

(1999) 12 GAU CK 0009
In the Gauhati High Court
Case No : Writ Petition (C) No. 97 of 1999

Krishna Gopal Bhattacharyya

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 15-12-1999

Acts Referred:

Assam Aided College Management Rules, 1976 — Rule 2, 3, 8
Constitution of India, 1950 — Article 14, 226

Citation : (2001) 1 GLT 196

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : R. Gogoi, A.K. Sarma and B.D. Choudhury, for the Appellant; H. Rahman, N. Dutta and B. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

D.N. Chowdhury, J.—The constitutionality formation of Special Body for management of the affairs of the Dimoria College, is the subject-matter for adjudication in this writ proceeding.

On the expiry of the term of the Special Body of the Dimoria College, District: Kamrup, on 28.8.1998, the Governor of Assam in exercise of the powers conferred under Rules 2 and 3 of the Assam Aided College Management Rules, 1976 constituted an Ors. Special body with eight members including one lady member for management of the affairs of Dimoria College with retrospective effect i.e., from 29.8.1998 vide notification under No. B(2)H. 306/96/98 dated 30.11.1998. By the aforesaid notification, the Petitioner No. 1, Krishna Gopal Bhattacharyya, a Professor of the Gauhati University, was made the President, while Shri Protul Sharma, Vice-Principal of the College, was made the secretary and the Petitioner Nos. 3 to 7 along with one, Shri Arup Bora, were shown as members of the Special Body. It may be mentioned here that vide notification No. B(2)H. 306/96/65 dated 29.8.1996, on the expiry of the term of the then existing Governing Body, a Special Body was constituted with nine members

wherein one Shri Ramen Das, Councillor of Ward No. 59, was nominated as a member of the Special Body along with all the Ors. eight members as those who were also the member of the Special Body constituted vide notification 30.11.1998. The term of the Special Body constituted on 29.8.1996 was extended for a period of an Ors. year vide Notification under No. B(2)H. 306/96/90 dated 2.3.1998, with retrospective effect from 29.8.1997. And while the Special Body was functioning as such, vide notification dated 30.12.1998 as aforesaid, after only thirty days of constitution of the Special Body by the notification dated 30.11.1998, the State Government dissolved the Special Body constituted vide Notification 30.11.1998 and reconstituted a new Special Body which, however, included the names of Arup Bora and Nameswar Boro, who happened to be the members of the erstwhile Special Body constituted vide Notification dated 30.11.1998. By the notification under No. B(2)H. 306/96/101 dated 30.12.1998, Shri Bubul Das, Minister of Fisheries, Assam, was made the President and the Principal of Dimoria College (Respondent No. 5) was nominated as the Secretary. Hence the writ petition questioning the legality and validity of the notification dated 30.12.1998, as arbitrary, discriminatory and mala fide.

2. The Petitioners asserted that on assuming the charge of the Special Body under the Presidentship of the Petitioner No. 1 in 1996, found that the Respondent No. 5, the then Principal of the College as Secretary of the College allegedly misappropriate a sum of Rs. 11,95,225 from the College Fund during the year 1992-93, 1993-94 and from the month of March, 1994 to September, 1994 by submitting false particulars and fake bills. The Petitioners also alleged a number of Ors. irregularities relating to financial impropriety against the Respondent No. 5 and the Petitioner No. 1 being the President of the then Special Body/Governing Body, placed the Respondent No. 5 under suspension vide his order dated 6.2.1997 on the basis of resolution dated 25.12.1996 adopted by the Special Body which was approved by the Director of Higher Education in-charge, vide communication No. G(B)GB. 32/96.35 dated 6.2.1997. By the said order of the President of the Special Body, Petitioner No. 2, Vice Principal in-charge of the Dimoria College, was ordered to take over charge of Principal of the College with immediate effect. A departmental proceeding was initiated against the Respondent No. 5 which was subsequently cancelled and a do novo enquiry was ordered against the said Respondent. The decision of the Special Body for order a de novo enquiry was challenged in Civil Rule No. 6001/97 by the said Respondent and this Court by its order dated 11.11.1998 directed the Respondent/disciplinary authority to conclude the proceeding within a time limit and set aside the order of de novo enquiry. But the said judgment and order dated 11.11.1998 was assailed in a writ appeal being registered and numbered as W.A. 401/98, and the Division Bench by its order dated 24.12.1998, issued notice returnable by 25.1.1999 and in the interim, stayed operation of the aforesaid judgment and order dated 11.11.1998 until further orders. While the Special Body was functioning as such, the impugned Notification dated 30.12.1998 was issued which, according to the Petitioners, was mala fide in

exercise of the powers with an improper motive only with a view to show undue favour to Respondent No. 5. The Petitioners further pointed out that despite the order of this Court passed in W.A. 401/98 dated 24th December, 1998, the newly constituted Special Body at the very first opportunity, took a resolution on 3.1.1999, directing the Respondent No. 5 to discharge his duties as Principal and Secretary of the College and the Special Body, respectively. The Petitioner contended that the entire exercise of constituting the new Special Body smacks of malafide and corrupt motive only to accommodate Respondent No. 5 as the Principal and Secretary of the College and the Special Body, respectively. The Petitioners further expressed their apprehension that on the strength of the impugned notification, the new Special Body was constituted with the intent to frustrate the move of the earlier Special Body and might withdraw the writ appeal filed by the earlier Special Body from the High Court.

3. Respondent No. 1, State of Assam, Respondent No. 2. Deputy Secretary to the Govt. of Assam, Education Department, and Respondent No. 3. The Director of Public Instruction, Assam (Higher Education), the State and its instrumentality, which passed/issued the impugned notification, did not file any affidavit. The case was contested only by the new Special Body represented by the Minister of Fisheries, Assam, who filed affidavit as the President of the Special Body denying and disputing the claim of the Petitioners. The Respondent No. 4 in its affidavit, hurled allegations against the earlier Special Body, since dissolved, headed by the Petitioner No. 1, and brought allegations of financial impropriety, more particularly against Petitioner No. 2, the Secretary of the erstwhile Special Body. The Special Body in its affidavit, further brought allegation of mismanagement by the erstwhile Special Body and stated that in the circumstances, the State Government rightly acted by dissolving the erstwhile Special Body and constituting the new body. The Respondent denied the allegation of misappropriation or financial irregularity and stated that the Respondent No. 5 only became the political victim so much so that the Audit Report submitted by the Internal Auditor exonerated the said Respondent No. 5. The Respondent No. 4 stated that on the strength of the High Court order dated 11.11.1998 passed in Civil Rule No. 6001/97, the Director of Higher Education, Assam, passed an order withdrawing the approval to the resolution adopted by the Special Body on 25.12.1996, accorded on 6.2.1997, which resulted in revocation of the suspension order and on the strength of the said order, the Respondent No. 5 assumed his charge as Principal of the College on 12.12.1998 and is discharging his duty as Principal. The said statement was, however, clarified by the President by stating that after the stay order of the High Court in the writ appeal, the Special Body took a resolution allowing the senior most teacher of the College to act as the Principal-in-Charge vide resolution dated 23.2.1999, which was subsequently approved by the Director of Higher Education and the said senior teacher is acting as the Principal and Secretary of the College and not the Respondent No. 5.

4. Throughout the proceeding, the authorities concerned with constitution and

reconstitution of Governing/Special Body, viz. Respondents Nos. 1, 2 and 3, were indifferently calm. The bona fide, propriety and the legality of the order issued by the Respondent No. 2 on behalf of the Respondent No. 1 is/was under challenge and accordingly, they, viz. The State of Assam, Deputy Secy. to the Govt. of Assam, Education Department and the Director of Public Instruction (Higher Education), Assam, were impleaded as party-Respondents. These Respondents neither filed any affidavit nor have they made available the records pertaining to constitution and reconstitution of the Special Body, before the Court. The Special Body was constituted only on 30.11.1998 whose life was for a period of one year from the date of constitution of the Special Body as per the Govt. notification issued under No. B(2)H. 419/96/Pt.78 dated 8.8.1997. The said notification further recorded that no Special Body of the Deficit Colleges can be dissolved before expiry of the term.

In the absence of any rebuttal, there is scope to proceed on the basis that the said averments have been admitted by the Respondents. Though there is no specific admission, nonetheless, there may be implied admission. Admittedly, as per the Government Notification, there is/was a positive embargo on the authority not to dissolve a Special Body before expiry of its term. The burden was/is undoubtedly on the Respondent Nos. 1 to 3 to justify its order which the Respondents chose not to do despite opportunities granted.

Mr. R. Gogoi, learned senior Counsel appearing on behalf of the Petitioners, submitted that even apart from the aforesaid admission, the impugned order suffers from the vices of malafide and arbitrariness and in support of his contentions, referred to a decision in Sabinus Ignatius Ekka and Others Vs. State of Assam and Another,

5. Mr. H. Rahman, learned Addl. Sr. Govt. Advocate, Mr. N. Dutta, learned senior Counsel appearing on behalf of Respondent No. 4 and Mr. B. Banerjee, learned Counsel appearing on behalf of Respondent No. 5, supported the impugned action of the Respondents as being lawful. Respondents Nos. 4 and 5, referring to their affidavits, submitted that in the circumstance, the State/Respondents rightly exercised their discretion to dissolve the Special Body.

Mr. B. Banerjee, learned Counsel appearing on behalf of Respondent No. 5, further submitted that the petition has become infructuous on the ground that the term of the erstwhile Governing Body/Special Body in which the Petitioners were nominated as members, came to an end by efflux of time on 30.8.1999. That the petition cannot be thrown out as infructuous only on that ground that the term of the Petitioners' Special Body had come to an end. The Petitioners challenged the order/Notification dated 30.12.1998, whereby the Special Body that was constituted on 30.11.1998 was cancelled and the new Special Body was reconstituted headed by the Minister of Fisheries, Assam, as the president, and seven Ors. s as members.

6. The role of the Governing Body or a Special Body in the management of the

affairs of the College cannot be under-rated. It has its own importance. In the instant case, the said Special Body was constituted only on 30.11.1998. As per Government's own policy, a Special Body was not meant for dissolution before expiry of its term. The counsel for the Respondents, in support of the impugned notification referred to the provisions of Rule 8 of the Assam Aided College Management Rules, 1976, hereinafter referred to as the Rules, 1976, which empowers the authority to dissolve and reconstitute a Governing Body at any time if the circumstances so demand. Therefore, there cannot be any inhibition on the authority to dissolve a Governing Body under the Rules, 1976. The said Rule reads as follows:

The Director of Public Instruction, Assam may dissolve and reconstitute a Governing Body at any time, if the circumstances so demand. Pending reconstitution of the Governing Body the Director of Public Instruction may takeover the control and management of a College for a period not exceeding three months and make arrangement for the management of the College in such a manner as considered fit by him. This period may be extended for a further period of three months with the approval of the Government.

Assuming that the notification dated 8.8.1997 does not stand on the way of the authority to dissolve the Special Body, even in that situation also, the said Rules does not confer an unlimited discretion on the authority to dissolve and reconstitute a Governing/Special Body without any just cause. Rule 8 of the Rules, 1976 itself indicates "if the circumstances so demand". Therefore, in order to dissolve a Governing/Special Body under Rule 8 of the Rules, 1976, there must be some circumstances demanding such dissolution, Arbitrariness is anathema to the equality clause enshrined in Article 14 of the Constitution of India. Arbitrary exercise of discretion is also antithesis to the rule of law.

The Indian Constitution stands for Rule of Law. The expression bears different denotations and connotations. In the first place, it signifies that all sections must be in accordance with law. Every State action that affects the legal rights, duties and liberties of an individual, must be sanctioned by law. In other words, all Governmental exercise of powers must be founded on a legal pedigree. Legality is one facet of the Rule of Law. It further conveys the idea that all State actions are to be confined within the legal bounds and its affairs are to be administered/ conducted within the fabric of accepted norms and known rules and principles limiting the discretionary power. Sir Edward Coke, in his portrayal mentioned of "golden & straight met wand" of law as opposed to "uncertain and crooked God of discretion". The Constitutional principle that has emerged from the Indian Constitution provided a mechanism for averting and avoiding the misuse or abuse of the discretionary power. Rule of Law does not disapprove existence of wide discretionary power, at the same time, it also conceives that law should be capable and effective to contain the exercise of discretion. The Constitution of India set out the limits--that all powers have a legal boundary. The Legislature or for that matter the rule making authority, may bestow extensive and

comprehensive powers on the public authorities/bodies which may seemingly appear to be absolute and unlimited. Our Constitution spurned out the concept of arbitrary power and unfettered discretion. "Discretion means when it is said that something is to be done within the discretion of the authorities that something is to be done according to rules of reason and justice, not according to private opinion. *Rooke's case* according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office confine himself." Lord Halsbury's statement in *Sharp v. Wakefield* (1891) AC 173 rehearsed in the Administrative Law, HWR Wade & CF Forsyth, 7th Edn., p. 387.

It would be pertinent here to refer to the case of *Congreve v. Home Office* reported in 1976 QB 29. In the above case, the Home Secretary claimed to revoke the T.V. licence for which the Congreve, a Solicitor in a City firm had paid the licence fee of £12 in advance. The Home Secretary claimed to revoke the licence by taking aid of a Statutory provision which conferred on him the power to revoke it. The first Court held that the Home Secretary was competent to revoke. But the Court of appeal held the action unauthorised. Lord Denning in his picturesque language, in the aforesaid case, made the following observations.

But now the question comes: can the Minister revoke the overlapping licence which was issued so lawfully? He claims that he can revoke it by virtue of the discretion given him by Section 1(4) of the Act. But I think not. The licensee has paid £12 for the 12 months. If the licence is to be revoked--and his forfeited--The Minister would have to give good reasons to justify it. Of course, if the licensee had done anything wrong--if he had given a cheque for £12 which was dishonoured, or if he had broken the conditions of the licence--the minister could revoke it. But when the licensee had done nothing wrong at all, I do not think that the Minister can lawfully revoke the licence, at any rate, not without offering him his money back, and not even then except for good cause. If he should revoke it without giving reasons, or for no good reason, the courts can set aside his revocation and restore the licence. It would be a misuse of the power conferred on him by Parliament: and these courts have the authority--and, I would add, the duty--to correct a misuse of power by a minister or his department, no matter how much he may resent it or warn us of consequences if we do. *Padfield v. Minister of Agriculture, Fisheries and Food* (1968) AC 997 is proof of what I say. It shows that when a minister is given a discretion--the Courts can interfere so as to get him back on to the right road.

The conduct of the minister, or the conduct of his department, has been found by the parliamentary commissioner to be maladministration. I go further, I say it was unlawful. His trump card was a snare and a delusion. He had no right whatever to refuse to issue an overlapping licence, or, if issued, to revoke it. His original demand, "pay £6 or your licence will be revoked", was clearly unlawful--in the sense that it was a misuse of power--especially as there was no offer to refund the £12, or any part of it.... The licence is granted for 12 months and

cannot be revoked simply to enable the minister to raise more money. Want of money is no reason for revoking a licence. The real reason, of course in this case was that the Department did not like people taking out overlapping licences so as to save money. But there was nothing in the regulation to stop it. It was perfectly lawful and the department's dislike of it cannot afford a good reason for revoking them.

7. Under the Rules, 1976, the DPI, Assam may dissolve and reconstitute a Governing Body at any time if the circumstances so demand. The DPI is clothed with the power to dissolve and reconstitute a Governing Body at any time provided circumstances so demanded. The DPI is, was duty-bound to disclose the circumstances which occasioned the dissolution. It is not the case of the Respondent Nos. 1 to 3 that the earlier Special Body/Governing Body faltered in performance of its duties; nor is/was there any material whatsoever calling for dissolution of the Special/Governing Body for some/any wrong committed by it. When the earlier Governing/Special Body had done no wrong and had not acted improperly in the management of the affairs of the College, the authority was not competent to lawfully dissolve the same. If the authority felt that the Special Body/Governing Body or some of its members went wrong in the management of the affairs of the College or committed any impropriety, fairness and rightness demanded a notice indicating of the same to the Body by the authority. Rule 3 of the Rules, 1976 also does not confer any power on the Government of Assam to sanction a Special Body without any valid reason. The Rule contemplates that such bodies can be constituted under special circumstances. Not to speak of special circumstances, no circumstance whatsoever is discernible from the materials so far produced in the case in hand. The power to constitute a Special Body is conferred under Rule No. 3 of the Rules, 1976 which is given under special circumstances. The power conferred on the authority is to be exercised honestly, bona fide and reasonably. When a power responded on the authority is exercised for an alien purpose or beyond the scope of the power, such exercise of power amounts to flouting of the power even when no corrupt motive can be imputed. The learned Counsel for the Respondents submitted time and again that the Government has the authority to sanction Special Body under special circumstances.

The Rules, 1976 conferred the discretion on the Government to sanction a Special Body and to no Ors. authority. The Government is the best Judge to take stock of the special circumstances and to constitute a Special Body as and when the occasion so arises. The learned Counsel for the Respondents remained that the Court is not to usurp upon the discretion of a public authority/Government who is the rule making authority empowered to take such a decision.

Within the area of discretion, the authority is to be given freedom to have their own choice. As alluded earlier, a discretionary power conferred on authority is to be exercised by the authority lawfully and reasonably. If the power is exercised unreasonably it amounts to abuse of power and the action of the authority will,

therefore, become ultra-vires.

The Constitution of India sanctioned and guaranteed the Rules of law and Article 226 is meant for ensuring that each and every authority of the state including the Government acts honestly and within the limit of their power as set out in the instrument itself, and when the Court is satisfied that there is any abuse or misuse of such power, a duty is cast on the Court to remedy the situation and to render justice to the parties. No good ground is discernible for the dissolution of the Special Body that was constituted on 30.11.1998 and reconstitution of the new Special Body on 30.12.1998.

8. In view of the discussions as made above and the reasons stated above, the impugned notification under No. B(2)H. 306/96-101 dated 30th December, 1998 is liable to be set aside and accordingly, the same is set aside and quashed. The Writ Petition is allowed. However, in the facts and circumstances of the case, the parties shall bear their own costs.

The Rule is made absolute.