
(1980) 05 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 427 of 1979

Kamal Chandra Patar

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 06-05-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1981 Guw 4

Hon'ble Judges : B.L. Hansaria, J

Bench : Single Bench

Advocate : S.N. Bhuyan and B. Agarwalla, for the Appellant; B.M. Goswami, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Hansaria, J.—The Government of Assam constituted a Sub-Divisional Tribal Development Board at Morigaon with immediate effect for a period of one year by notification issued on 23-8-79. The petitioner was appointed as the Chairman of this Board. But before the ink of this notification had dried, another order dated 20-9-79 was issued by the Government dissolving all the Sub-Divisional Tribal Development Boards. This has been challenged by this petition by the Chairman of the Board as constituted by notification dated 23-8-79.

2. Shri Bhuyan has urged two points before me: (1) that the action of dissolving the Board was illegal as no show cause notice was issued to the Chairman, or for that matter, to other members of the Board; and (2) no reason at all has been given as to why the Board was dissolved.

3. Shri Goswami has questioned the locus of the petitioner in approaching this court under Article 226 of the Constitution, because according to him the notification in question did not confer any right on the petitioner. Shri Bhuyan has relied on Union of India (UOI) Vs. K.P. Joseph and Others, in countering the submission of Shri Goswami. Before analysing this decision it may be pointed out

that the Sub-divisional Tribal Development Boards were created by executive orders, as has been stated in the affidavit-in-opposition of respondents Nos. 1 and 2. No statutory provision has been brought to my notice by the petitioner in this regard. In Joseph's case (supra) the Supreme Court pointed out that generally speaking, an administrative order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. One of the exceptions noted was that Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service. After noting the decision in Indo-Afgan Agencies AIR 1968 SC 718, the court pointed out that to say that an administrative order can never confer any right would be too wide a proposition, and there are administrative orders which confer rights and impose duties. As the administrative order with which the court was seized had provided for certain benefits to ex-military personnel on re-employment, it was held that the order in question conferred the right to have the pay of the respondent fixed in the manner specified in the order as that became a part of the condition of his service.

4. I do not think if this decision can be pressed into service by this petitioner to contend that the notification in question had conferred any right on him to continue as the Chairman of the Board till the expiry of the period mentioned therein. It seems the Board was constituted at the pleasure of the Governor, and could be dissolved at his pleasure. No emolument was also attached to the office of Chairmanship.

5. As to the absence of any show cause notice, which is founded on the rule of natural justice, my attention has been drawn by Shri Agarwalla to State of Gujarat and Others Vs. Ambalal Haiderbhai and Others, This decision states that these rules may not always be expressly embodied in a statute or rules framed thereunder, and may be implied from the nature of the duty to be performed under the statute. That is so, but even the implied observance of these rules is required while performing statutory duty. This aspect was made clear in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, where it was pointed out that the question of distinction between an administrative and quasi-judicial function can only arise in the exercise of powers under a statute; and that rules of natural justice are attached to the performance of certain functions regulated by statutes or rules made thereunder involving decisions affecting rights of parties. As in the present case the power was not exercised under any statute, I do not think if the Government owed any obligation to issue show cause notice to the Chairman before dissolving the Board.

6. As to the order being silent about the reason which led the Government to dissolve the Board, reference may be made to the affidavit-in-opposition of respondents Nos. 1 and 2, wherein in para 8 it has been stated that the

Government considered that it will be more appropriate to have broad-based Boards consisting of representatives of all shades of opinion serving the interest of Scheduled Tribes irrespective of party affiliation. The reason as unfolded in the affidavit is relevant and germane.

7. In view of the above, I do not find any force in this petition, which is dismissed.