
(2001) 01 GAU CK 0014
In the Gauhati High Court
Case No : PIL No. 45 of 2000

Kanakeswar Narzary and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 17-01-2001

Acts Referred:

Bodoland Autonomous Council Act, 1993 — Section 10, 12, 19, 50, 62

Citation : AIR 2001 Guw 189 : (2001) 1 GLT 8

Hon'ble Judges : H.K. Sema, J;D. Biswas, J

Bench : Division Bench

Advocate : G. Uzir, M. Ahmed and S.K. Medhi, for the Appellant; C. Choudhury and M. Sarania, for the Respondent

Final Decision : Allowed

Judgement

H.K.Sema, J.

We have heard Mr. G. Uzir, learned counsel for the petitioners, Mr. C. Choudhury, learned Sr. Govt. Advocate, Assam and Mr. M. Sarania, learned counsel for the respondent No.3.

1. This petition has been filed by a public spirited person in the form of public interest litigation. The petitioner No. 1 is the President of United Bodo National Liberation front (UBNLF), a social organisation and was an instrumental in passing the Act called "Bodoland Autonomous Council Act, 1993" (in short "the Act") and spearheading the implementation of the Act with letter and spirit. The petitioner No. 2 is presently a Member of the Legislative Assembly and was General Secretary of the same organisation. In this petition the petitioners are aggrieved by an order dated 17.04.2000 (Annexure-B) dissolving the ad hoc interim Bodoland Autonomous Council constituted on 15.06.1996, purportedly in exercise of powers conferred u/s 62 of the Bodoland Autonomous Council Act, 1993. Petitioners are also aggrieved by another order dated 17.04.2000 (Annexure-C) by which the Governor of Assam was pleaded to constitute an

Advisor) Committee for the Bodoland Autonomous Council with the members mentioned therein. The petitioner prayed for as many as nine reliefs. However, at the time of hearing of this petition Mr. Uzir, learned counsel for the petitioners abandoned the rest of the reliefs and confined his submissions on three reliefs namely, (a) quashing of the order dated 17.04.2001 dissolving the ad hoc Council (Annexure-B) and, (b) the other order dated 17.04.2000 (Annexure-C) constituting the Advisory Committee and, (c) it is also the prayer of the petitioners to issue a writ of Mandamus directing the respondents to hold General Election of the Council within the time bound schedule.

2. Counter on behalf of the respondent No. 1 and 2 have been filed. The official respondents in their counter did not controvert that no election to the Bodoland Autonomous Council (for short "BAC") has been held as provided u/s 12 of the act since 1993 till date. The Government respondents also did not controvert that there is no provision under the Act to constitute Advisory Committee.

3. Before we advert to the merit of the case, it is necessary to have a quick survey of the relevant section of the Act and aims and objects of the Bodo Accord incorporated in the Act. The Bodoland Autonomous Council Act is the creation of the Memorandum of the settlement of Bodo accord. It is tripartite Accord signed by the Government of India, Assam on one side and President of ABSU (All Bodo Students' Union) and Chairman of BPAC on the other side.

4. Preamble of the Accord areas -

"(i) Both the Government of India and the Government of Assam have been making earnest efforts to bring about an amicable solution to the problems of the Bodos and other Plains Tribals living in the north bank of river Brahmaputra within Assam.

(ii) Towards this end, the Government of India held a series of meetings with the State Government as well as with leaders of All Bodo Students' Union (ABSU) and Bodo Peoples' Action Committee (BAPC). The state Government has also separately held discussions with the Bodo leaders. As a result, it has been considered necessary to set up an administrative authority within the state of Assam under a scheme, the details of which are outlined in the succeeding paragraphs."

Clause (2) of the preamble deals with the objective of the Accord. It reads -

"the objective of this scheme is to provide maximum autonomy within the framework of the Constitution to the Bodos for social, economic, educational, ethnic and cultural advancement."

Clause 3(b) of the Accord deals with the power of the General Council and the election of the Council. It reads:

The BAC will comprise of a General Council Comprising 40 members,"35 elected on the basis of adult suffrage and having a life of five years. The Government will

have powers to nominate 5 members to the Council, particularly from groups which could not otherwise be represented. This Council will have powers to make bye-laws, rules and orders for application within the BAC area on the subjects enumerated in Schedule "A".

The subject enumerated in Schedule "A" under Clause 3(b) over which the Council can exercise power are the following:

"List of subjects and Departments over which BAC will have control within the BAC Area.

(1) Cottage Industry (2) Animal Husbandry and Veterinary (3) Forest (4) Agriculture (5) P.W.D. (6) Sericulture (7) Education -(a) Adult Education (b) Primary Education (c) upto Higher Secondary including Vocational Training (8) Cultural Affairs (9) Soil Conservation (10) Co-operation (11) Fisheries (12) Panchayat and Rural Development (13) Handloom and Textiles (14) Health and Family Welfare (15) Public Health Engineering (16) Irrigation (17) Social Welfare (18) Flood Control Schemes for protection of villages (not highly technical nature) (19) Sports and Youth Welfare (20) Weight and Measures (21) Library Services, (22) Museums and Archaeology (23) Urban Development, Town and Country Planning (24) Tribal Research Institute (25) College Education (General) (26) Land and Revenue (27) Publicity/Public Relations (28) Printing and Stationary (29) Tourism (30) Transport (31) Any other matter connected with development (32) Municipal Corporation, Improvement Trusts, District Boards and other local authorities (33) Tribal Welfare (34) Markets and Fairs (35) Lotteries, Theaters, Dramatic performance and Cinemas (36) Vital Statistics including registration of births and deaths (37) Good and Civil Supply, and (38) Intoxicating liquors, opium and derivatives etc."

5. The provision made in Memorandum of Settlement of Bodo Accord has been incorporated in the main Act. The Bodoland Autonomous Council Act, 1993 (Assam Act No. XI of 1993) has been enacted by the Assembly to provide for the establishment of an Administrative Authority in the name and style of "Bodoland Autonomous Council". The preamble of the act reads :-

"Whereas it is expedient to provide for the establishment of a Bodoland Autonomous Council within the State of Assam with maximum autonomy within the framework of the Constitution comprising contiguous geographical areas between the river Sankosh and Mazbat/the river Pasoni, for social, economic, educational, ethnic and cultural advancement of the Bodo residing therein.

It is hereby enacted in the forty-fourth year of the Republic of India as, follows -

Objects of the Act : The preamble is a particular Act is the first recital to know about the mind of the legislators with which the act is going to be enacted. In the instant case the preamble declares that the Act is provided to grant autonomy to a particular Community, namely the Bodos living within the defined area in the Act, in the matter of their social, economic, educational, ethnic and cultural

advancement. The term "autonomy" however does not mean that the Bodoland may be something not within the State of Assam. The Bodoland contemplated in the Act will remain as a part of Assam but the people living within it, subject to the general control of the State Govt. shall enjoy autonomy in respect of taking actions for development in the fields mentioned above. In a democratic system with a constitution of the type such autonomy to a section of the people does not seem to be any way foreign. For the same reason the Act may not be held to be ultra vires of the constitution also."

6. Section 10 of the Act deals with the Electoral Roll and provides that the electoral roll for any Assembly constituency in force on the last date of nomination for the General Council Election, be the electoral roll for the election of members for the General Council for that constituency.

7. Section 12 of the Act deals with the election and provides that the election of members shall be held in accordance with the Rules made u/s 19 of the Act and the first election for the purpose of constituting the General Council shall be held on such date as the Government may direct etc.

8. In the background of the aims and object and provisions made under various sections of the act, it is distressing to note that the election to the BAC has not been held since inception of the Act in 1993 till date. Such an Act has been passed aimed at ventilating the grievance of the people residing in backward track so as to enable them to have their own people elected and look after their own administration by their representatives who knows the background of the people, geographical topography and problems of the area. By not having the election to the council as provided under the act, the purpose for which the Act was passed has been made nugatory. As would appear from the preamble or memorandum of settlement signed between the parties, the passing of such an Act was aimed at to bring about an amicable solution to the problems of the Bodos and other plain tribes living in the north bank of river Brahmaputra. We are aware that in the Government department the methodology of note making, file pushing and passing of the buck is not uncommon. A reasonable delay, therefore, is expected, though not appreciated. It is high time that one must learn from the past mistakes. Our best teachers are our past mistakes, because they taught us good lesson. Inaction does not solve any problem, rather it breeds problems, cause chaos and confusion. The problems now faced by the North Eastern State is the repetition of proverbial saying "spark Neglected Burns the House".

9. Having said so, we now come to the order dated 17.04.2000 (Annexure-B). By the impugned order the ad hoc Interim Council which has been constituted as envisage under the provisions of Section 50 of the act has been dissolved and substituted by a foreign body called Advisory Committee which is not permissible under the Act.

10. Mr. C. Choudhury, learned Sr. govt. Advocate, Assam, however, could not

show us any provision under which the power of constituting Advisory Body can be exercised. This being the legal position, the impugned order dated 17.4.2000 (Annexure - C) constituting the Advisory Committee for BAC with the members mentioned therein is not sustainable as the same has been passed without jurisdiction and therefore set aside. So also the another impugned order dated 17.4.2000 (Annexure-B) dissolving the ad hoc Interim Council constituted on 15.06.1996 with the sole motive to constitute an Advisory Committee which has not been provided under the act. The motive for dissolving the ad hoc Interim BAC, legally constituted on 15.06.1996, is to replace it by an Advisory Committee. The order dated 17.04.2000 dissolving the ad hoc Interim Council is, therefore, has been passed with mala fide. This order dated 17.04.2000 (Annexure-B) is also quashed and set aside. This would mean that the ad hoc Interim Committee constituted on 15.06.1996 would stand revived automatically and shall continue till it is replaced by an elected Council.

11. We now come to the most important topic, the necessity of having elected representative for BAC as provided under the Act. We have already expressed our displeasure in the foregoing paragraph. The wisdom of passing such an Act namely, the Bodoland Autonomous Council Act, is to provide an opportunity to the people living in backward and unexplored area to elect their own representative so as to enable them to look after the well being and administration of the area uninfluenced and uninterfered from the other neighbouring area. It must be grasped that the main objective of the signing of the Bodo accord is to provide maximum autonomy to the Bodos for social, economic, educational, ethnic and cultural advancement. This objective can not be achieved unless the election is held and the administration of the area is handed over to the elected representatives to whom the people of the area reposed confidence. This being the sole aim of the act, unless the election is held and the people of the area are allowed to have their own elected representative, there is likelihood of mistrust and misapprehension being further widened. This must be stopped forthwith. We accordingly direct the Government of Assam to hold election to the Bodoland Autonomous Council within a period of six months from today.

12. We have given the aforesaid direction for holding election within time bound scheme because by notification dated 15.03.2000 the entire Bodoland area has been delimited into 40 constituencies and there will be no difficulty whatsoever in conducting smooth and fair election to the Council. Mr. C. Choudhury, however, invited our attention to the communication dated 17.04.2000 from the secretary Assam state Election Commission addressed to the Commissioner and Secretary to the Government of Assam, WPT & BC Department wherein it has been pointed out that in 29 Chakrasila BAG Constituency, which falls within Bilasipara sub-division and Kokrajhar Sadar Sub-division, there are as many 5 villages namely (1) Bandormari (2) Basbart Pt-I (3) Bandarpara (4) Diplal Beel and (5) Damoderpara Pt-I, are non-BAC village and are within the BAC Constituency and thus small pocket of non-BAC area within this constituency. It is seen that except

29 Chakrasila Constituency, there will be no such problem in the rest of the constituency. However, if any difficulty arises with regard to the 29 Chakrasila Constituency in holding free and fair election, that part of the constituency may be deferred until such problems are solved. However, in our view such minor difficulties should not stand on the way of having election on that constituency also.

13. In view of the facts and circumstances stated above, we direct the Govt. of Assam to hold general election to the Bodoland Autonomous Council within a period of 6 (six) months from today.

With the aforesaid direction this petition is allowed with no order as to costs.