
(1993) 01 GAU CK 0020
In the Gauhati High Court
Case No : Civil Rule No. 432 of 1992

Hazarat Ali and Ors.

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 12-01-1993

Acts Referred:

Assam Panchayati Raj (Constitution) Rules, 1990 — Rule 12, 12, 13, 13, 5(2), 5(2)
Constitution of India, 1950 — Article 226, 226

Citation : (1993) 1 GLJ 258 : (1993) 2 GLR 435 : (1995) 1 GLT 88

Hon'ble Judges : S.N.Phukan, J

Bench : Single Bench

Advocate : A.C.Buragohain, U.C.Bhattacharjee, T.J.Mahanta, M.R.Saikia,
K.C.Mahanta, D.Das, D.C.Mahanta, Advocates appearing for Parties

Judgement

1. The present petition has been filed by 10 persons under Article. 226 of the Constitution praying for quashing the notification issued by the Government on 11th Feb 92 reconstituting the Anchalik Panchayat within the Development Block under Bilasipara Mahakuma Parishad (Annexure 7 to the writ petition) and also the election notice issued by the SubDivisional Officer, Bilasipara notifying that elections to the Gaon Panchayat mentioned in the said notice would be held as per programme mentioned in the said notice vide Annexure 9.

2. Under the Assam Panchayati Raj Act, 1986 for short the Act, there are three tier Panchayat, Gaon Panchayat, Anchalik Panchayat and Mahkuma Parishad. Rules were framed under the said Act and these Rules are known as Assam Panchayati Raj (Constitutions) Rules 1990, for short the Rules. After the general elections to the State Assembly held in January, 1991 a Ministry was formed. The Government reconstituted the Gaon Panchayats and Anchalik Panchayats in Bilasipara SubDivision and the said notification is available at Annexure 1 to the writ petition. A corrigendum was also issued altering the territorial jurisdiction of Hatipata Gaon Panchayat on 2.11.90 vide Annexure 2. The SubDivisional Officer (Civil) respondent No. 3 issued two election notices for elections to Gaon

Panchayats and Anchalik Panchayats of Bilasipara SubDivision informing all persons concerned regarding the programme of elections in the said SubDivision. Two election notices are Annexures 3 and 4 to the writ petition and these notices were issued in pursuance of the notification issued by the State Government dated 30.10.91 (Annexure 1). As per Government Notification dated 30.10.91 vide Annexure 1 the Mahamaya Anchalik Panchayat consisting 11 Gaon Panchayats was constituted and seats were also reserved for women in various Gaon Panchayats of Bilasipara SubDivision by order dated 18.1.92 vide Annexure 5 to the writ petition. In pursuant to the election notices vide Annexure 3 and 4, nomination papers for elections for the office of President and members of various Gaon Panchayats and 3 Anchalik Panchayat Were filed on 27.1.92 and 28.1.92 in the office of the respondent No. 3 and these were duly scrutinised on 29.1.92 and many candidates were declared elected as nobody contested those candidates. In para 9 of the writ petition, it has been indicated regarding submission of nomination papers by the 10 petitioners in respect of the office of the President and members of the Anchalik Panchayat. The copies of the receipt showing, filing of nomination papers have been annexed to the writ petition, and are available at Annexure 6A to 6J. In para 10 of the writ petition, it has also been indicated regarding the: the filing of nominations papers by the proforma Respondents for the office of the President and members of the Gaon Panchayat

3. As many as 35 other persons have been allowed to be impleaded as proforma respondents and they have stated that they also; filed nomination papers for election to the thirteen Gaon Panchayats of Bilasipara Subdivision on 27th and 28th Jan 92 in response to the election notices at Annexures 3 and 4 to the writ petition. They have, also stated that their nominations papers were scrutinised on 29.1.92, and, were found valid and proper. They have joined with the writ petitioners/in the allegation that respondent 1, 2 and 3 illegally stayed the election processes which, have started after the notifications and after acceptance of nominations papers,, Being; aggrieved they have filed petition for impleading them as proforma respondents.

4. Heard Mr.DC Mahanta, learned counsel for the writ petitioner and Mr. AC Buragohain, learned Govt Advocate.

5. In this writ petition first, point that has been urged by Mr. Buragohain on behalf of the respondents is that the present petition is not maintainable as writ petitioners have alternative remedy by way of an appeal under the Act regarding election disputes. On the other hand Mr.Mahanta, learned counsel for the writ petitioners has urged that this is not a case of individual election disputes but the writ petitioners have challenged the action of, the respondents in arbitrarily cancelling the earlier election after process for, the election had started and ordering, fresh delimitation and election..

6. Rule 53 of Assam Panchayati Raj (Constitution) Rules, 1990, inter alia provides that no election held under the provision of the Act or Rules framed thereunder shall be called in question except by an election petition presented in accordance

with these Rules to the District Judge, having thereof by any candidate. Thus it appears that the petition can be presented if there is any dispute regarding declaration of a person as elected. In the case in hand there is no such dispute regarding election ,of any, particular candidate or candidates and as such the above Rule is not attractive. As stated above in the present petition the writ petitioners have challenged the arbitrary action of the State Government and other authorities by ordering fresh delimitation and election after the .process of election had, started. Therefore for the present petitioners, there is no alternative remedy except to approach this Court for exercising, writ jurisdiction.

7. Mr. Mahanta has drawn the attention of this Court to a decision .of King's Bench Division In *Re Barnes Corporation*, (1933), 1 KBD 668. In that case there were anomalies at the first meeting) of the Council of a borough for the election of aldermen, and it was held that, the action of the Chairman in the said meeting was not in accordance with the law and as there was no lawfully election and the offices of aldermen were unfilled, the proper remedy was not a; *Quo Warranto*, or an election petition under the Act but a *Mandamus* to hold election of aldermen. It was also held that the writ should. be peremptory notwithstanding any inconvenience that might be "caused by the displacement of persons who were then acting as aldermen. Mr.Mahanta has also placed reliance in a decision of the Division Bench of the Patna High Court in *Bishwanath Prasad vs. Kamji Prasad Sinha*, AIR 1964 Patna 459. In that case the question that came up for before the Court for consideration was regarding validity of elections to the municipality on the ground that when election process had started the electoral roll in question was revised and whether under such condition a writ petition would lie or the remedy was by way of filing election petition under relevant Rules. It was held that elections having been challenged on account of violation of election Rules petitioners cannot be denied relief in writ petition on the ground that election petition under relative Rules can also be filed. The Division Bench also relied on an earlier decision of the same High Court. I am in respectful agreement with the law laid down by Patna High Court and I hold that if the entire process of election or any action of the authorities is illegal in holding the election after the election process has started, this Court can definitely exercise writ jurisdiction.

8. To appreciate the contentions raised in the present petition it is necessary to refer to relevant sections of the Act and also Rules of the Assam Panchayati Raj (Constitution) Rules, 1990. I quote below the said sections :

Section 4: Establishment of Mahkuma Parishati: (I) The State Government shall by notification establish a Mahkuma Parishad in each Civil SubDivision and where there is no Civil SubDivision in each District, declaring the name and territorial jurisdiction of such Mahkuma Parishad.

(2) The State Government may by notification alter or reduce the area of operation of a Mahkuma Parishad.

Section 5: Establishment of Anchalik Paochayat: (1) In each area declared as Mahkuma Parishad under section 4 there may be as many Anchalik Panchayats as may be deemed necessary by the State Government.

(2) The, State Government shall, by notification declare and publish the name and territorial jurisdiction of such Anchalik Panchayat and may at any time, by notification, include any area or exclude any area from the territorial jurisdiction of an Anchalik Panchayat:

Provided that the area of an Anchalik Panchayat shall coincide with the area of a Development Block.

Section 6 : Notification declaring any area to be a Gaon Paochayat : (1) The State Government; may, by notification declare any area to be a Gaon Panchayat area for the purpose of this Act.

(2) The State Government shall declare the name and territorial jurisdiction of each Gaon Panchayat under subsection (1) and may at any time by notification, include any area in and exclude any area from, the territorial jurisdiction of the Gaon Panchayat:

Provided that the area of a Gaon Panchayat shall have a population of not more than 8 thousand and not less than 6 thousand :

Provided further that the area of any revenue village or a forest village shall be included entirely within the area of one "Gaon Panchayat" The following Rules are quoted below:

"Rule 5: Delimitation of the constituencies in a Gaon Panchayat : The Deputy Commissioner or the SubDivisional Officer, as the case may be, shall immediately after declaration of a Gaon Panchayat by the State Government under subsection (2) of section 6 of the Act delimit, the number of constituencies as per subsection (1) of section 10 of the Act, and delimit each such constituency on the basis of household numbers in the manner that no household should be split.
Rule 12 : Fixation of the date of election : The date for any General or bye-election meant for the Panchayat shall be fixed and notified by the State Government.

Rule 13 : Issue of notice fixing the date of election, submission of nomination and scrutiny and withdrawal thereof. (1) Not less than 30 (thirty) days before the date fixed for election under Rule 12, the Deputy Commissioner or the SubDivisional Officer, as the case may be, shall publish a notice in the language or languages as may be considered necessary stating

(a) The date on which, the place at which, the hours between which and the category of representatives for which nomination papers are to be presented, an interval of seven clear days being allowed between the date of publication of such notice and the date for presentation of the nomination papers :

Provided that the date for filing of nomination paper shall be fixed and notified by

the State Government :

(b) The date on which, the place at which and the house between which the nomination papers may be taken up for scrutiny such date being within three days after the date of submission of nomination papers :

(c) The last date, place and time for withdrawal of candidature : Provided that the last day for withdrawal of candidatures shall not be less than fifteen days before the date of election :

Provided further that the last date for withdrawal of candidature shall be fixed and notified by the Government.

(d) The date on which and the Polling Station at which the election of the Gaon Panchayat constituencies shall be held and hours during which the Poll shall be open.

Rule 22 : Procedure in contested and uncontested election: (1) Immediately after expiry of the period of withdrawal of candidature, the Deputy Commissioner or the SubDivisional Officer, as the case may be, or the officer authorised by him in this behalf, shall, in respect of every election, declare the names of the candidates whose nomination papers have been found valid.

(2) If there is only one valid nomination in respect of a particular election, the Deputy Commissioner or the SubDivisional Officer, as the case may be, or the officer authorised in this behalf, shall declare such candidates to be duly elected from the constituency concerned.

9. By notification dated 30th Oct'91 by exercising powers under subsection (2) of the section 6 of the Act the State Government reconstituted the Gaon Panchayats under Bilasipara Mahkuma Parishad and declared and published the territorial jurisdiction of the said reconstituted Gaon Panchayats vide Annexure 1 to the writ petition. Subsequently by notification dated 30.11.92, vide Annexure 2 to the writ petition one village was excluded from jurisdiction of one Gaon Panchayat and included in another Gaon Panchayat. Thereafter Government issued notification under Rule 12 for General Elections to the Panchayats for the entire State. In exercise of powers under Rule 13 of the Rules two notifications were issued by the SubDivisional Officer, Bilasipara, respondent No.3, on 18.1.92 vide Annexure 3 and 4. By notice at Annexure 3 it was notified that elections to the Anchalik Panchayats would be held as per programme indicated in the said notice. By Annexure 4 it was notified that elections to the Gaon Panchayats under the Anchalik Panchayats indicated in the notice would be held as per programme indicated in the said notice. Therefore the election process started and the writ petitioners and also proforma respondents filed nomination papers and, this fact is clear from the receipts at Annexure 6 series. A specific statement in the writ petition has been made that these nomination papers have been scrutinised on 29.1.92 and some candidates were also declared elected as there was no contest. But on 3.2.92 the State Government by an executive order

stayed the election process in the entire Bilasipara SubDivision. It has been stated in para 11 of the writ petition that in other SubDivisions elections were held for Panchayats in the whole State of Assam on 21st, 24th and 27th February, 1992.

10. From the provision of Rule 12 of the Rules the date has to be fixed and notified by the State Government for General Elections to Panchayats or bye-election for any Panchayat. After it is so notified under Rule 12 of Rules, the Deputy Commissioner or SubDivisional Officer has to publish notices under Rule 13. Thereafter, under the provision of the Rules nomination papers are filed, scrutinised and after withdrawal the Deputy Commissioner or the SubDivisional Officer under subrule (1) of Rule 22 has to declare the names of the candidates whose nomination papers were found valid. Subrule (2) of Rule 22 inter alia provides that if there is only one nomination in respect of a particular election the Deputy Commissioner or the SubDivisional Officer, as the case, shall declare such candidate to be duly elected from the constituency concerned.

11; Reading the provisions of the Act and Rules framed thereunder I hold that once a notification is issued under Rule 12 of the Rules by the State Govt. and followed by notices issued by the Deputy Commissioner or the SubDivisional Officer under Rule 13 the process of election starts. Now the question is whether by an executive order such process can be stayed.

12. In the Act or in the Rules there is no provision empowering to order stay of such election process. A question may be raised that applying the principle of the General Clauses Act, that power to appoint includes also power to remove in the present election the State Govt may under Rule 12 may withdraw such notification. In the petition it has been stated that the petitioners could not obtain with the copy of the order issued by the Govt. staying the election in the Sub Division. Such copy of the order has also not been produced. From the subsequent action of the State Govt. It appears that election was stayed only for the purpose of reconstitution of the Anchalik Panchayats under Bilasipara Mahkuma Parishad. This cannot be a ground for staying the election in a particular SubDivision more particularly as there is no such power vested on the State Govt. to do so. I. therefore, hold that after notification was issued under Rule 12 of the Rules and notice by the SubDivisional Officer under Rule 13 of the Rules staying of election by the State Govt. is arbitrary and without any legal authority.

13. Now next question to be considered is whether the impugned notification dated 11.2.92 issued by the Govt. by exercising powers under subsection (2) of Section 5 of the Act vide Annexure 7 is valid or not. Subsection (2) only empowers the Govt. to include any area or exclude any area from the territorial jurisdiction of an Anchalik Panchayat and such an Anchalik Panchayat shall coincide with the area of a Development Block. The impugned notification does not indicate the purpose for which such reconstitution was necessary. No records have also been produced to justify this action. Comparing this notification with the original notification

dated 30.10.91 vide Annexure 1 it appears that the impugned notification was not issued for the purpose of including or excluding any area from the territorial jurisdiction of the Anchalik Panchayat in question. Therefore the impugned notification, ill Without jurisdiction and liable to be struck down which I hereby do

14. In para 13 of the writ petition the writ petitioners have ahead serious anomalies in the impugned notification dated Uv&92. According to the writ petitioners as many as 9 existing Gaon Panchayat were created and; 10 such new Panchayats were created and the areas of i Gaon Panchayats have also been arbitrarily changed. Section 6 of the Act empowers the Govt. only to declare any area of the Gaon Panchayats and also to indicate name and; territorial jurisdiction of such Panchayats The said section also provides that the area of any revenue village or a forest village shall be included entirely within the area of one Gaon Pandhayat. Comparing the two notification at Annexure 1 and 7 to the writ petition If find that some villages were totally left out in the notification at Annexure 7 and the said villages are Bedlongmari, Tamakhari, Pt II Chouguri, Haldibari PtII and Rangamtti Pt. III. In other words by the impugned notification at Annexure 7 the villagers of the above villages would be deprived of a Gaon Panchayat Which is not in accordance under the Act or the. Rules framed thereunder. This is another ground on which this notification has to be set aside.

15. In pursuance of the notification at Annexure 7 the SubDivisional Officer issued the election notice under Rule 13 of the Rules which is available at Annexure 9. As the notification of the State Govt. dated 11.2.92 has to set aside, consequently the above notice issued at Annexure 9 by the SubDivisional Officer has also to be quashed.

16. From what has been stated above I quash both the notification issued by the State Govt. Vide Annexure 7 and also the election notice issued by the SubDivisional Officer, Bilasipara at Annexure 9. The SubDivisional Officer respondent No.3 is directed to hold the elections in respect of the reconstituted Gaon Panchayats by the State Govt. by order dated 30.10.91 vide Annexure 1 and subsequent notices issued by the SubDivisional Officer dated 18.1.92 vide Annexures 3 and 4. The election shall be held as per nomination papers filed and accepted in pursuance of the above two notices dated 18.1.92 by the SubDivisional Officer respondent No. 3 and if any candidate or candidates have been declare elected being uncontested, such declaration shall be deemed to have been validly made.

With the above direction the writ petition is disposed of. No costs.