
(2005) 09 GAU CK 0050
In the Gauhati High Court
Case No : Writ Petition (C) No. 9348 of 2004

Makhan Pegu and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Mising Autonomous Council (Amendment) Act, 1997 — Section 80
Mising Autonomous Council Act, 1995 — Section 80

Citation : (2005) 4 GLT 502

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : N. Dutta and B. Chetri, for the Appellant; A.C. Buragohain, P.K. Musahary, K.K. Mahanta, R. Bora and K.P. Gogoi, for the Respondent

Judgement

I.A. Ansari, J.—By a notification, dated 11.04.2002 (Annexure A to the writ petition), the Government of Assam, in exercise of powers conferred u/s 80 of the Mising Autonomous Council Act, 1995 and Mising Autonomous Council (Amendment) Act, 1997, reconstituted the Interim Mising Autonomous General Council and Mising Autonomous Executive Council. The Petitioners acted as nominated members in the said Executive Council. While the Petitioners were functioning as Executive members of the said Council, by another notification, dated 30.11.2004 (Annexure B to the writ petition), issued in exercise of powers u/s 80 of the Mising Autonomous Council Act, 1995, and Mising Autonomous Council (Amendment) Act, 1997, the Petitioners and some others were removed and replaced by, amongst others, the Respondent Nos. 8 to 13 herein.

2. With the help of the present writ application, the writ Petitioners have challenged their removal by impugned notification, dated 30.11.2004, on the ground, inter alia, that before their removal, no opportunity of showing cause or hearing was accorded to the Petitioners and, thus, the principles of natural justice having been denied, the impugned notification is not sustainable in law.

3. In these premises, the Petitioners have, inter alia, sought for issuance of writ

(s) setting aside and quashing the impugned notification, dated 30.11.2004, aforementioned.

4. The State Respondents, namely, Respondent Nos. 1 to 3 have filed their affidavit-in-opposition, wherein these Respondents have contended to the effect, inter alia, that it was on the basis of the letter, dated 29.11.2004, received by the Government from the Respondent No. 7, namely, Chief Executive Member, Mising Autonomous Council, that the Petitioners were dropped along with three others by issuing the notification, dated 30.11.2004, aforementioned. These Respondents also annexed to their affidavit-in-opposition the letter, dated 29.11.2004, aforementioned.

5. The Respondent No. 7 has also filed his affidavit-in-opposition, his case being that since no notice is stipulated to be given for removing a nominated member under the provisions of Section 80 of the Missing Autonomous Council (Amendment) Act, 1997, the removal of the Petitioners did not require serving of any notice of show cause, in this regard, on the Petitioners nor were the Petitioners entitled to be given any opportunity of hearing before their removal from the office of the Executive Members of the said Council.

6. I have heard Mr. N. Dutta, learned Senior Counsel, assisted by Mr. B. Chetri, learned Counsel for the Petitioners and Mr. A. Buragohain, learned Additional Advocate General, Assam, appearing on behalf of the Respondent Nos. 1 to 5. I have also heard Mr. K.K. Mahanta, learned Senior Counsel, assisted by Mr. R. Bora, learned Counsel, appearing on behalf of the Respondent Nos. 8 to 13 and Mr. K.P. Gogoi, learned Counsel for the Respondent Nos. 6 and 7.

7. Before proceeding any further, what needs to be noted is that in Mahesh Doley and Others Vs. State of Assam and Others, while answering the question as to whether an Executive member of the said Council needs to be given, before his removal from the said Council, any opportunity of showing cause or hearing, this Court held thus:

48. In view of the fact that there is nothing in the provisions of the said Act to show that for every removal, stigmatic or otherwise, an opportunity of showing cause has to be extended to a nominated member, there is no escape from the conclusion that the doctrine of pleasure is impliedly present in the proviso to Section 80. Thus, not only the nomination of a person as a member of the Interim General or Executive Council depends on the pleasure of the Government, but that his/her removal also depends on the pleasure of the Government and except when the removal is stigmatic or penal in nature, the principles of natural justice will not be applicable.

8. From a careful reading from what has been observed in Mohesh Doley (supra), it is clear that for removal of a nominated person from the interim Executive or General Council, no opportunity is required to be given the person concerned for showing cause and/or hearing except when the removal is stigmatic or penal in nature.

9. Bearing in mind what has been observed in Mahesh Doley (supra), when I turn to the facts of the present case, what attracts the eyes, most prominently, is that the State Respondents have removed the Petitioners on the basis of the request, which was, admittedly, made by the Respondent No. 7 vide his letter, dated 29.11.2004, aforementioned. This letter clearly states that the Respondent No. 7 has expressed his total dissatisfaction with the work of the present Petitioners. The relevant portions of the letter, dated 29.11.2004, aforesaid are quoted below:

I have the honour to inform you that I am totally not satisfied with the works of the following Vice-Chairman and Executive Members of my Council.

1. Shri Bhaben Narah, Vice-Chairman.
2. Shri Makhan Pegu, Executive Members.
3. Shri Priya Paban Doley, Executive Members
4. Shri Hema Lagachu, Executive Members
5. Shri Mahananda Doley, Executive.
6. Shri Jatin Paw, Executive Members

As such, I would like to request you to pass necessary orders to drop the above mentioned Vice-Chairman and Executive Members from the Mising Autonomous Council and in place of them the following persons may kindly be included in the Council for greater interest and speedy development of the ongoing schemes of the Council.

10. A bare reading of the contents of the above letter shows that the removal of the present Petitioners is on the ground of their unsatisfactory nature of work as Executive Members of the said Council. There can be no room for doubt that the opinion expressed by the Respondent No. 7 with regard to unsatisfactory nature of work allegedly rendered by the present Petitioners is adverse to the interest of the Petitioners and will leave, unless interfered with, a stigma on the Petitioners. There is also no doubt that the Respondent Nos. 1 to 3 had not applied their mind, while removing the Petitioners, rather, they merely acted on the letter, dated 29.11.2004, aforementioned of the Respondent No. 7 in order to remove the present Petitioners from the said Council. Such a removal of the Petitioners is nothing but stigmatic in nature and entails civil consequences. In short, the impugned notification, dated 30.11.2004, whereby the Petitioners have been removed, will adversely affect the interest of the Petitioners and the said letter could not have been acted upon by the Respondent Nos. 1 to 3 without giving any opportunity of showing cause or hearing to the Petitioners.

11. Moreover, the Respondent No. 7 himself is a nominated person and it was on his allegation made to the effect that the Petitioners were not working satisfactorily that the Petitioners have been removed. No exercise appears to have been done by the Respondent Nos. 1 to 3 to determine the correctness and/or veracity of the accusations, which had been made by the Respondent No. 7

against the present Petitioners. The Petitioners have, thus, been condemned without being heard. If such a removal of the Petitioners is not interfered with, the same shall cause serious miscarriage of justice.

12. In the result and for the foregoing reasons, the impugned notification, dated 30.11.2004, aforementioned, so far as the same concerns the present Petitioners, is hereby set aside and quashed. The notification, dated 30.11.2004, aforementioned to the extent that the same relates to the Petitioners shall be treated as non est in law.

13. Before parting with this writ petition, it is, however, made clear that the setting aside and/or quashing of the impugned notification, dated 30.11.2004, aforementioned shall not be treated as a bar for the Respondent Nos. 1 to 5 to take necessary action against the Petitioners in accordance with law.

14. With regard to the grievances of the Petitioners that they have not been paid their lawful dues, the Respondents, particularly, the Respondents Nos. 1 to 5 as well as the Respondent Nos. 6 and 7 are hereby directed to examine the said grievances of the Petitioners and do the needful in accordance with law.

15. No order as to costs.