

(2009) 06 GAU CK 0015
In the Gauhati High Court

Marion Begum and etc.

APPELLANT

Vs

State of Assam and Others etc.

RESPONDENT

Date of Decision : 12-06-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 243, 243B, 243C

Citation : AIR 2010 Guw 37 : (2009) 6 GLR 569

Hon'ble Judges : J. Chelameswar, C.J.; I.A. Ansari, J

Bench : Division Bench

Judgement

1. Chelameswar, C.J.—These writ petitions raise a common question of law regarding the constitutional validity of Section 15 of the Assam Panchayat Act. The petitioners in these various writ petitions are the Presidents of the Village Panchayats within the State of Assam and apprehend that they might be removed from the office of the Village Panchayats by virtue of a no confidence motion. Hence these writ petitions challenging the constitutional validity of Section 15 of the Assam Panchayat Act which provides for removal of either the President or the Vice President of the Village Panchayat through the process of no confidence motion.

2. In essence, the submission of the petitioners is that under the constitutional scheme President and the Vice President of the Village Panchayats are required to be elected directly by the entire electorate of the village whereas u/s 15 the President and Vice Presidents of a Village Panchayat are made removable by the process of no confidence motion where only the Ward Councillors, who have no role in the election of the President or the Vice Presidents, are entitled to participate and decide the fate of the President and the Vice Presidents.

3. According to the petitioners such a prescription of law as the one contained u/s 15 is challenged not only arbitrary and violative of Article 14 but also inconsistent with the scheme of Part IX of the Constitution of India.

4. Part IX of the Constitution, as it exists today, was inserted by the Constitution

Seventy Third Amendment Act, 1992 w. e. f. 24-4-1993. Under Article 243B it is mandated that the Panchayats at the village, intermediate and district levels, are required to be constituted in every State in accordance with the provisions of this Part. The expression "Panchayat" itself is defined under Article 243(d) as follows:

243(d) "Panchayat" means an institution (by whatever name called) of self Government constituted under Article 243B, for the rural areas.

Under Article 243C(1) the Legislature of a State is authorised to make provisions with respect to the composition of the Panchayats by law. Such law may contain various provisions contemplated under sub-article (3) thereof, the details of which may not be necessary for the present purpose. Under sub-article (2) all seats in a Panchayat are mandated to be filled up by persons chosen by direct election from the territorial constituencies in the Panchayat area. Under sub-article (4) the Chairperson of a Panchayat is given the right to vote in the meeting of the Panchayats. Sub-article (5) stipulates that the Chairperson of a Panchayat at the village level shall be elected in such manner as the Legislature of the State may by law provide.

The expression "Chairperson" of a Panchayat occurring under Article 243C(5) is not defined by the Constitution nor the persons representing one of the territorial constituencies in a Village Panchayat area is given any specific designation. All that the Article 243C says is that the territorial area of the Panchayat defined under Article 243C(3)(c) is required to be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall be same throughout the Panchayat area. By necessary implication from the language of Article 243C(2) each such territorial constituency shall have a fixed number of seats in the Panchayat to be determined by law and such seats shall be filled up by representatives directly elected by the electorate of the territorial constituency. The requirement of a direct election by all the eligible voters of the territorial constituency to choose its representatives in the Panchayat is mandated under Article 243(2). In contrast, under sub-article (5) the election of a person to the office of the Chairperson of a Village Panchayat could be either by the process of direct election by all the electorate of the Panchayat or by a process of indirect election by the elected representatives of the territorial constituencies. It is not mandatory that the chairperson should be elected by all the voters of the Panchayat.

In exercise of the authority conferred by Article 243C read with Entry 5 List II of the Seventy Schedule of the Constitution the Assam Panchayat Act, 1994 came to be enacted. The provisions insofar as they are relevant for the present purpose are those provisions dealing with the establishment of Gaon Panchayats under Chapter IV of the said Act commencing from Section 5 ending with Section 30. Section 52 prescribes that the State Govt. may by notification declare any local area comprising a revenue village or a group of revenue villages etc. to be a "Gaon Panchayat". Sub-section (3) thereof declares a Gaon Panchayat so constituted to be a body corporate having perpetual succession and a common

seal. Section 63 mandates that the Gaon Panchayat shall consist of ten members to be directly elected by the voters of the territorial constituencies of the Gaon Panchayats, one from each constituency. It further provides that the President of the Gaon Panchayat shall be elected directly by all the voters of the various territorial constituencies of the Gaon Panchayat area. The expression "President" is defined u/s 2(34)4 to mean a non-official who is elected as the President of the Gaon Panchayat. Obviously the expression "President" is used as a synonymous with the expression "Chairperson" of a Panchayat employed in Article 243C of the Constitution.

Under Section 6(3) it is stipulated that a Vice President is required to be elected from amongst the members of the Gaon Panchayat. It is pertinent to note here that while the Constitution does not contemplate an office of a Vice-President in a Panchayat, the Legislature provided for the creation of such an office and also prescribed the mode of filling up of the said office u/s 6(3).

Section 155 provides for vacation of the President or Vice-President of the Panchayat from the office when a resolution expressing want of confidence in him is passed by a majority of two third of the total number of members of the Gaon Panchayat. Section 15 also prescribes the procedure by which such a no confidence motion is required to be passed. It is this provision which is under challenge in this batch of writ petitions.

5. The only submission made by the learned Counsel for the petitioners is that Section 15 of the Assam Panchayat Act insofar as it prescribes a procedure of removal of its President directly elected by all the voters of the entire Gaon Panchayat area by a process of no confidence motion wherein only the elected members representing the various territorial constituencies of the Gaon Panchayat participate is irrational and arbitrary as a limited number of people, that is the elected members representing the territorial constituencies, (who had a minimum role in their capacity as voters of the village in the election process of the President), shall have such disproportionate power to oust the elected President from the office.

6. The submission only reminds us of a caution given by Cardozo:

Those who think more of symmetry and logic in the development of legal rules than of practical adaptation to the attainment of a just result remain "troubled by a classification where the lines of division are so wavering and blurred".

If the logic of the petitioners is to be accepted, a person elected to a public office by a popular vote can never be removed from the office save by the process of "recall" where the entire electoral college relevant for the office should once again participate. But such a system is not adopted by our Constitution in the context of any one of the offices to which persons are elected by popular vote. On the other hand both the Constitution and the laws made under the Constitution such as the Representation of the People Act, provide for vacation of the office of an elected representative either to the Parliament or a Legislative

Assembly in various contingencies such as holding an office of profit either under the Govt. of India or the State Govt., as the case may be or on becoming an undischarged insolvent or acquiring citizenship of a foreign State etc. Such prescriptions, in our view, are the "practical adaptation to the attainment of a just result" - a politically just result. The vacation of the membership of the Parliament or the Legislature of the State, as the case may be, in such contingencies, as indicated above, is perceived by the Constitution makers to be a politically desirable consequence having regard to the nature of the office and the responsibilities attached to that office.

Similarly when a law like the Assam Panchayat Act provides for the vacation of the office of the President on the passing of a no confidence motion by the elected representatives of the people representing the respective territorial constituencies of the Panchayat, in our view, the same cannot be said to be arbitrary and violative of Article 14. While the election of President by the entire electorate of the village is an expression of the collective choice of the electorate the loss of confidence on the part of the elected representatives of the territorial constituencies in the incumbent of the office of President, in our opinion, also is an expression of loss of confidence on the part of the total electorate of the village, as collectively the members of the Village Panchayat symbolize the will of the entire electoral college of the village because each one of them in turn was directly elected by the electorate of the respective constituencies which they represent.

7. Apart from that by a long line of decisions of the Supreme Court from *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, it is held that there is no common law right to get elected to a public office. At para 18 the Supreme Court held:

18. ... The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

8. Viewed in the light of the above principle, the right to get elected to the office of the President of a Gaon Panchayat is a creation of the Assam Panchayat Act. Any person seeking to get elected to the said office is subject to the various restrictions and limitations imposed by the said law. The same law prescribed a definite mode by which the incumbent of the office of President shall cease to hold such an office. The incumbent cannot complain of any infraction of the Constitution.

9. For all the above mentioned reasons, we see no merits in this batch of writ petitions and, therefore, dismissed.

1 243C. Composition of Panchayats.- (1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats:

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation:

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the Chairpersons of the Panchayats at the intermediate level, in the Panchayats at the district level;

(c) of the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level, in such Panchayat;

(d) of the members of the Council of States and the members of the legislative Council of the State, where they are registered as electors within:

(i) a Panchayat area at the intermediate level, in Panchayat at the intermediate level;

(ii) a Panchayat area at the district level, in Panchayat at the district level.

(4) The Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The Chairperson of:

(a) Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level, shall be elected by, and from amongst, the elected members thereof.

2 5. Establishment of Gaon Panchayat.- (1) The State Government may by notification, declare any local area comprising a revenue village or a group of revenue villages or a Forest village or a Tea-Garden area or hamlets forming part of revenue village of Forest Village or tea garden area or other such administrative unit or part thereof to be a Gaon Panchayat with population of its territory not less than six thousand and not more than ten thousand.

3 6. Constitution of Gaon Panchayat.- (1) The Gaon Panchayat shall consist of:

(a) ten members to be directly elected by the voters of the territorial constituencies of the Gaon Panchayat area - one from each constituency in the manner prescribed;

(b) President of the Gaon Panchayat who shall be elected directly by the voters of the territorial constituencies of the Gaon Panchayat area in the manner prescribed.

4 2(34) "President" means a non-official who is elected as the President of Gaon Panchayat or Anchalik Panchayat or Zilla Parishad.

5 15. No confidence motion against the President and Vice-President.- (1) Every President or Vice-President shall be deemed to have vacated his office forthwith when resolution expressing want of confidence in him is passed by a majority of two third of the total number of members of the Gaon Panchayat.

Such a meeting shall be specially convened by the Secretary of the Gaon Panchayat with approval of the President of the Gaon Panchayat. Such meeting shall be presided over by the President if the motion is against the Vice-President, and by the Vice-President, if the motion is against the President. In case such a meeting is not convened within a period of fifteen days from the date of receipt of notice, the Secretary of the Gaon Panchayat shall within three days, refer the matter to the President of the concerned Anchalik Panchayat, who shall convene the meeting within seven days from the date of receipt of the information from the Secretary of the Gaon Panchayat and preside over such meeting.

In case the President of the Anchalik Panchayat does not take action as above, within the specified seven days time, the concerned Gaon Panchayat Secretary shall inform the matter to the Deputy Commissioner/Sub-Divisional Officer (Civil) as the case may be within three days after the expiry of the stipulated seven days time and the concerned Deputy Commissioner/Sub-Divisional Officer (C) shall convene the meeting within seven days from the date of the receipt of the information with, intimation to the Zilla Parishad and the Anchalik Panchayat and preside over the meeting so convened.