

(1972) 04 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 526 of 1971

Bhutan Chandra Pradhani

APPELLANT

Vs

The State of Assam and others

RESPONDENT

Date of Decision : 24-04-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1972 Guw 41

Hon'ble Judges : P.K. Goswami, C.J.; R.S. Bindra, J

Bench : Division Bench

Advocate : B.K. Das and S.C. Das, for the Appellant; J.C. Medhi, Advocate-General, Assam and Dr. D. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Goswami, C.J.—This application under Art. 226 of the Constitution is by the petitioner, who is an ex-President of the Golokganj Anchalik Panchayat, since dissolved. A Rule was obtained by him against an order of the Governor of 31st August, 1971 passed u/s 140-B of the Assam Panchayat Act, 1959, as amended (Assam Act XXIV of 1959), hereinafter called "the Act", dissolving the Golokganj Anchalik Panchayat in the district of Goalpara with immediate effect "as Government is satisfied that there is a deadlock in the functioning of the said Anchalik Panchayat".

2. The first meeting of the Anchalik Panchayat, after election, was held on 3rd January 1969, and ordinarily u/s 19 of the Act it continues to function for a period of four years till a new body is constituted. There is a provision for extension of the life of the Panchayat under that section. It appears the Panchayat had to be superseded once by the Governor for a period of three months on 8th January 1971 u/s 140(1) of the Act, after asking the Panchayat to show cause against supersession. The Deputy Commissioner reported about the serious situation in the Anchalik Panchayat resulting in the complete deadlock of the functioning of the body and recommended dissolution. Even so, the

Government gave the body a chance to rehabilitate and function properly and withdrew the order of supersession on 7th April, 1971. As in the case of the budget of 1970-71, the Panchayat could not pass the budget of 1971-72 also, although it held four successive meetings between 5th May, 1971 and 20th July, 1971. As a matter of fact, the budget of 1971-72 should have been passed within 15th of May 1971 (paragraph 2 of the counter-affidavit). On account of the deadlock created due to non-passing of the annual budget, the Governor passed the impugned order dissolving the Panchayat. Hence this writ application.

3. Mr. B. K. Das, learned counsel for the petitioner, submits that there are two provisions under the Act, namely, Section 140 and S. B providing, inter alia, for dissolution of an Anchalik Panchayat and the Panchayat has been discriminated by the impugned order electing a harsher procedure for dissolution of that body. We may, therefore, read the two sections:-

140 (1) If the State Government are of opinion that a Gaon or Anchalik Panchayat persistently makes default in the performance of the duties imposed upon it by or under this Act or any other Act or abuses its power, they may after giving sufficient opportunity to show cause to the contrary, by an order in writing specifying the reason for so doing, dissolve or supersede for such time not exceeding six months the Panchayat concerned. x x x

Section 140-B, which has been introduced by the Assam Act V of 1967, reads as under:-

140-B, If for any reason there is a deadlock in the functioning of a Gaon or Anchalik Panchayat or a Mohkuma Parishad, the State Government may dissolve the Gaon or Anchalik Panchayat or the Mohkuma Parishad, as the case may be, and may make any alternative arrangement, as may be deemed necessary, for the working of the Panchayat or the Parishad concerned till it is reconstituted.

4. It is submitted by Mr. Das that since, inter alia, dissolution is the common content in both the sections, the Panchayat in this case has been discriminated by the Governor resorting to Section 140-B instead of S. 140(1) where there is a provision for giving sufficient opportunity to show cause against the action. He submits that Section 140-B is, therefore, clearly discriminatory and violative of Article 14 of the Constitution. He sought to depend entirely upon a decision of the Supreme Court in *Ram Dial and Others Vs. The State of Punjab*, to support his submission. That was a case in which the Supreme Court had to deal with the provisions of Section 14(e) and S. 16(1) of the Punjab Municipalities Act, 1911. On a perusal of the provisions, the Supreme Court observed as follows:

There is no doubt that the removal contemplated in Section 16(1) for reasons in Cls. (a) to (g) thereof, as their content shows, is in the public interest and the proviso to Section 16(1) provides for a hearing in the manner indicated therein. On the other hand Section 14(e) which also provides for removal in the public interest makes no provision for hearing the member to be removed, Even if Section 14(e) is wider than Section 16(1), there is no doubt that all the reasons

given in Clauses (a) to (g) are in the public interest and, therefore, even if the State Government intends to remove a person for any reasons given in Clauses (a) to (g) it can take action u/s 14(e) and thus circumvent the provisions contained in the proviso to Section 16(1) for hearing. Thus there is no doubt that Section 14(e) which entirely covers Section 16(1) is more drastic than Section 16(1) and unlike Section 16(1) makes no provision for even calling upon the member concerned to explain. In this view of the matter it is clear that for the same reasons the State Government may take action u/s 16(1) in which case it will have to give notice to the member concerned and take his explanation as provided in the proviso to Section 16(1), on the other hand it may choose to take action u/s 14(e) in which case it need not give any notice to the member and ask for an explanation from him. This is obviously discriminatory and, therefore this part of Section 14(e) must be struck down as it is hit by Art. 14 of the Constitution.

Their Lordships, after perusal of the two provisions in the Act came to the conclusion that they operated in the same field and therefore while action taken under one section provides for hearing and the other does not and is thus more drastic and arbitrary. Section 14(e) was struck down as discriminatory and as such unconstitutional under Art. 14 of the Constitution.

5. The provisions with which we are concerned in this case, according to our opinion, do not operate in the same field. They deal with two distinct situations although the contemplated action under both the situations may, in some cases, be dissolution of the Panchayat. Section 140-B was introduced in the Act in 1967 and the Legislature was well aware of the already existing provision u/s 140 where opportunity to show cause is provided for. Even so, dealing with a situation arising out of a deadlock in a Panchayat, the Legislature did not provide for any notice or opportunity to the Anchalik Panchayat. Since the two sections operate in two different fields, as we have found, there is no foundation for the grievance on the score of discrimination. The above decision of the Supreme Court, relied upon by the learned counsel, does not come to his aid. We, therefore, hold that Section 140-B of the Act is not discriminatory and as such does not violate Art. 14 of the Constitution.

6. Mr. Das very strenuously contended that in the counter-affidavit on behalf of the State there is a mention about failure "to carry out the functions of the Anchalik Panchayat" and that the petitioner as the President "was mainly responsible for it". Mr. Das submits that this was therefore a clear case in which the Government should have taken action u/s 140 instead of choosing the more drastic action u/s 140-B. When power is conferred under the Act on the Government under two valid provisions of law and the Government chooses one or the other, in a given situation or according to their judgment as applicable in the circumstances of a particular case, it is not open to the High Court under Art. 226 of the Constitution to scrutinise and interfere with such a discretion in the absence of any proof of mala fides. The order of the Governor clearly shows that

action had to be taken because of the prevailing deadlock in the functioning of the Anchalik Panchayat and it is not submitted by Mr. Das that the Government had no material to come to a conclusion that there was a deadlock. That being the position, the argument of the learned counsel that the Government should have taken recourse to Section 140 in this case is of no force.

7. Mr. Das has also referred to another decision of the Supreme Court in *State of Orissa v. Dhirendranath Das*, AIR 1961 SC 1715, where their lordships had to consider two different sets of rules regarding departmental enquiry which were in operation side by side. While under, what is described therein, as Tribunal Rules no right of appeal was conferred against tribunal's recommendation in the departmental enquiry, a right of appeal was conferred under the Service Rules in force and there was no guidance in the Rules as to under what conditions one set of rules will be made applicable to the public servants who are all placed in equal circumstances to meet the allegations in a departmental enquiry. It is because of this feature, the Supreme Court struck down the enquiry and the proceedings held under the Tribunal Rules. This decision is, therefore, of no avail to Mr. Das in the instant case.

8. Mr. Das has also referred to two other decisions, namely *Banshilal and Others Vs. State of Rajasthan and Others*, and *Municipal Committee and Another Vs. State of Madhya Pradesh*, . These decisions are also clearly distinguishable and do not support the contention of the learned counsel in the present case.

9. Although Mr. Das at one stage tried to argue but has finally abandoned his submission that absence of provision of opportunity to show cause u/s 140-B itself is invalid being opposed to the rules of natural justice. Indeed, this argument could not be made in view of a recent decision of the Supreme Court in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, . The following observations in that decision are apposite:-

It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice". (Para 7)

10. In the result, the application fails and is dismissed. The rule is discharged. We will, however, make no order as to costs.

Application dismissed.