
(1997) 05 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 419 of 1997

Bongaigaon Municipal Board

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-05-1997

Acts Referred:

Assam Municipal Act, 1956 — Section 299(b), 299(b), 299(c), 299(c)

Citation : (1997) 2 GLJ 91 : (1997) 2 GLT 529

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

Bench : Single Bench

Advocate : N.Dhar, S.Seal, S.I.Rahman, P.B.Majumdar, N.Choudhary, M.M.Lahiri, I.Hussain, H.N.Sharma, A.S.Choudhary, R.Majumdar, Advocates appearing for Parties

Judgement

1. In this application under Article 226 of the Constitution, the petitioner has prayed for quashing the order communicated in WT Message dated 22.1.97 by the Secretary to the Government of Assam, Municipal Administration Department (respondent No.3), to the Deputy Commissioner, Bongaigaon (respondent No.4), and for a direction on the said respondents to allow the present Bongaigaon Municipal Board (ad hoc) to continue in office till elections are held by the Government in accordance with law?

2. The facts, briefly, are that the ad hoc Bongaigaon Municipal Board was constituted of which Sri Bhupendra Narayan Das was the Chairman. Apprehending that the said ad hoc Municipal Board would be removed, the Bongaigaon Nagarik Parishad, a voluntary organisation representing the interest of the residents of Bongaigaon Town, filed a writ petition being Civil Rule No. 126 of 1994 which was disposed of by this Court by judgment and order dated 3rd January, 1995 with a direction that the State Government would hold the election to the Bongaigaon Municipal Board within six months and till the election was held the said ad hoc Bongaigaon Municipal Board would not be disturbed by the authorities. The State Election Commission thereafter issued a notification dated

6.11.96 fixing the date of election of Municipal Boards and the Town Committee in the State of Assam as 6.12.96. But on difficulties being pointed out by the State Government for holding elections, this Court permitted the State Government to move the State Election Commission for postponement of the elections and on the State Election Commission being moved, elections to the Municipal Boards have been postponed. In the circumstances, the ad hoc Bongaigaon Municipal Board continued in office in terms of the said judgment and order dated 3.1.95 passed by this Court in Civil Rule No. 126 of 1994. But all on a sudden, a notification dated 26.11.96 was issued by the Secretary to the Government of Assam, Municipal Administration Department (respondent No. 3) stating therein that all powers and duties under the Assam Municipal Act, 1956 (for brevity, the Act) which were being exercised and performed by the ad hoc Bongaigaon Municipal Board, whether at a meeting or otherwise, would be exercised and performed by the Deputy Commissioner, Bongaigaon, temporarily with immediate effect and until further orders in respect of the said Municipal Board. The aforesaid notification dated 26.11.96 was followed by an order dated 3.12.96 of the Deputy Commissioner, Bongaigaon (respondent No.4) stating that the Extra Assistant Commissioner would perform the duties of the Chairman, Bongaigaon Municipal Board and exercise the powers of the Chairman on behalf of the Deputy Commissioner, Bongaigaon, effective from 3.12.96. The said notification dated 26.11.96 of the respondent No.3 and the order dated 3.12.96 of the respondent No.4 were challenged by the petitioner in Civil Rule No.6015 of 1996 and on 9.12.96 this Court while issuing Rule suspended the operation of the aforesaid notification dated 26.11.96 and the order dated 3.12.96 pending disposal of the Rule. The said Civil Rule No.6015 of 1996 is pending before this Court and has not yet been disposed of. During the pendency of the aforesaid civil rule, the impugned WT Message dated 22.1.97 has been issued by the Secretary to the Govt of Assam, Municipal Administration Department (respondent No.3) directing the respondent No.4 to cause immediate enquiry into the alleged misappropriation of Govt and public money by the Chairman and the Vice Chairman of the Bongaigaon Municipal Board as alleged by Sri Anil Sarkar and Ram Narayan, respondents 5 and 6 respectively, in their representation dated 16.1.97 and to stop the expenditure from the bank accounts except payment of salary to staff, electricity bills and telephone bills, and to send the applications and tenders relating to allotment of market shed and weekly and daily markets to the Govt for taking final decision. In the said message dated 22.1.97 it has further been mentioned that the order was issued on the strength of section 296 of the Act.

3. At the hearing of this Civil Rule, Mr. NM Lahiri, learned senior counsel appearing for the petitioner submitted that the impugned order under WT Message dated 22.1.97 has been issued by the respondent No.3 only with the view to frustrate the interim order passed by this Court in(CivilRuleNo.6015 of 1996 suspending the operation of the impugned notification dated 26.11.96 and the order dated 3.12.96 of the respondent Nos.3 and 4 respectively under which

the powers of the Chairman of Bongaigaon Municipal Board were to be exercised by the Deputy Commissioner and the Extra Assistant Commissioner. He further argued that a reading of the impugned order would show that the respondent No.3 has relied on the provisions of section 296 of the Act for issuing the order. But under the said section 296 of the Act, the respondent No.3 has no such jurisdiction to issue the impugned order. He contended relying on the judgment of this Court in the case of *Municipal Board, Sibsagar vs. Secretary to the Govt of Assam*, (1983) 2 GLR 63, and *Lohit Chandra Saikia vs. North Lakhimpur Municipal Board & others*, (1984) 2 GLR 412, that the power under section 296 of the Act is to be exercised only to meet an extra ordinary exigency or emergent situation and that an order, resolution or act of an autonomous body like a Municipality cannot be interfered with lightly by the State Govt under the said provisions. He further argued relying on the aforesaid authorities in the aforesaid two decisions that unless and until the resolution, order or act of the Board 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 or is in excess of power conferred by law; or the execution of it 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, the State Govt cannot issue any order or direction under section 296 of the Act. In the facts of the present case, no resolution, order or act has been adopted by the Bongaigaon Municipal Board in violation of fundamental rights contained in Part III of the Constitution or the Directive Principles of the State Policy contained in Part IV of the Constitution nor any power has been exercised by the ad hoc Bongaigaon Municipal Board in excess of what has been conferred by law. No resolution, order or act of the ad hoc Bongaigaon Municipal Board would have the effect of breach of peace or cause serious injury or annoyance to the public, or to any class or body of persons. Thus none of the preconditions for exercise of power under section 296 of the Act against the ad hoc Bongaigaon Municipal Board exists and the impugned order which has been based on mere allegations made by respondents 5 and 6 is without jurisdiction. Mr. Lahiri also cited the judgment of this Court in the cases of *Shri Ratan Dutta ; & others vs. State of Assam & others*, (1988) 2 GLR 168 (1988 (1) GLJ NOC 27), and *Navajyoti Dutta vs. State of Assam*, 1997 (1) GLT 189 for the proposition that the State Govt has no jurisdiction under section 296 of the Act to allot shops or settle markets and the said powers belong to the Municipal Boards.

4. Mr. HN Sarma, learned Additional Senior Govt Advocate, Assam appearing for the State respondents, on the other hand, contended on the basis of the averments made in the affidavit in opposition filed on behalf of respondents 1, 3 and 4 that the present ad hoc Bongaigaon Municipal Board was not an elected body and was constituted under section 299 (b) of the Act. He further contended that paragraphs 5, 6, 7 and 12 of the affidavit in opposition would show that the petitioner has resorted to serious malpractices and irregularities in incurring expenditure out of the Municipal Board's funds and in this regard two

representations were received from the respondents 5 and 6, copies of which have been annexed to the said affidavit in opposition as Annexure B and C. In the peculiar facts and circumstances of the case therefore the impugned order dated 22.1.97 was issued by the respondent No.3 directing the respondent No.4 to conduct enquiry into the allegations against the Chairman and the "Vice Chairman of the ad hoc Bongaigaon Municipal Board and to stop expenditure out of the funds of the Board except for payment of salary to staff, electricity bills and telephone bills, as well as to stop the process of allotment of market shed and weekly and daily markets and to send all applications, tenders and comparative statement to the Department for making final decision. Hence, the said action of the State Govt on the facts and in the circumstances of the case was justified and within its jurisdiction.

5. Mr. AS Choudhury, learned counsel appearing for the respondents 5 and 6 supported the action of the State Govt in the impugned order dated 22.1.97 and contended that requests were made by the respondents 5 and 6 and others for holding emergent meeting of the Bongaigaon Municipal Board relating to various revenue collection and expenditure, but in the Chairman of the ad hoc Bongaigaon Municipal Board did not pay any heed to the said requests and instead continued to act on his own. He argued that the documents annexed to the application filed by the respondents 5 and 6 for vacating the interim order dated 30.1.97 in the present civil rule would show that the Chairman of the ad hoc Bongaigaon Municipal Board has misappropriated a huge amount of money. He further contended, that this Court has not passed by interim order permitting the Chairman of the ad hoc Bongaigaon Municipal Board to indulge in corrupt practices. Hence, the Govt in issuing the impugned order dated 22.1.97 for enquiring into the allegations of corrupt practices against the Chairman of the ad hoc Bongaigaon Municipal Board has not frustrated any orders passed by this Court as contended by Mr. Lahiri, learned senior counsel appearing for the petitioner.

6. Admittedly, Bongaigaon Municipal Board is not elected body. The elected body had been dissolved and in its place the petitioner has been appointed under section 299 (b) of the Act for exercising and performing all powers and duties which under the Act are to be exercised and performed by the Board. Section 299 of the Act, as amended by the Assam Municipal, (Amendment) Act, 1994, is quoted herein below :

"299. Consequence of dissolution : When an order of dissolution has been passed under section 298, the following consequences shall ensue:

(a) all Commissioners of the Board shall, as from the date of the order of dissolution, vacate their offices as such Commissioners;

(b) all powers and duties which under this Act may be exercised and performed by the Board whether at a meeting or otherwise shall, during the period of dissolution be exercised and performed by such person as the State Government

may direct till Commissioner and Chairman are elected :

Provided that the officer so appointed after dissolution of the Board shall obtain prior approval of the Director of Municipal Administration on the matter on which but for the dissolution, the decision of the Board is necessary.

(c) all properties vested in such Board shall during the period of dissolution vest in the State Government."

Thus the petitioner is only a nominee of the State Govt under section 299 (b) of the Act and exercises the powers and performs the duties of the Board under the Act as a nominee of the State Govt. Section 299 (c) of the Act further makes it clear that all properties vested in the Municipal Board vest during the period of dissolution in the State Govt. Accordingly, during the period a Board is in dissolution, properties vested in such Board vest in the State Govt by virtue of section 299 (c) of the Act. The State Govt will have all consequential and incidental powers necessary to protect the properties of the Board which are vested in the State Govt. Where therefore a complaint is filed before the State Govt that the properties vested in the Board and vested in the State Govt by virtue of section 299 (c) of the Act are being misappropriated, misutilized or diverted for wrong purposes, the State Govt would have the power to issue direction under section 299 of the Act for carrying out necessary enquiry into the complaint and taking preventive steps against the loss or damage being done to the properties vested in the Board and the State Govt.

7. Mr. Lahiri, learned counsel appearing for the petitioner, contended that proviso to section 299 (c) would show that an ad hoc body appointed under section 299 (b) is only required to obtain prior approval of the Director of Municipal Administration on the matter on which decision of the Board is necessary had there been no dissolution. He further stated and filed copies of documents to show that the budget for the Bongaigaon Municipal Board for the year 1996-97 has in fact been approved by the Director of Municipal Administration by his order dated 3.3.97 and hence the petitioner has obtained the necessary prior approval for incurring expenditure on different items out of the Board's fund as required under the said proviso to section 299 (b) of the Act, as amended. But in my considered opinion, even where approval is given by the Director of Municipal Administration for some expenditure out of the Municipal funds, it may so happen that the Municipal fund may not be spent in accordance with the budget approved and there may be misappropriation, misutilization, diversion, wastage, etc. In such case, if the State Govt as the owner and custodian of the properties vested in the Municipal Boards as per the provisions of section 299 (c) issues directives for enquiry and for stoppage of expenditure of the municipal funds, the same cannot be held to be outside the jurisdiction of the State Govt. If such power of the State Govt to issue directives necessary for the purpose of protecting the properties of the Board is not impliedly read into section 299 (c) of the Act, the very object of the said statutory provision would be defeated. Section 299 (b) read with section 299 (c) of the Act would, therefore, make it

clear that the State Govt has to power to issue the impugned order dated 22.1.97 for the purpose of protecting the properties of the Bongaigaon Municipal Board.

8. Mr. Lahiri vehemently contended that in the impugned order dated 22.1.97 no reference has been made to the said provisions of section 299 (b) and (c) of the Act and only reference has been made to section 296 of the Act. But it has been held by the Supreme Court in the case of Municipal Corporation of the City of Ahmedabad vs. Ben Hiraben Manilal, AIR 1983 SC 537, following the earlier decisions of the Supreme Court in the case of Nani Gopal Biswas vs. Municipality of Howrah, AIR 1958 SC 141; L. Hazari Mal Kuthiala vs. Income Tax Officer Special Circle, Ambala Cantt, AIR 1961 SC 200 and Hukumchand Mills Ltd vs. State of MP, AIR 1964 SC 1329, that a wrong reference to the power under which action was taken by the Government would not per se vitiate that action if it could be justified under some other power under which the Government could lawfully do that act. In the present case, although in the impugned order a reference has been made to section 296 of the Act, the action taken under the impugned order can be justified under section 299 of the Act and hence the impugned order cannot be held to be without jurisdiction.

9. Coming now to the contention of Mr. Lahiri that the impugned order dated 22.1.97 has been issued by the respondent No.3 with a view to frustrate the earlier judgment and orders passed by this Court, I find on a reading of the judgment and order dated 3.1.95 of this Court in Civil Rule No.126 of 1994, all that was directed was that the State Govt would hold election and the present ad hoc Committee of the Municipal Board would not be disturbed by the authorities. By the said judgment and order, therefore, the petitioner was allowed only to continue and the said continuance of the petitioner was to be in accordance with the provisions of the Act including section 299 of the Act. Similarly, by the interim order dated 9.12.96 passed by this Court in Civil Rule No.6015 of 1996, the notification dated 26.11.96 and the order dated 3.12.96 of the respondents 3 and 4 respectively, directing that the Deputy Commissioner, Bongaigaon and the Extra Assistant Commissioner, Bongaigaon were to exercise the powers of the Bongaigaon Municipal Board, and the Chairman, were suspended. The effect of the aforesaid interim order dated 9.12.96 was that the Deputy Commissioner, Bongaigaon was not to act as Municipal Board as notified in notification dated 26.11.96 and that the Extra Assistant Commissioner was not to act as Chairman of the Bongaigaon Municipal Board as per order dated 3.12.96. The order dated 22.1.97 impugned in the present civil rule does not anywhere state that the Deputy Commissioner, Bongaigaon would act as the Board or the Extra Assistant Commissioner would act as Chairman. But as held above, a direction has been given in the impugned order dated 22.1.97 to conduct an enquiry into the allegations against the Chairman of the ad hoc Bongaigaon Municipal Board and to stop expenditure out of Board's fund except payment of salary to staff, electricity bills and telephone bills and to stop allotment of market shed, weekly and daily markets and to sent the papers relating to allotment of the said market

shed and weekly and daily markets to the State Govt for final decision. The effect is that the petitioner still continues to be the ad hoc Municipal Board but the exercise of its power as ad hoc Municipal Board has been restricted by the directions of the State Govt in the impugned order dated 22.1.97.

10. As has been held above, the State Govt has the jurisdiction to issue the said directions as the custodian of the properties of the Municipal Board under section 299 (c) of the Act, where the elected Municipal Board has been dissolved and the State Govt has appointed an ad hoc Municipal Board under section 299 (b) of the Act. The decisions of this Court cited by Mr. Lahiri were not rendered in cases where the elected Municipal Board had been dissolved and the State Govt had appointed an ad hoc Municipal Board under section 299 (b) of the Act and are not applicable to the facts of the present case.

11. All the contentions of the petitioner, therefore, fail and the writ petition is dismissed and the interim order dated 30.1.97 suspending the impugned order is vacated. But considering the entire facts and circumstances of the case, the parties shall bear their own costs.