
(1996) 07 GAU CK 0008

In the Gauhati High Court

Case No : Civil Rule Nos. 2584, 2585, 2647, 2648, 2649, 2650 and 2672 of 1996

Manoranjan Deka

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Assam Municipal Act, 1956 — Section 298, 298, 299(b), 299(b)

Citation : (1996) 2 GLJ 465

Hon'ble Judges : M.Sharma, J

Bench : Single Bench

Advocate : S.Ali, P.G.Barua, K.R.Surana, D.Ojha, D.Das, A.Ahmed, A.Sharma, A.C.Das, Advocates appearing for Parties

Judgement

1. All the seven writ petitions involve similar points of law and facts and, therefore, I have taken to decide them by this common judgment.

2. The writ petitioner have challenged the WT Message No.MA/71/96/2 dated 24.5.96 issued by the Secretary to the Govt of Assam, Municipal < Administration Department and its order dated 31.5.96 communicated through the respective Deputy Commissioners.

3. In Civil Rule 2584 of 1996 the writ petitioner assumed charge as Chairman of Sarthebari Town Committee vide notification No.MA 302/93/4 dated 29th September, 1993 by which the Executive Officer, Sarthebari Town Committee was directed to handover the charge of Sarthebari Town Committee to the writ " petitioner. Again the Municipal Administration Department, Govt of Assam vide notification No. MA 205/94/Pt/32 dated 29.5.95 resorted to managing the Town Committee by appointing one Executive Officer and since then the affairs of the said Town Committee were looked after by the Executive Officer till 14.7.95 when by issuing WT Message No. MA 143/91/23A the operation of the notification No. MA 205/94/Pt/32 dated 29.5.95 was kept in abeyance and on receipt of the WT Message dated 14.7.95, which was communicated by the Deputy Commissioner, Barpeta the petitioner immediately took over the charge to run the affairs of

Sarthebari Town Committee. While the petitioner was managing the Town Committee from 14.7.95 as such the petitioner received the WT Message dated 24.5.96 which was communicated by the Deputy Commissioner, Barpeta vide Memo No. BPF 81/93/116 dated 29.5.96 directing J the petitioner to handover charge of the Municipla Board/Town Committee to the Circle Officer with immediate effect.

4. Similarly in Civil Rule 2585 of 1996 the writ petitioner assumed charge as Chairman of Barpeta Municipal Board vide notification No.MA 192/93/5 dated 26.5.93 which was communicated by the Deputy Commissioner, Barpeta under Memo No.BPE 7/91/PtI/150 to the Circle Officer directing him to hand over charge of the Barpeta Municipal Board to the petitioner. Again the Municipal Administration Department, Govt of Assam vide notification No. MA 205/94/Pt/30 dated 29.5.95 resorted to managing the Board by appointing one Executive Officer and since then the affairs of the said Municipal Board were looked after by the Executive Officer till 14.7.95 when by issuing WT Message No.143/91/ 23A the operation of the notification No. MA 205/94/Pt/30 dated 29.5.95 was kept in abeyance and on receipt of the WT Message dated 14.7.95, which was communicated by the Deputy Commissioner, Barpeta the petitioner immediately took over the charge to run the affairs of Barpeta Municipal Board. While the petitioner was managing the Municipal Board from 14.7.95 as such the petitioner received the WT Message dated 24.5.96 which was communicated by the Deputy Commissioner, Barpeta vide Memo No.BPF81/93/116 dated 29.5.96 directing the petitioner to handover charge of the Municipal Board/Town Committee to the Circle Officer with immediate effect.

5. In Civil Rule 2647 of 1996 the writ petitioner assumed the charge as Chairman of Bokakhat Town Committee vide notification No. MA 239 dated 16.8.93. While the petitioner was working as such the Sub Divisional Officer, Bokhaghat Sub Division served an order dated 3.6.96 contained in Memo No. BS 5/9596/29A dated 3.6.96 wherein WT Message No.71/96/2 dated 24/5/96 from the Secretary, Municipal Administration Department was referred. By this letter the petitioner was directed to handover the charge of the Town Committee immediately to the Executive Magistrate, Bokakhat.

6. In Civil Rule 2648of 1996 the writ petitioner assumed the charge as Chairman of Dergaon Town Committee vide notification No. MA 256 dated 1.9.93 issued by the Secretary to the Govt of Assam, Municipal Administration Department in exercise of powers conferred under section 293 (1) (b) of the Assam Municipal Act, 1956. While the petitioner was working as such the Deputy Commissioner, Golaghat in pursuance of the WT Message dated 24.5.96 issued order under Memo No. DC 24/9496/141 dated 31.5.96 directing the petitioner to handover charge of Dergaon Town Committee to the Circle Officer, Dergaon.

7. In Civil Rule 2649 of 1996 the writ petitioner assumed the charge as Chairman, Moran Town Committee vide notification No. MA 278/93/3 dated 13.9.93 issued by the Secretary to the Govt of Assam, Municipal Administration

Department in exercise of powers conferred under section 293 (1) (b) of the Assam Municipal Act, 1956. While the petitioner was working as such he received the WT Message dated 24.5.96 whereby he was directed to handover charge of Moran Town Committee to the Sub Divisional Officer, Charaideo Sub Division.

8. In Civil Rule 2650 of 1996 the writ petitioner assumed the charge as Chairman of Mariani Town Committee which was constituted in September, 1993 in exercise of power conferred under section 293 (1) (b) of the Assam Municipal Act, 1956. While the petitioner was working as such he received the WT Message dated 24.5.96 by which the Deputy Commissioner, Jorhat was directed to takeover the charge of Moran Town Committee from the petitioner. Accordingly the Border Magistrate, Jorhat took over the charge of Mariani Town Committee on 28.5.96.

9. In Civil Rule 2672 of 1996 the writ petitioner assumed the charge as Chairman of Naharkatia Town Committee from late Hari Phukan who had assumed the charge of Chairman vide notification No.MA 297/93/3 dated 29.9.93. While the petitioner was working as such the Deputy Commissioner, Dibrugarh in pursuance of the WT Message dated 24.5.96 issued order under No.NRC 53/9596 dated 28.5.96 directing the petitioner to handover charge of Naharkatia Town Committee to the Circle Officer, Naharkatia.

10. It transpires from all the writ petitions that the respective Town Committees/ Municipal Boards are the ad hoc Committees/Boards constituted by the State Govt under section 299 (1) (b).

11. The common grievance of the petitioners is that the manner in which the steps are being taken to takeover the charge of the Town Committees/ Municipal Boards expressed in the WT Message purported to be taken under section 299 (1) (b) are without following the provisions of law as provided under the Act, 1956. Further it is alleged that respondents can only exercise the power under section 299 (1) (b) of the Act after giving the Town Committees/ Municipal Boards an opportunity for submitting its explanation in regard to the matter in question as provided in the section.

12. Mr. D. Das, counsel for the petitioners strenuously submits that respondents having not complied with the provisions of section 298 of the Assam Municipal Act, 1956 the contemplated action under section 299 (1) (b) in modifying the earlier Town Committees/Municipal Boards is unsustainable and bad in law.

13. For proper examination of the question the section 298 of Assam Municipal Act, 1956, as amended in 1994, is quoted below :

"298. Power to dissolve the Board in case of incompetence, defaults or abuse of power If, in the opinion of the State Government, any Board is not competent to perform or persistently makes default in the performance of the duties imposed on the Board by or under this Act or otherwise by law or exceeds or abuses its power or in the event of failure on the part of the Board to provide such services as the State Government may, by notification in the Official Gazette, declare, to

be the essential (sic) services, the State Government after giving the Municipal Board a reasonable opportunity of being heard, may by notification, stating the reasons for so doing, declare such 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."

14. From reading of this section it transpires that on receipt of the explanation against the allegation from the concerned Town Committee/Municipal Board the State Govt is required to consider the same and thereafter by notification stating the reasons for so doing it may declare that the Town Committee is incompetent to perform, or persistently makes default in performance of its duties or has exercised or abused its power and the State Government by such notification dissolve the Board/Committee or supersede such bodies. The submission of Mr. Das, counsel for the petitioners is not sustainable on the ground that the Barpeta Municipal Board and Sarthebari Town Committee were ad hoc bodies at the time of communication of the WT message.

14A. The Barpeta Municipal Board was dissolved which was an elected body in exercise of powers under section 298 of the Act, 1956 and thereafter in exercise of powers under section 299 (1) (b) of the Act, 1956 appointed the Sub Divisional Officer, Sadar, Barpeta vide notification No.283/90/Pt/224 dated 6.5.91 to manage the Board which was later modified and appointed the Board headed by the writ petitioner vide order dated 28.6.93. Similarly Sarthebari Town Committee was dissolved in exercise of powers under section 298 of the Act in exercise of the powers under section 299 (1) (b) of the Act and appointed Circle Officer vide order dated 29.5.95 to manage the Committee which was modified subsequently and by order dated 26.5.93 the Board headed by the petitioner was constituted.

15. The other Town Committees/Municipal Boards involved in these Civil Rules are the ad hoc Committees/Boards which is an admitted fact. Section 298 of the Assam Municipal Act, 1956 is applicable only to the elected bodies which are constituted under section 299 of the Act, 1956. Section 298 imposes restriction on the Government regarding the dissolution of these Town Committee/Municipal Boards. The Government has power to dissolve the Town Committees/Municipal Boards constituted under section 298 in case of incompetency, default or abuse of powers and if in the opinion of the State Govt any Board/Committee is not competent to perform or make default in performing of the duties imposed on the Board by or under this Act or otherwise by law, or exceeds or abuses its powers, or in the event of failure on the part of the Board to provide such services the State Government by notification in the Official Gazette declare to be essential services, the State Government after giving a reasonable opportunity of being heard may by notification stating the reasons, can dissolve such Board/ Committee. Section 298 speaks of providing opportunity to explain its allegation which is mandatory in nature. Section 299 (b) of the Act, 1956 (as amended in 1994) is quoted below :

"299. (b) All powers and duties which under this Act may be exercised and performed by the Board whether at a meeting or otherwise shall, during the period of dissolution be exercised and performed by such person as the State Government may direct till Commissioner and Chairman are elected."

16. This section imparts the State Govt to appoint person/persons and in exercise of that power the writ petitioners" Municipal Board/Town Committees were constituted by issuing notification and under the provisions of the same Act the respondent Govt modified the earlier notifications and appointed the concerned Deputy Commissioner/Sub Divisional Officers/Circle Officers to exercise the powers and functions of the above Municipal Boards/Town Committees. For this purpose the procedure under section 298 is not required to go through. As I have seen some of the Town Committees/Municipal Boards were replaced by the group of persons headed by a Chairman and again with order the same was modified and replaced by the respondent Govt Office to manage the concerned Municipal Boards/Town Committees, that is, the group of persons earlier appointed were subsequently replaced by the group of persons headed by the petitioners as Chairman under the same provision of section 299 of the Act, 1956. Admittedly under the provisions of section 299 (b) the Govt of Assam has modified the earlier notification appointing the ad hoc Boards/Committees of the writ petitioners and appointed the concerned Deputy Commissioners/Sub Divisional Officers who have been directed to take over the charges.

17. From the above discussion the submission of Mr. Das, counsel for the petitioners is misconceived.

18. Mr. PG Baruah, Advocate General, Assam referring the case of Manik Sarkar vs. State of Assam & others, 1994 (2) GLJ180 has submitted that the petitioners' case has already been decided by this case. In this case the Jorhat Municipal Board was under supersession for about ten years and the Board was managed by the Executive Officer appointed by the State Government but by an impugned notification an ad hoc committee was constituted by the State Government under section 299 (1) (b). In that case the allegation was made that no reason was shown for replacing the Executive Officer by the said ad hoc committee and instead of taking step for holding a fresh election the Government had constituted an ad hoc committee. The Court held that in view of the amended Act only a person, as the State Govt may direct, till the Commissioner and Chairman are elected can arrange the affairs of the Board, that the amended provisions have totally eliminated the provisions for appointment of ad hoc committee. The Assam Municipal Act, 1956 has been amended in 1994 and 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 Government may direct till Commissioner and Chairman, are elected. The provision of this amended section 299 does not contemplate management of the Board/Committee by a group of persons either than Government Officers. Provisions of section 299 of

the old " Act contemplates that a person or a group of persons would manage the Board/ Committee but the amended provision of this section provides that only person, as the State Govt may direct till the Commissioner and Chairman are elected can manage the affairs of the Board. Therefore, there is no provision for appointment of ad hoc Board/Committee after the amendment of this section 299. Under the amended provision it was the duty and obligation of the State Govt to hold election within a period of six months from the date of dissolution. The learned Advocate General submits that the Constitution (74th Amendment) has provided for setting up of an Election Commission in each Town Committee/ Municipal Board to conduct and supervise the affairs of the Board/Committee including the preparation of electoral rolls for the purpose of holding election and accordingly said Election Commission has suggested amendment of section 14 and 15 of the Assam Municipal Act, 1956 relating to qualification of electorates. It is also submitted that the matter is under process to bring about amendment and the Government is contemplating to hold the election to all Municipal Boards/Town Committees within six months.

19. The 74th Amendment of the Constitution came into force from 1st June, 1993. In view of this, major changes have been brought in the 1956 Act and section 299 (1) (b) of the Assam Act, 1956 has been amended as section 299 (b) to the extent that the State Govt has the power to entrust the function of a superseded Board/Committee to such person as the State Govt may direct till Commissioner and Chairman are elected which means that the act of entrustment will be to one person. There is no provision under the amended Act, 1994 to run the Board/Committee by ad hoc body of persons. Further subsection (b) of section 299 provides that, "the officer so appointed after dissolution..." which indicates that the term "such person" means a Govt officer. The 74th Amendment of the Constitution was made to decentralise the democratic function to the grassroot level of the institutions of the sovereign State so that people have a say in their social/financial upliftment democratically.

20. The 1994 Amendment of the Act only provided dissolution of the elected body with a view to hold election within six months of such dissolution. The formation of the body by a single person or group of persons is only of the purpose of managing the function of the local body for the interim period, not beyond that period.

21. The 74th Amendment has conferred status and stature to the local bodies under the Municipal Act and the 1994 Amendment has imposed a restriction on the State power to dissolve an elected Board/Committee and to hold election within six months.

22. In the case of Dr. Narendra Mohan Guha vs. State of Assam (AIR 1972 Gauhati 104) it was held that when there is an order of supersession under section 298 of the Act, there must be an order of the Govt to constitute the Board/Committee under section 299 (2) (ii) and in the same order of supersession intention of holding election within the statutory period can be

given.

23. Mr. S. Ali, counsel for the petitioners submits that the State Govt may be directed to hold the election within six months under the provisions of the Act. He has fairly submitted that the Committee which he is representing are ad hoc bodies constituted under section 299 (1) (b) of the old Act and therefore he only prays for a direction to hold the election within the statutory period. In view of my above discussion I am not inclined to pass any direction at this stage when section 299 (2) (i) empowers the State Govt to pass order for election which cannot exceed six months at a time. However, keeping in view the 74th Amendment, intention of the Govt should be prompt to restore the democratic functions of such grassroot institutions of our decentralise system of governance.

24. In the result the writ petitions are rejected.