

(2016) 01 GAU CK 0052

In the Gauhati High Court

Case No : WP (C) Nos. 170 of 2015, 6958 of 2014, 3780 of 2015 and 3996 of 2015

Mahadev Panging and Others

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Citation : (2016) 2 GauLJ 303 : (2016) 2 GauLR 831 : (2016) 2 GauLT 1109 : (2016) 3 NEJ 466

Hon'ble Judges : Biplab Kumar Sharma, J.

Bench : Single Bench

Advocate : K.N. Choudhury, N.C. Das, Sr. Advocates, M. Mahanta and Karabi Das, Advocates, for the Appellant; B. Chetri, Sr. GA, D. Das, Sr. Adv. and R. Sarmah, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—1. All the writ petitions raising the same issue based on more or less same set of facts have been heard analogously and are being disposed of by this common judgement and order. In all the writ petitions, the petitioners have called in question the dissolution of the Integrated Tribal Development Project (ITDP) Committee vide the notifications in question. According to the petitioners, who are members of the earlier Committee, such action on the part of the respondents is illegal as they had not completed their term of office which according to them is 5 (five) years.

The basic facts involved in the writ petitions are indicated below.

2. WP(C) 170/2015: The ITDP Sivasabar was constituted vide Annexure-I notification dated 21/02/2011 of which the petitioner was made the Chairman, When the petitioner was continuing as such, the Annexure-2 notification dated 20/02/2014 was issued laying down the guidelines towards constitution of ITDPs etc. The relevant guidelines with which the present proceeding is concerned are

that (i) for appointment as Chairman/Members, the candidates will have to make application to the Government in the WPT & BC Department along with the recommendation from the Deputy Commissioner and (ii) the term of office of the Board shall not exceed 5 (five) years from the date of notification constituting Board, provided however, if the Government is of the opinion that circumstances so exist whereby the orderly conduct of business of the board is not possible, the Government may by notification, dissolve the board.

3. A modification was brought to the above Annexure-2 notification vide Annexure-3 notification dated 12/09/2014, which is reproduced below:--

"GOVERNMENT OF ASSAM DEPARTMENT OF WELFARE OF PLAIN TRIBES & BACKWARD CLASSES DISPUR::::: GUWAHATI

ORDERS BY THE GOVERNOR NOTIFICATION

Dated Dispur the 12th September, 2014

No. TAD/BC/440/2013/13: In partial modification to this Department's earlier Notification No. TAD/BC/440/2013/12, dtd. 20.02.2014, the Clause 1 (V) and the Clause (IV) have been altered as below:

1. Constitution of the PIC/Development Board for SC/ST/OBC:

(v) The prospective candidates will have to make an application for appointment as Chairman/Members and submit the same to the Government in the WPT & BC

(iv) Term of Office

The term of office of the Board shall not exceed three (3) years. The term of office shall be reckoned with from the date of notification constituting the Board. Provided that, if the Government is of the opinion that circumstances so exist whereby the orderly conduct of business of the Board is not possible, the Govt. may by notification dissolve the Board.

(Sd/- B.R. Samal) Commissioner & Secretary to the Govt. of Assam WPT & BC Department, Dispur".

4. After issuance of the said two notifications, the Government of Assam in the WPT & BC Department issued the impugned notification dated 19/12/2014 followed by the Annexure-5 notification dated 19/12/2014. While by Annexure-4 notification, the ITDP Sivasagar was dissolved with immediate effect, by the second notification, the respondent No. 4 was appointed as the Chairman of the ITDP Committee.

5. WP(C) 6958/2014: As in the first writ petition, in this writ petition also, the ITDP Committee, Dibrugarh was constituted vide Annexure-1 notification dated 01/08/2011 and the petitioner was made the Chairman. While the petitioner was continuing as such, the aforementioned notifications were issued laying down the guidelines and thereafter vide the Annexure-4 notification dated 19/12/2014, the ITDP Committee, Dibrugarh was dissolved and by Annexure-5 notification dated

19/12/2014, the respondent No. 4 was appointed as the Chairman of the ITDP Committee Dibrugarh. As in the first writ petition, in this writ petition also, the challenge is to the said notifications dated 19/12/2014.

6. WP(C) 3780/2015: In this writ petition also, the petitioner was nominated as the Chairman of Sub-Divisional Schedule Caste Development Board, Jonai vide Annexure-1 notification dated 03/02/2012 by which the said board was constituted. He is also aggrieved by the Annexure-IV notification dated 12/06/2015 by which in supersession of the earlier notification, a new board was constituted with the private respondents as its members.

7. WP(C) 3996/2015: In this writ petition also, the petitioner is aggrieved by the Annexure -III notification dated 12/06/2015, by which in supersession of the earlier notifications, a new Sub-Divisional Schedule Caste Board, Dhemaji was constituted with the private respondents as its members.

8. The basic thrust of the case of the petitioners is that as per the past practice being followed, the earlier term of office of the board was all along 5 (five) years but the respondents with the help of the aforementioned notifications reduced the term of office of the respective board to 3 (three) years and dissolved the boards prematurely. Another plea advanced is that the notification by which the term of office has been laid down to be 5 (five) years, (subsequently modified as 3 (three) years), cannot have any retrospective application, so to make them applicable in respect of the existing boards headed by the petitioners.

9. When the matter was taken up on 06/05/2015, upon hearing the learned counsel for the parties and on perusal of the records, the following order was passed:--

"06/05/2015

In terms of the order passed on 27.4.2015, Mr. B. Chetri, learned Sr. Govt. Advocate, Assam has produced the files, in which, the impugned decisions have been taken. On perusal of the files, it appears that the petitioner involved in WP(C) No. 170/2015 was removed as Chairman of ITDP on the basis of the application made by the respondent No. 4 and recommended by the Minister, Cultural Affairs Department. While processing the recommendation, it was noticed that the term of office of the Chairman, ITDP was reduced to three years from five years vide notification dated 12.9.2014. Such reduction was made through amendment to the earlier notification dated 20.2.2014. The proposal did not indicate anything that unless specifically provided for such amendment cannot have retrospective application.

Similarly in WP(C) No. 6958/2014, the petitioner was removed on the basis of the application submitted by the respondent No. 4 recommended by the then Parliamentary Secretary, Home and P & R D Department. Similar note was put up as in the case of the petitioner involved in WP(C) No. 170/2015.

It is in reference to the above position, Mr. K.N. Choudhury, learned counsel for

the petitioners submits that apart from the fact that there was no formation of any opinion about the circumstances requiring removal of the petitioners before completion of their term of office of 5 years. He also submits that the amended provision regarding tenure of office of the petitioners and for that matter, the Chairman, ITDP vide the notification dated 12.9.2014 cannot have any retrospective application. He also submits that barring the two ITDPs pertaining to Dibrugarh and Sivsagar, no other ITDPs of the other districts have been disturbed.

Both Mr. B. Chetri, learned Sr. G.A., Assam and Mr. C. Barua, learned counsel representing the private respondents submit that applying the pleasure doctrine, it is the prerogative of the State Government to replace the Chairman of the ITDP and the petitioner cannot claim any indefeasible right to continue in office on the above grounds. Mr. Choudhury, learned counsel for the petitioners placing reliance on the decision of the Apex Court reported in , (2010) 6 SCC (B.P. Singhal v. Union of India) submits that the doctrine of pleasure cannot be applied in the manner and method in which the same has been applied in the instant case giving a go bye to the principles involved in the concept of rule of law. In paragraph-22 of the said judgment, the Apex Court observed thus:

"There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by Rule of Law, where arbitrariness in any form is eschewed, no Government or Authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for public good."

Heard-in-part. Further hearing on 26.5.2015, on which date, Mr. Chetri, learned Sr. G.A., Assam shall produce the record again including the PUCs referred to in the notes.

The interim order passed earlier shall continue till disposal of the writ petition.

Let a copy of this order be furnished to Mr. Chetri, learned Sr. G.A., Assam."

10. I have heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. M. Mahanta, learned counsel for the petitioners in WP(C) No. 170/2015 and WP(C) No. 6958/2014 and Mr. N.C. Das, learned senior counsel assisted by Ms. Karabi Das, learned counsel for the petitioners in WP(C) No. 3780/2015 and WP(C) No. 3996/2015. I have also heard Mr. D. Das, learned senior counsel assisted by Mr. R. Sarmah, learned counsel representing respondent No. 4 in WP(C) No. 6958/2014 and Mr. B. Chetri, learned senior Government Advocate, Assam. I have also perused the entire materials on record.

11. Both Mr. K.N. Choudhury and Mr. N.C. Das, learned senior counsels, arguing

the case on behalf of the petitioners, have submitted that as per the past practice the term of office of the board being 5 (five) years, the said term could not have been reduced to 3 (three) years on the basis of the aforementioned notifications, which do not have any retrospective application. In this connection, Mr. K.N. Choudhury has placed reliance on the additional affidavit filed by the petitioner involved in WP(C) No. 170/2015, in which two notifications, one dated 29/09/2011 and another dated 14/07/2006 have also been enclosed. While by the first notification dated 29/09/2001 in supersession of the earlier notification dated 30/08/2001, the ITDP Committee, Sivasagar was reconstituted, by the second notification dated 14/07/2006, the ITDP Committee, Sivasagar was again constituted in supersession of all earlier notifications. He also placed reliance on two Apex Court's decision (i), 1992 Supp (1) SCC 584 (N. Suresh Nathan and another v. Union of India and others) and (ii) , (2010) 6 SCC 331 (B.P. Singhal v. Union of India and another). Mr. Das, learned counsel representing the other two petitioners has submitted that the petitioners are not opposed to the guidelines issued by the Government but the Government must strictly follow those guidelines.

12. Both Mr. B. Chetri, learned senior Government Advocate, Assam, referring to the counter affidavits filed by the respondents submits that the petitioners having been appointed as Chairman without specifying any tenure of office, they cannot urge for any fixed tenure of office, that too, for 5 (five) years. Mr. D. Das, learned senior counsel representing the respondent No. 4 in WP(C) No. 6958/2014 submits that the appointment in question being not through any selection and applying the Doctrine of Pleasure, it is prerogative of the State Government to replace the Chairman of the Board and the petitioners cannot claim any indefeasible right to hold office for 5 (five) years.

13. None of the petitioners was appointed as Chairman and for that matter none of the boards was constituted for any specific period. As will be evident from Annexure-I notification dated 21/02/2011 [WP(C) No. 170/2015], the board was constituted in supersession of the earlier notification dated 20/10/2011. It was only by Annexure-2 notification dated 20/02/2014, certain guidelines for constitution and functioning of the boards were laid down. The said guidelines include constitution of a Selection Committee for selection of Chairman, Vice Chairman and Members. The prospective candidates are to make application for appointment as Chairman/Members. Certain qualifications have also been laid down for Membership. Laying down the term of office, it was specified in the notification dated 20/02/2014 that the same shall not exceed 5 (five) years, meaning thereby it could be for a lesser period also.

14. Bringing a modification to the earlier notification vide Annexure-3 dated 12/09/2014, it was laid down that the term of office of the Board shall not exceed 3 (three) years. As regards constitution of the Board, it was laid down that the prospective candidates will have to make application for appointment as Chairman/Members along with the recommendation from the Deputy

Commissioner/Minister (In-charge) concerned.

15. In the counter affidavit filed by the respondents, both official and private, the stand taken is that the board is neither a statutory body nor any right was conferred on the petitioners as a member of the said board for any specified period. As regards the plea of the petitioners that the applications submitted by the newly appointed Chairman were not routed through the concerned authority, the Government in its affidavit has categorically stated as to how the same were routed through the concerned Minister including the Chief Minister. To a specific query as to whether only the petitioners were picked up for substitution and for that matter only the boards represented by the petitioners have been superseded, the Government in its affidavit filed on 25/06/2015 has specifically stated that pursuant to the notifications referred to above, laying down the guidelines for constitution of the boards and the methodology of appointment of Chairman and Members, the Government in the WPT & BC Department vide its notification dated 19/05/2015 and 27/05/2015 dissolved all the boards completing 3 (three) years. Along with the said affidavit, the copies of the notifications constituting the new boards have also been enclosed.

16. It is in the aforesaid fact-situation, the issue involved for decision is as to whether the petitioners can claim continuation in the respective offices for a fixed tenure of 5 (five) years and for that matter whether the respective board will continue to operate for a full term of five years on the basis of its earlier constitution with the members who were nominated to the respective board. As noted above, when the petitioners were nominated as Chairman and for that matter, the boards were constituted, no specific term of office was indicated but the Chairman and Members were nominated not on the basis of any selection but on the basis of any recommendation of the Government without any process of selection. In this context, the learned counsel for the respondents have emphasized on the Doctrine of Pleasure.

17. The decision in V.P. Singhal (Supra) is in respect of removal of the Governor from his office. It was held that the power of judicial review in the matter of removal of Governor is very limited. Such review is possible only if removal is arbitrary, malafide, capricious or whimsical, for which strong prima-facie case is required with sufficient reasons. In N. Suresh Nathan (Supra) on which Mr. Choudhury, has placed reliance, is in respect of past practice being followed on promotion to the post of Assistant Engineer. When it was found that the practice followed in the department for a long time was that in the case of diploma holder Junior Engineers who obtained the degree during service, the period of three years' service in the grade for eligibility for promotion as degree holders commenced from the date of obtaining the degree and the earlier period of service as a diploma-holders was not counted for this purpose. Such a practice was admitted by the respondents and the Apex Court was of the view that such a past practice so as to count the required three years' service from the date of obtaining the degree, cannot be diluted.

18. Unlike the aforesaid case, in the instant case, it is not the case of the respondents and for that matter, the petitioners as well, that they were appointed as Chairman and/or the respective boards were constituted specifying the term of office as five years. What they have projected is that as per the past practice, their term of office should be five years. It is in this context, the petitioner in WP(C) No. 170/2015 has referred to the additional affidavit filed today enclosing therewith 2 (two) notifications, one dated 29/09/2001 and another dated 14/07/2006. By the first notification, the ITDP Committee, Sivasagar was constituted in supersession of the earlier notification dated 30/08/2001 and by the second notification, the ITDP Committee, Sivasagar was reconstituted with the replacement of Chairman and Members. If the arguments advanced by the learned counsel for the petitioners is to be accepted that the term of office of the members of the board is for five years, then they will also have to explain as to why the said term was reduced vide the notification dated 14/07/2006, which was issued even before completion of 5 (five) years by the ITDP Committee that was constituted on 29/09/2001.

19. Mr. B. Chetri, learned senior Government Advocate has drawn my attention to the affidavits filed by the respondents to show that there was no guidelines laying down any fixed tenure of 5 (five) years in respect of the boards. He has also referred to the same notifications showing their constitution and reconstitution even before completion of five years. In all such notifications, the recitation is to the effect that the notifications are in supersession of the earlier notifications. The two notifications to which he has specifically referred to are dated 21/07/2009 and 16/03/2010. By the first notification dated 21/07/2009, the Sub-Divisional Schedule Caste Development Board, Dhemaaji was constituted and by the second notification dated 16/03/2010, the Chairman of the Board was replaced. Similarly, by a subsequent notification dated 19/08/2011 another Sub-Divisional Schedule Caste Development Board, Dhemaaji was constituted which again replaced by another notification dated 12/06/2015. Mr. Chetri has also referred to 3 (three) decisions of the Apex Court reported in , (2013) 12 SCC 226 (Kuchchh Jal Sankat Nivaran Samiti and Others v. State of Gujarat and another); (2003) 8 SC 440 (Vijay Lakshmi v. Punjab University and others) and , (2001) 3 SCC 635 (Ugar Sugar Works Ltd. v. Delhi Administration and Others). All the decisions are in respect of limited scope of judicial review in the matter of policy decision of the Government. Referring to the said decisions, he has submitted that it being a policy decision of the Government not to specify any specific term of office of the Chairman and the Members of the Board, the Writ Court will be reluctant to sit on appeal over such a policy decision.

20. As noted above in none of the notifications constituting the board and appointing the petitioners as Chairman any fixed tenure was specified. It was only on 20/02/2014, the Government issued guidelines regarding constitution and functioning of the boards. The qualifications/disqualifications and the method of selection etc. were also laid down. As regards the tenure of office, for the first time, it was laid down that the same shall not exceed five years, meaning

thereby that the same could less than 5(five) years also. By bringing the modification vide Annexue-3 notification dated 12/09/2014, the term of office of the board was specified to be not exceeding 3 (three) years. As in the case of 5 (five) years in the case of 3 (three) years also, having regard to the specification "not to exceed", coupled with the nature of selection and appointment, it cannot be said that the petitioners are entitled to hold office for a fixed tenure of five years. As per their own showing, no such fixed tenure was available for any boards and for that matter in all the boards.

21. Above apart, the petitioners are also not occupying any selection post. The post they had held are purely in the domain of the Doctrine of Pleasure and not otherwise. In the notifications constituting the respective board and nominating the members, it was never specified that their term of office would be for five years. For the first time in 2014, two notifications, referred to above, were issued laying down the guidelines towards constituting the board and selecting the members. In these two notifications also, no fixed tenure has been prescribed. What has been said is that the term of office shall not exceed 5 (five) years (now three years). Pursuant to such notifications, all the boards have been dissolved and reconstituted.

22. Another point urged by the petitioners is that the private respondents were not appointed as per the requirement of the guidelines. In the counter affidavit filed by the respondents, it is their specific case that they were recommended by the concerned Minister. It being within the domain of the Government to appoint and re-appoint members and also to constitute and reconstitute the board, I am of the considered opinion that the issue raised in this writ petition cannot be viewed within the principles of judicial review exercising writ jurisdiction.

23. For all the aforesaid reasons, I do not find any merit in the writ petitions and accordingly, they are dismissed. Consequently, the interim orders operating in the writ petitions automatically stand vacated.