
(2009) 05 GAU CK 0026
In the Gauhati High Court
Case No : Writ Petition (C) No. 6771 of 2002

Md. Afajuddin Ahmed

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Citation : (2009) 1 GLD 302 Supp : (2010) 6 GLR 523 : (2009) 4 GLT 629

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Judgement

H.N. Sarma, J.—The subject matter of challenge in this writ petition is an order dated 1.10.2002 passed by the Commissioner, North Assam Division, Tezpur in Case No. 1 of 2001, by which the appointment of the petitioner as Gaonbura of Taragaon village under Mouza Rinakuchi in the district of Darrang was set aside and the matter was remanded back for reconsideration to the Deputy Commissioner, Darrang.

2. Mr. H. Haque, learned Counsel appearing for the petitioner and Mr. N.K. Sarma, learned Counsel for the respondent No. 5 have made their submissions. Mr. R.K. Bora, learned Additional Sr. Government Advocate appears for the State respondents.

3. The pleaded case of the petitioner inter alia is that the petitioner belongs to the village Taragaon within Rainakuchi Mouza in the district of Darrang which is a revenue village under Patharighat Revenue Circle. Md. Idrish Ali, the village headman (Gaonburah) of the said village having been resigned, the necessity arose for filling up the post of Gaonburah. Accordingly an advertisement was issued by the Deputy Commissioner (Darrang) on 11.10.2001 inviting application for the post of Gaonburah. In pursuant to the said advertisement several applications including the petitioner and the respondent No. 5 applied for the post. Thereafter a selection board was constituted by the Deputy Commissioner for selecting suitable candidate for the post. In the said selection process the petitioner was found more suitable than the other applicants and accordingly he

was appointed as Gaonburah vide order dated 12.3.2001 by the Additional Deputy Commissioner, (Revenue Darrang, Mangaldoi) and the joined in the post. Being aggrieved, by the said appointment of the petitioner, the respondent 5 preferred an appeal before the Commissioner, North Assam, Circle, Tezpur under the provisions of executive instructions No. 162(c), issued under the assam 1 and Revenue Rules and Regulations, under which he is the statutory appellate authority. The appellate authority after consideration of the claim and also upon taking note of the comments furnished by the Deputy Commissioner, Tezpur, in this regard set aside the order of appointment of the petitioner dated 12.3.2001 and remanded the matter back to the Deputy Commissioner, Darrang for consideration of the claim of the respondent No. 5, vide impugned order dated 1.10.2002. Challenging the said order passed by the appellate authority, the present writ petition is filed by the petitioner.

4. A counter has been filed on behalf of the respondent No. 5, refuting the allegations and contentions made by the petitioner in the writ petition.

Mr. Haque, learned Counsel for the petitioner challenging the impugned order on the following count submits that both the respondent No. 5 and the petitioner were called upon for the interview and in the said interview the petitioner stood first and a the petitioner is accordingly appointed to the post by the ADC, Darrang, and as such he is discharging the duties and responsibilities as Gaonburah, as contemplated under the law. There having no irregularity or illegality in selecting and appointing the petitioner, the order of his appointment ought not to have been interfered with.

The learned Counsel further submits that there has been no infraction of any statutory provisions and transparency and fairness was maintained by the authority all throughout in making the selection and appointment and as such the Commissioner, North Assam Division erred both in law and facts in passing the impugned order.

5. The stand of the respondent No. 5, on the other hand, is that the father of the respondent No. 5 was an ex-Gaonburah of the concerned village and as per the provisions contained under Clause 162 of the Executive Instructions, the claim of the family of the earlier Gaonburah is one of the relevant considerations that ought to have been kept in mind by the Deputy Commissioner in making appointment of Gaonburah but that was not done in the instant case. It is further contended that the case of the petitioner was not at all considered by the Deputy Commissioner and on such count, the learned appellate authority viz. the Commissioner, North Assam, Circle having set aside the order of appointment of the petitioner it requires no interference in exercise of the extraordinary jurisdiction of this Court.

6. The rival submissions made by the learned Counsel for the parties received due attention of the Court.

7. The post of Gaonburah is a civil post. Certain statutory are attached to the

post of Gaonburah under the provisions contained in the executive instructions framed under Assam Land and Revenue Regulation. The Gaonburah is a village headman and as a village headman he is to assist the police in preventing crime and to report any criminal acts if committed within his village. It is the duty of the Gaonburah to assist the mauzadar in the collection of land revenue and the mandal in the annual correction of the village map and records and in the maintenance of survey marks. He should caution the villagers about the outbreaks of epidemics among men and cattle and serious destruction of crops. He should also report threatened breaches of embankments and should be in charge of a notice board, setup at his house at the cost of Government for the publication of official notice of all kinds.

Section 45 of the Cr PC also lays down certain duties to be discharged by Gaonburah. The Gaonburah is to use his influence to see that the village water supplies are not harmed or misused. He should be ready to help vaccinators and epidemic doctors to obtain any information they may require. The Gaonburah also gets certain annual remission of land revenue in respect of khiraj lands held by him.

While the respondent No. 5 filed an appeal before the Commissioner, a parawise comments on the allegations made in the appeal so called for from the Deputy Commissioner was accordingly submitted.

8. From the parawise comments submitted by the Deputy Commissioner, Darrang to the appellate authority, it is made clear that the Deputy Commissioner while selecting the petitioner as Gaonburah on the basis of interview took into consideration the suitability of the applicants for the post and on such consideration, a merit list was prepared and on the basis of the said merit list, the appointment was made. It is not disclosed that the relevant consideration i.e. three criteria as contained under Clause 162 of the Executive Instructions, more particularly the claim of the family of the late Gaonburah and views of the villagers have been considered or not. In appointing a candidate to the post of Gaonburah, the conditions prescribed under Clause 162 being the relevant consideration, the claim of the respondent No. 5, that he being the son of the earlier Gaonburah was required to be taken note of. In fact the said condition is one of the essential criteria for selection.

9. Mr. Haque, the learned Counsel for the petitioner referring to the decision reported in Mahbubur Rahman Vs. State of Assam and Others, , which is based on another decision of this Court reported in 1983 2 GLR 171 (Chakradhar Das and Anr. v. Kruana Kanta Pathak and Ors.), submits that the post of Gaonburah is not an hereditary post and appointment to the post of Gaonburah is open to person who are members of the family of Gaonburah. The learned Counsel further referring to the decision reported in 2004 (2) GLT 173 (Rajeswar Das and Anr. v. State of Assam and Ors.), wherein this Court considering the earlier decisions of the this Court reported in 1992 (1) GLR 89 (Narendra Nath Kalita v. State of Assam and Ors.), 1996 (2) GLT 651 (Kamal Borbora v. Deputy

Commissioner and Ors.) State of Assam and Others Vs. Jhanendra Choudhury and Others, , further reiterated that the respondent No. 5 although is a son of earlier Gaonburah of the village, he has no indefeasible right to be appointed to the post, if a better candidate for the post is found.

In the case of Rajeshwar Das (supra) it has been held that a liberal construction of the instruction would result in appointment of unreasonable person and in a democratic setup an opportunity preferred on the basis of family relationship cannot be encouraged and it is merit alone that could prevail, otherwise it would frustrate the very purpose of advertisement and appointment if the claim of the family member of the family is concerned.

10. A close scrutiny of Clause 162 clearly discloses that in the matter of selection of the Gaonburah, 3 criteria mentioned therein are required to be considered by the selecting authority. There might be other relevant conditions also for such consideration but consideration of the conditions mentioned in the said clause appears to be mandatory in nature for such selection of a Gaonburah.

The aforesaid clause does not appear to have mandated that only if somebody having claimed as the member of the family of late Gaonburah has not indefeasible right to be appointed to the post, whereas, the said clause only provides for consideration of those factors and is one of the relevant considerations to be considered. Admittedly the final selection for the post would be made on the basis of overall consideration of the candidates wherein the aforesaid consideration is also required to be taken note of.

In the instant case from the perusal of the materials made available before the Court it is found that the conditions prescribed under Clause 162 has not been taken note of by the Deputy Commissioner while selecting the candidate for the post.

11. Under Clause 162(d) it is provided that the State Govt. has a power of review against the order passed by the Deputy Commissioner and the State Govt. on receipt of such application for review, after giving reasonable opportunities of being heard to the parties, may either affirm or set aside the order of the Commissioner or remit the case directing him to take further action or enquiry as considered appropriate in the circumstances of the case. The petitioner, however has not availed the aforesaid remedy by way of review as provided under Clause 162 (d), framed under the Regulation.

12. From the overall considerations and the aforesaid discussions, I have no hesitation to hold that the Deputy Commissioner, Darrang, Mangaldoi in selecting the petitioner to the post of Gaonburah committed error apparent on the face of the record in the decision making process by not considering the relevant facts that was mandatorily required to be considered for selecting the candidates. On such consideration the learned Commissioner, North Assam, Division set aside the order of appointment of the petitioner as Gaonburah and remanded the matters back to the Deputy Commissioner for fresh consideration of the claim of

respondent No. 5.

13. In view of what has been discussed above, I do not find any reason to interfere with the impugned order dated 1.10.2002 passed by the Commissioner, North Assam, Division, consequently the writ petition fails and it stands dismissed.

14. It is further directed that the Deputy Commissioner, Darrang, in terms of the directions contained in the appellate order shall dispose of the matter as expeditiously as possible and at any rate not later than 3 months from the date of receipt of a certified copy of this order, giving opportunities to the parties.

15. The interim order dated 17.10.2002 stands vacated. Parties are to bear their own costs.