
(1994) 07 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 3770 of 1993

Manik Sarkar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-07-1994

Acts Referred:

Assam General Clauses Act, 1915 — Section 26
Assam Municipal Act, 1956 — Section 298, 299, 299(1), 299(1)(B), 299(2)
Constitution (Seventy-Fourth Amendment) Act, 1992 — Section 298, 299
Constitution of India, 1950 — Article 226, 243I(1), 243I(2), 40

Citation : (1994) 2 GLR 431

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

Bench : Single Bench

Advocate : A.K. Phukan, V.M. Thomas and B. Rajkhowa, for the Appellant; S.A. Laskar, Government Advocate for Assam, A.H. Saikia and A. Das, for the Respondent

Final Decision : Allowed

Judgement

D.N. Baruah, J.—In this writ application under Article 226 of the Constitution of India, Petitioner has challenged Annexure-A notification dated 9.12.93 issued by the Commissioner and Secretary to the Government of Assam, Municipal Administration, appointing an adhoc body comprising of the 3rd to 18th Respondents to exercise and perform all the powers and the duties exercised by Jorhat Municipal Board, under the Assam Municipal Act, 1956, for short "the Act", Petitioner also prays for issuance of an appropriate writ on direction to allow the Executive Officer, Jorhat Municipal Board to discharge the duties and functions of the said Board till such time now Board is constituted under the provisions of the Act. The writ petition was moved on 17.12.93, but the case was adjourned. However, on that day, the Court passed an order to maintain status quo as on that day. The matter came up on 22nd December, 1993. On that day, this Court issued Rule. However, the Court refused to pass any interim order.

2. The facts of the case as stated by the Petitioner in brief are as follows:

He is an Ex-Ward Commissioner of the Jorhat Municipal Board. He being a resident of Jorhat Town is keenly interested in the affairs of the Jorhat Municipal Corporation. He is also interested in proper functioning of the Board in a democratic process. A duly elected body of Jorhat Municipal Board was superseded by the Government in put ported exercise of power u/s 298 of the Act. An Executive Officer, was appointed to exercise and performing all the powers and duties under "the Act" in respect of the said Municipal Board, Subsequently by a notification dated 4.8.93 the terms of the Executive Officer was extended.

3. Thereafter, while the aforesaid extension order was still in force the 1st Respondent issued Annexure-A notification dated 9.12.93 in exercise of the power conferred u/s 299(1)(B) of "the" notification the duties which under "the Act was being exercised and performed by the Municipal Board should be exercised and performed by persons named in the notifications, i.e. 3rd to 18th Respondent as Chairman and the Respondent No. 4 was a Vice Chairman of the said adhoc temporary Board. It is clear from the provisions of Section 299 that when a Municipal Board has been superseded under the provisions of Section 298 of the Act, all the powers and duties under the said Act that may be exercised and performed by the Board, during the period of supersession shall be exercised and performed by such "person" or "persons" as the State Government may direct, Accordingly the State Govt. had duly appointed an Executive Officer of the Jorhat Municipal Board to exercise and perform the duties and powers of the said Municipal Board during the period of supersession. The provisions of "the Act" mentioned above further provide that on the expiration of the period of supersession, the State Government may extend the period for a further period not exceeding, one year at a time or reconstitute a Municipal Board by a fresh general election. The Government is also empowered to reconstitute a new Municipal Board by a fresh general election before the expiration of the period of supersession.

4. According to the Petitioner the State Government had no power, authority or jurisdiction to appoint an adhoc body as was done in the instant case, more particularly when the State Government had already exercised the power u/s 299(1)(B) of the Act by appointing an Executive Officer for exercising and performing the powers and duties of the Jorhat Municipal Board during the period of supersession. As such, under the provisions of law the State Government could not have ordered other alternative but to extend the said appointment of the Executive Officer for a further period till the general election was held. The Petitioner further states that according to the provisions of the Act, the only course available to the State Government was to reconstitute the Municipal Board by a fresh general election as contemplated u/s 299(2)(ii) of the Act. As such the appointment of the adhoc body by replacing the Executive Officer in purported exercise of the power conferred u/s 299(1) and (2) of the Act is ultra vires in view of the provisions contained in the said Section of the Act. Section 299 does not contemplate appointment of an adhoc body by replacing an

Executive Officer, instead of holding a general election. This according to the Petitioner is not envisaged under the provisions of "the Act". Besides, the democratic process has been throttled by appointing an adhoc body, denying the legitimate right of the residents of Jorhat town to choose their own representatives for running the affairs of the local body, namely, the Municipality.

5. Therefore, the Annexure-A notification dated 9.12.93 was illegal and without jurisdiction and not contemplated under the provisions of "the Act". The Petitioner has filed this application for appropriate writ or direction.

6. The 1st Respondent filed an affidavit-in-opposition, According to this Respondent the writ application was not maintainable in law as well as on facts. 1st Respondent stated that by the time of filing of affidavit, the writ petition had become infructuous particularly in view of the statements made in paragraph 13 of the writ petition as well as by virtue of order dated 22.12.93 passed by this Court rejecting the prayer for interim stay. According to this Respondent, the election of Jorhat Municipal Board could not be held in view of 74th Constitution Amendment which was passed by the Parliament and came into force on the 1st of June, 1993. This amendment envisaged a series of measures to be taken by the State Government. The purpose of 74th amendment was to bring about a truly democratic polity in the administration of urban local bodies, to expand the role that they would play in the affairs of urban population, introduce the principle of equity and justice with particular attention to upliftment of the disadvantaged segments of the community and to place the urban and local bodies on a sound financial footing which required introduction of a few major changes in the Assam Municipal Act, 1956. According to the 1st Respondent, the Executive Officer had to be withdrawn in view of the exigencies of the circumstances and in his place it was felt necessary in the public interest to place one man committee headed by the Executive Officer and, therefore, the notification dated 9.12.93 was legally and validly issued constituting the new committee. This Respondent also stated that the provisions of Section 299(1)(b) of the aforesaid Act clearly indicate that the State Government had the power to entrust the function of a superseded or dissolved Municipal Board to a person or persons, This implied that the State Government could entrust the function to one person, be it an Executive Officer or a body of persons. This authority was not faltered by any other provisions of the Act and it was entirely within the competence of the State Government to convert the singularity of the arrangement, to run the affairs of the Municipal Board to plurality of persons as has been done in the present case, According to the 1st Respondent, if the State Government had the power to extend the life of the committee headed by the Executive Officer it had also the power, authority or jurisdiction to appoint the Committee in question. In the present case arrangement had been made to fulfil the requirement of law and the Constitutional mandate, The 1st Respondent further stated that the State Government was keen to hold the election shortly after the fulfilment of requirement of law/constitutional mandate as stated above. Prompt effort in this regard had already been made and election would be

notified at it time considered, appropriate by the State Government and us such, the allegation that there was no intention or desire of the State Government to hold the election was not legally and factually correct or justified. Proposed holding of election was very much at much. The 1st Respondent in its affidavit also stated that the entire writ petition was misconceived. No legal right of the Petitioner was violated and no ground for interference was made out, Hence the entire writ petition was liable to be rejected with cost.

7. The Respondent No. 4, filed affidavit-in-opposition on behalf of the Respondent No. 2 and 4. In the affidavit they raised the preliminary objections as to the maintainability of the writ petition. According to him the Petitioner had no locus standi to file the present petition, inasmuch as, his rights and interest had not been violated by the impugned Annexure-A notification dated 9.12.93. They further stated that the present petition was malafide and a politically motivated as such, the same was liable to be dismissed. He challenged that the Petitioner ever worked as Ward Commissioner of the Jorhat Municipal Corporation. According to him the Petitioner was residing at Jorhat only for few years and was not a voter in Jorhat Municipal Board, and therefore, the Petitioner had no interest in respect of the affairs of the Municipal Board. The Respondents stated that u/s 299(2)(a) of the Act the Government had the jurisdiction and authority to appoint the body persons an pet Annexure-A notification dated 9.12.93. The present case was a case of supersession and the Government had over all control over the functioning of the Municipal Body as envisaged under the law and had power to make alternative arrangement for better and sufficient functioning of the Municipal Board as deemed fit by the Government which was earlier run by the Executive Officers only on supersession.

8. The Respondent No. 11 filed affidavit-in-opposition. In his affidavit he Supported the action of the Government.

9. I heard Mr. A.K. Phukau learned Counsel for the Petitioner, Mr. S.A. Laskar, learned Senior Govt. Advocate for the 1st Respondent and Mr. A.H. Saikia, learned Counsel for the 3rd Respondent.

10. Mr. Plukan urged before me that Annexure-A to the writ petition was wholly illegal for not in accordance with Sections 298 and 299 of the Act, inasmuch as, an order of dissolution/supersession must also contain an order of election. But this was absent in the present case. The Government having already exercised the power u/s 299(2) could not have passed another order u/s 299(2) constituting an adhoc body. Hence, Annexure-A notification was without jurisdiction and contrary to the provisions of "the Act". Amended law provided only for dissolution of the Board, for holding election within a period of six mouths from the date of dissolution. Annexure-A to the petition could not be allowed to stand as it was contrary to the provisions of law. The amendment of the Act having been made pursuant to 74th Amendment of the Constitution it would be in violation of the constitutional mandate to allow the present body to continue. The amendment did not save anything done under the 1956 Act, nor

the provisions of Section 26 of the Assam General Clauses Act could be invoked, inasmuch as, the repealed provisions were inconsistent with the new Section 298 and 299. The present ad hoc body was a body of persons and its continuance would be violative of Sections 299(1)(b) as amended.

11. Mr. S.A. Laskar, learned Senior Government Advocate appearing on behalf of the 1st Respondent supported the action of the Government. Similarly, Mr. A.H. Saikia, learned Counsel appearing on behalf of the 3rd Respondent also supported the action of the Government.

12. On the rival contention of the parties the following questions require determination:

(i) Whether the Petitioner has locus standi, and

(ii) Whether the action of the Government in issuing the Annexure-A notification dated 9.12.93 is sustainable in law or not.

13. POINT I : The counsel for the Respondents raised the preliminary objection that the Petitioner had no locus standi to move this petition, inasmuch as he was not a voter in the Jorhat Municipal Board.

Admittedly, the Petitioner is now a resident of Jorhat. At least he has the interest in the affairs of the Municipality. Besides, it is a well established law that when an action of the Government is illegal and unreasonable the Court cannot shirk its duty and refused its writ.

14. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, the Supreme Court has clearly observed that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and this concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice which inspires and animates the principles. When such illegality and unreasonableness is brought to the notice of the Court the court cannot remain a silent spectator.

15. Similarly in *Chaitanya Kumar and Others Vs. State of Karnataka and Others*, the Supreme Court also observed thus:

...But, simultaneously, the Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. When arbitrariness and perversion are writ large and brought out clearly, the court cannot shirk its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations.

Therefore, in view of the above, the petition cannot be thrown out only on the ground of locus standi, if it is seen that the action of the Govt. is unjust and unreasonable. Therefore, I reject the contention that the Petitioner has no locus standi.

16. POINT - II : To decide the controversy it will be apposite to refer to the

provisions of Section 298 of the Old Act and also Section 298 of the Amended Act. u/s 298 of the Old Act, State Govt. may by notification supersede the Board on the grounds mentioned in the Section for a period not exceeding one year at a time or dissolve the Board and order for fresh election as soon as possible.

17. Section 298 had been amended. As per the amended provision also the State Government, may by notification stating the reasons for doing so, such Board dissolve the Board and hold election within six months from the date of dissolution.

18. Section 299 of the Old Act provides that when an order of supersession of dissolution has been passed under the preceding section, consequences should ensue as mentioned in the said Section.

19. Regarding the provisions of Section 298 of the Old Act and the amended Act there appears marked difference regarding the supersession and holding off general election. The period has been curtailed. Under the Old Act the Board could be superseded for a period of one year at a time or it can be dissolved and fresh election might be held as soon as possible. On the other hand, as per the amended Act, the State Government is empowered to declare that Board to be incompetent or in default or to have exceeded or abused its power, as the case may be, and dissolve the Board and hold election within a period of six months from the date of dissolution. If we compare the old Act with the amended Act, we find that in the amended Act, the period of dissolution has been reduced to six months and in case of dissolution, election to be held within a period of six months from the date of dissolution. There is no provision for further extension of the period. Therefore, under the amended Act, the State Government is bound to hold election within a period of six months from the date of dissolution.

20. Section 299(b) of the amended Act provides that in case of dissolution, all the powers and duties to be exercised and performed by the Board, may be exercised and performed "by such person" as the State Govt. may direct till Commissioner and Chairman are elected. There is a marked difference between the old Section 299 and amended Section 299. Under the Old Act a person or group of persons could manage the affairs of the Board, whereas under the amended Act only a person, as the State Government may direct, till the Commissioner and Chairman are elected, can manage the affairs of the Board, Therefore, the amended provisions have totally eliminated the provisions for appointment of adhoc committee.

21. The Constitution has been amended regarding the local authorities, viz. Panchayati Raj Institutions and Urban Local Bodies by 74th amendment of the Constitution. The object and reasons for 74th Amendment of the Constitution may be stated as follows:

Though Local Authorities, namely, Panchayati Raj Institutions and Urban Local Bodies had been in existence in the country for a long time, it was observed that those institutions had not been able to acquire the status and dignity of viable

and responsible people's bodies due to variety of reasons including absence of regular elections, prolonged supersessions, inadequate representation of weaker sections like the Scheduled Castes and Scheduled Tribes and women, insufficient devolution of powers and lack of financial resources. Article 40 of the Constitution which enshrined one of the Directive principles of State Policy, laid down that the State should take steps to organise village Panchayats and endow them with such powers and authority as might be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the shortcomings which had been noticed, it had been recognised that there was a need to enshrine in the Constitution certain basic and essential features of the Local Authorities to impart certainly, continuity and strength to them. Accordingly, it was proposed to add a new part relating to Local Authorities in the Constitution to provide for, constitution of urban local bodies such as Nagar Panchayats for such transitional areas, Municipal Councils for such smaller urban areas and Municipal Corporation for such larger urban areas as might be specified by the Governor by public notification, direct elections to the urban local bodies, constitution of Committees at the ward level or other levels in Municipal Corporations, reservation of seats for the scheduled castes and the scheduled tribes in proportion to their population, reservation of not less than one-third of the seats for women, conferring powers and authority (including the power to levy, collect and appropriate taxes, duties, tolls and fees) on Local Authorities, fixing tenure of five years for Local Authorities and holding elections within a period of six months in the event of supersession of any such Authority; setting up of Finance Commission within One year of the amendment and thereafter every five years to review the financial position of Local authorities; powers of State Legislatures to make provisions with respect to elections to Local Authorities; application of the provisions of the said part to urban territories; excluding certain States and areas from the application of the provisions of the said part; disqualifications for membership of Local Authorities and barring interference by courts in electoral matters relating to Local Authorities.

The 74th Amendment Act came into force from when it was notified.

22. Under the provisions of Section 298 of the Old Act the Government had the power to supersede or dissolve the Board on the conditions mentioned therein, But the period of super-session would not exceed more than one year. u/s 299 of the Old Act the Government was empowered to extend the period of super-session for another term not exceeding one year or to reconstitute a Municipal Board by a fresh general election as provided u/s 299(2)(1) and (iii). On a plain reading of the provisions of Sections 298 and 299 it is clear that the Govt. had power to supersede or dissolve a Municipal Board on the conditions laid in the said sections. However, it was a temporary measure and normally election ought to be held immediately so that the democratic rights of the people to manage their own affairs in the local self government can be exercised. These provisions are extra ordinary and can be invoked only in an appropriate cases on the

ground mentioned therein. But the aim of the State Govt. should always be to hold a fresh election.

23. The State Government's power to appoint a group of persons has been taken away by the amended Act. This in all probability is to eliminate the appointment by ad hoc system. Appointment of an ad hoc body, normally curtails the democratic process as the adhoc bodies are appointed by the Government there is possibility of picking and choosing people by the State Government. So that they may yield to the pressure of the Govt. This possibility cannot be ruled out in some cases at least. This is definitely prejudicial to the interest of the people.

24. The objects of the 74th amendment amongst others are to eliminate absence of regular elections, prolonged super-sessions and inadequate representation of weaker Sections and to usher the democratic right of the people. Under Article 243I(1) and (2) it is clear that every Local Authority shall continue for a period of five years from the date appointed for its first meeting unless it is dissolved under the law, and where a Local Authority is dissolved before expiration of its duration, an election to constitute the Local Authority shall be completed, as soon as may be, and in any case, before the expiration of a period of six months from the date of such dissolution. This is a Constitutional mandate. This 74th amendment was made on 7th September, 1990, however, the amendment of the Municipal Act, 1956 came into force only on 6th of May, 1994. Be that as it may, it was the duty and obligation of the State Govt. to hold election as expeditiously as possible after the super-session under the provisions of the Old Act and under the amended Act it must be done within a period of six months from the date of dissolution. The State Government under the present law has no power to extend the period.

25. It has been stated that the Jorhat Municipal Board is under super-session for the last ten years and the entire function of the Board was managed by an Executive Officer appointed by the State Government. While the Executive Officer was discharging his duties as entrusted to him, suddenly the impugned Annexure-A notification was issued replacing him by an adhoc Committee consisting of Respondent Nos. 3 to 18, While, passing the order u/s 299(1)(b) of the Act, no reason was shown for replacing the Executive Officer by the said adhoc Committee. The notification also does not indicate that the Executive Officer was not discharging his duties in a proper manner. Instead of taking step for holding a fresh election the Government had constituted an adhoc body. I find no reason for superseding the Executive Officer by the said adhoc Committee. It may only indicate that the Government is not yet contemplating to hold the election. The Municipal Board having been kept under super-session for such long period of ten years can never be commended and cannot be for the interest of the people. I, therefore, hold that the Annexure-4 notification dated 9.12.93 was passed without giving due considerations about the aspirations of the people to fulfil their democratic right, As I already mentioned, the super-session under the Old Act and dissolution under the amended Act can be resorted only in exceptional

cases as mentioned in the said section. Besides, it is only a temporary measure to replace a duly elected body by a fresh general election. However, in the instant case it has not been done so. The super-session has been perpetuated for a long period of more than ten years. It is really a sad state of affairs. Therefore, in my opinion, Annexure-A notification is illegal and without jurisdiction and against the interest of people.

26. In view of the above, I set aside the impugned Annexure-A notification dated 9.12.93 and direct the State Government to hold election as expeditiously as possible and at any rate within a period of 3 (three) months from today. During this period the affairs of the Jorhat Municipal Board shall be managed by an Executive Officer appointed by the State Government.

In the result the petition is allowed, however, I make no order, to costs.