therein that any provision of any law relating to Panchayats in force in the State immediately before the commencement of the Constitution (Seventy Third Amendment) Act, 1992 and which was inconsistent with the provision of Part IX of the Constitution would continue to be in force until or unless amended or repealed by the competent Legislature or other competent authority or until expiration of one year from such commencement whichever is earlier. By the said provision, therefore, a period of one year from the date of commencement of the Constitution (Seventy Third Amendment) Act, 1992, i.e. from 24.3.92 was allowed to the State Legislature to make new law consistent with the provisions of the aforesaid Part IX of the Constitution and the said period of one year expired on 24.3.94. Thereafter the 1994 Act was enacted which came into force on 5.5.94. But section 130 of the 1994 Act provides as follows :

"130: Repeal and Saving: All the Panchayats existing Immediately before the commencement of this Act, shall continue till the expiration of their duration as under the Assam Panchayati Raj Act, 1986 unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of the State."

A reading of the aforesaid provisions in section 130 of the 1994 Act would make it clear all Panchayats existing immediately before the 1994 Act were to continue till expiration of one year unless sooner dissolved by a resolution passed to that effect by the State Legislature. This provision has obviously been enacted keeping in mind the provision in proviso to Article 243N to the effect that all Panchayats existing immediately before such commencement were to continue till expiration of their duration unless sooner dissolved by a resolution passed to that effect by the State Legislature. Since admittedly the Panchayats which are before this Court in this present Civil Rules were all existing prior to the commencement of the Constitution (Seventy Third Amendment) Act, 1992, i.e. 24.3.92 they were entitled to continue till the expiration of their duration, under the 1986 Act as clearly indicated in section 130 of the 1994 Act quoted above. The question, therefore, is what is the duration of the existing Gaon Panchayats and Anchalik Panchayats under the 1986 Act ? Subsection (3) of section 10 of the 1986 Act which relates to term of office of the members of the Gaon Panchayats and subsection (1) of section 15 thereof which relates to term of office of the members of the Anchalik Panchayats are quoted herein below : "10. Strength of elected members and Election of Gaon Panchayat President: (3) The term of office of the President, the Vice President and the members of the Gaon Panchayats shall be five years from the date of the first meeting of the Gaon Panchayat:

Provided that the term of the office fixed under this subsection shall be held to include any period which may elapse between the expiration of the said period and the date of the first meeting of the Gaon Panchayat newly constituted at which a quorum shall be present, when a Gaon Panchayat is thus duly constituted the old Gaon Panchayat shall stand dissolved.

15. Term of office of the President, Vice President and Members of an Anchalik Panchayat: (1) The term of office of the President, the Vice President and the Members of an Anchalik Panchayat shall be 5 (five) years from the date of the first meeting of the Anchalik Panchayat under subsection (1) of section 14:

Provided that the term of the office fixed under this section shall be held to include any period which may elapse between the expiration of the said period and the date of the first meeting of the Anchalik Panchayat newly constituted. When an Anchalik Panchayat is thus duly constituted and called to meet for the first time the old Anchalik Panchayat shall stand dissolved :

Provided further that the term of office of a member elected or coopted or nominated or the President or the Vice President to fill up a casual vacancy shall be the remainder of the term of office of the member, the President or the Vice

President whom he replaces."

The aforesaid provision in subsection (3) of section 10 of the 1986 Act makes it clear that the term of office of the members of the Gaon Panchayat is five years from the date of its first meeting but in the proviso to subsection (3) of section 10 it has been statutorily provided that such term of office fixed under subsection (3) of section 10 shall be held to include any period which may elapse between the expiration of the said period and the date of the first meeting of the Gaon Panchayat newly constituted at which a quorum is present. On a reading of the aforesaid main provision contained in subsection (3) of section 10 as well as proviso thereof, it is abundantly clear that normally the term of office of a member of Gaon Panchayat would be five years, but where due to various difficulties, the new Gaon Panchayat is not constituted in accordance with the provisions of the 1986 Act and has not been able to hold its first meeting within the aforesaid period of five years from the date of first meeting of the old Gaon Panchayat, the aforesaid term of office of five years is statutorily deemed to include the period upto the date of first meeting of the newly constituted Gaon Panchayat. Mr. HN Sarma, Additional Senior Govt Advocate, Assam is perfectly right in his submission that the proviso is only an exception to the main provision and cannot be interpreted to negate the main provision itself. But the function of a proviso, it must be remembered, is to carve out an exception to the main provision and where the Legislature in clear language adds a proviso to the main provision, the Court cannot ignore the said legislative intention as expressed in the proviso. Similarly, subsection (1) of section 15 of the 1986 Act provides that term of office of the members of the Anchalik Panchayat is to be five years from the date of its first meeting and this provision has been made to take care of a normal situation but the first proviso to subsection (1) of section 15 of the 1986 Act has carved out an exception for extraordinary circumstances where the new Anchalik Panchayat is not constituted in accordance with the Act and has not been able to hold its first meeting before the expiration of the term of five years from the date of the first meeting of the old Anchalik Panchayat. In my considered opinion, therefore, while the normal duration of the Gaon Panchayats and Anchalik Panchayats had been fixed as five years under the 1986 Act, the said Act has provided for continuance of such Gaon Panchayats and Anchalik Panchayats for a further period until a new Gaon Panchayats or Anchalik Panchayats are constituted in accordance with the Act and hold their first meeting.

7. Coming now to the submission of Mr. Sarma that so interpreted the provisions of the 1986 Act would be inconsistent with the provisions of clause (1) of Article 243 E of the Constitution which provides for continuance of a Panchayat for a period of five years from the date appointed for its first meeting and no longer, Article 243N quoted above contains a non obstante clause to the effect that notwithstanding anything contained in Part IX of the Constitution the provision of any law relating to Panchayats in force in the State immediately before the commencement of the Constitution (Seventy Third Amendment) Act, 1992,

which are inconsistent with the provisions of Part IX of the Constitution would continue until the expiration of such one year from such commencement or until the old law is amended or repealed by the competent Legislature. Since more than a year has expired since the commencement of the Constitution (Seventy Third Amendment) Act, 1992 and the provisions of the 1986 Act have been repealed by section 131 of the 1994 Act, the provisions of the 1986 Act are no longer in force. But a proviso has been added to Article 243 N stating in clear language that all the Panchayats existing immediately before the commencement of the Constitution (Seventy Third Amendment) Act, 1992, shall continue till expiration of their duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of the State. While; therefore, by virtue of operation of the main provision in Article 243N and section 131 of the 1994 Act all provisions of the 1986 Act cease to have any force, those provisions of the 1986 Act which relate to the duration of the Panchayats continued to be in force because of the proviso to the said Article 243N of the Constitution. Accordingly, the provisions of subsection (3) of section 10 including the proviso therein and the provisions of subsection (1) of section 15 including the first proviso thereof which provides that the duration of the Gaon Panchayats and Anchlik Panchayats continued to be in force subject to a resolution passed by the Legislative Assembly dissolving the Gaon Panchayats and Anchlik Panchayats before the expiry of the said duration. It is for this reason that the Legislature has made a specific provision in section 130 of the 1994 Act that all the existing Panchayats shall continue till expiration of their duration as under the 1986 Act unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of the State.

8. Regarding the submission that the provision of Article 243E and 243N have to be harmoniously construed, it is true that the provisions of Article 243E of the Constitution indicate that a Panchayat shall continue for five years from the date appointed for first meeting and no longer, but then clause (3) of the said Article 243E clearly gives a mandate that elections for the Panchayats have to be completed before the expiry of their duration as specified in clause (1), i.e. before the expiry of the five years term. Thus, the object of Article 243E of the Constitution is to ensure that only the elected bodies function as Panchayats and that the elected bodies are not superseded by the State Government. Consistent with this object it has been provided in the proviso to Article 243N that the existing Panchayats will, continue for their duration under the law under the law which they have been constituted and it is not the State Government but only the Legislative Assembly and Legislative Council of the State who will have the power to dissolve them before the expiry of their duration by resolutions passed to that effect. There is therefore no conflict between the provisions of Article 243E and the proviso to 243N of the Constitution and the interpretation suggested by me is a harmonious construction of the said provisions.

9. For the reasons stated above, the writ petitions are disposed of with a declaration that the existing Panchayats are entitled to continue until the

expiration of their duration as provided in section 10 (3) and the proviso thereto and section 15(1) and the first proviso thereto of the 1986 Act unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of the State.