
(1969) 07 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 261 of 1968

Narayan Das

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 01-07-1969

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 3
Constitution of India, 1950 — Article 226, 311

Citation : AIR 1970 Guw 57

Hon'ble Judges : P.K. Goswami, J; M.C. Pathak, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee and S.N. Medhi, for the Appellant; A.M. Majumdar, Jr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Pathak, J.—By this writ petition under Article 226 of the Constitution of India, the Petitioner has challenged the order dated 20-7-68 passed by the Deputy Commissioner, Darrang, by which the order dated 14-7-68 passed by the Additional Deputy Commissioner, Darrang, appointing the Petitioner a Gaonbura of village Chengelimora in the Barbhagia Mouza in place of Bangshidhar Das Gaonbura, Respondent No. 4, has been set aside.

2. The Petitioner's case is that respondent no. 4 Bangshidhar Das was the Gaonbura of Chengelimora village who filed a petition on 6-5-67 before the Sub-Deputy Collector of Naduar Circle through the Mouzadar of Barbhagia Mouza stating inter alia that he had become unable to do; as gaonbura and as such the said post might be offered to his eldest son, Liladhar Das and therefore the Petitioner filed a petition on 18-5-67 before the Deputy Commissioner, Darrang, praying for his appointment as gaonbura of Chengelimora village in place of the gaonbura who was retired from service. On 3-7-67 the Petitioner filed another petition before the Deputy Commissioner of Darrang alleging inter alia that Liladhar Das, the son of Respondent no. 4, was a minor and that the people in the locality

filed a petition praying for the appointment of the Petitioner as the gaonbura. This petition was sent to the Sub-Deputy Collector, Naduar Circle for enquiry and report. Thereafter the Sub-Deputy Collector made necessary enquiry and submitted his report to the Additional Deputy Commissioner, who by his order dated 14-7-67 relieved Respondent no. 4 from the office of the Gaonbura of Chengelimora village and appointed the Petitioner as the new gaonbura and accordingly a sanad was issued to the Petitioner by the Additional Deputy Commissioner. The Petitioner was performing the duties of gaonbura since the date of his appointment. Thereafter he was served with a copy of the order dated 20-7-68" passed by the Deputy Commissioner whereby the order of the Additional Deputy Commissioner appointing the Petitioner as gaonbura accepting the resignation of Respondent no. 4 and relieving him from the said office was cancelled and gaon-buraship of Respondent no. 4 was restored. The Petitioner has challenged this order of the Deputy Commissioner,

3. Mr. J. P. Bhattacharjee, the learned Counsel appearing for the Petitioner, has submitted that the Petitioner who was appointed a gaonbura was holding a post under the State Government and he could not be removed without following the procedure laid down in Article 311 of the Constitution and as such the impugned order dated 20-7-68 passed by the Deputy Commissioner was bad in law. The learned Counsel further submitted that the appointment of the Petitioner as gaonbura was under the provisions of the Assam Land and Revenue Regulation, 1886, and as such the powers that were vested in the Deputy Commissioner could be exercised by the Additional Deputy Commissioner inasmuch as the expression "Deputy Commissioner" Included "Additional Deputy Commissioner" as defined u/s 3(m) of the said Regulation. In the premises, the learned Counsel submitted that the removal of the Petitioner from the post of gaonburaship offended Article 311 of the Constitution of India.

4. Mr. A. M. Majumdar, the learned Junior Government Advocate, on the other hand, submitted that the appointment of a gaonbura was made by the Deputy Commissioner under Executive Instructions 162 and 163 and this was not made under any provision of the Assam Land and Revenue Regulation, that in appointing a gaonbura the executive power of the State Government was exercised by the Deputy Commissioner as delegated under Executive Instructions 162 and 103 and as such the appointment of the Petitioner by the Additional Deputy Commissioner was without jurisdiction and it was no appointment in the eye of law and the Petitioner could not be said to hold the post under the State Government inasmuch as he was not appointed by any authority on whom the executive power of the State Government regarding the appointment of gaonbura was vested. On that basis, the learned Junior Government Advocate submitted that the Petitioner was not entitled to any protection under Article 311 of the Constitution of India.

5. The controversy therefore boils down to the question whether the Petitioner can be said to have held a post under the State Government from which he was

removed or discharged without following the provisions of Article 311 of the Constitution.

6. Gaonburas are appointed under the Executive Instructions 162 and 163 which are in the following terms:

162. Gaonburas are appointed by the Deputy Commissioner. In the case of a vacancy, the Deputy Commissioner shall take into consideration (a) the claims of the family of the late gaonbura, (b) the wishes of the villagers and (c) the views of the mausadar, and shall appoint the person whom he considers most suitable for the post.

In charges consisting entirely of nisikhiraj or lakhiraj estates the nomination of the gaonburas shall rest with the properties unless the nominee is plainly unfit.

The Deputy Commissioner may dismiss a gaonbura from office after recording his reasons in writing.

163. Appointment of gaonburas shall be marked by the grant, under the Deputy Commissioner's signature of a parchment sanad. On the death or dismissal of a gaonbura the sanad should be returned to the Deputy Commissioner's office for cancellation.

7. From the above two Executive Instructions, it is quite clear that the power of appointing a gaonbura has been vested in the Deputy Commissioner and not in any other authority. The appointment is not under any provisions of the Assam Land and Revenue Regulation and as such the definition of the "Deputy Commissioner" laid down in Section 3(m) of the Regulation could not come to the aid of the Petitioner. That the power of appointing a gaonbura vested at the relevant time only on the Deputy Commissioner is also confirmed by the subsequent Government Notification No. RLR 68/65/83 dated 23rd September 1968, by which the provisions of the Executive Instructions 162, 163 and 167 have been amended by introducing Executive Instruction 163A, which runs as follows:

For the purpose of the Executive Instructions 162, 163 and 167. the term "Deputy Commissioner" includes "Additional Deputy Commissioner" also.

Note: There should be specific allocation of works between Deputy Commissioner and Additional Deputy Commissioner. The Deputy Commissioner should specify the works to be done by the Additional Deputy Commissioner.

The order appointing the Petitioner was passed by the Additional Deputy Commissioner on 14-7-67. Hence, at that time the Additional Deputy Commissioner was not invested with the power of appointing gaonburas. In the circumstances, It must be held that the appointment of the Petitioner as gaonbura on 14-7-67 and the issue of the sanad to the Petitioner on 14-7-67 by the Additional Deputy Commissioner was without any authority and It had no existence in the eye of law.

8. The learned Counsel for the Petitioner, however, submitted that from 14-7-67 till 20-7-68 the Petitioner was functioning as the gaonbura and, therefore, he must be deemed to have held the post under the State Government and in that view Article 311 was attracted in the instant case and since there had been no compliance with the provisions of Article 311 in the matter, the impugned order of the Deputy Commissioner should be quashed. Article 311 is attracted in the case of a person who holds a civil post under the Union or a State. This holding of a civil post must at least be prima facie legal. In other words, if a person is appointed to a Government post by a competent authority, and removed therefrom it may attract the provisions of Article 311 in appropriate cases. But if a person is found to have been appointed in Government service by an authority who had no power or jurisdiction to make such an appointment and on whom the Government has not delegated any such power of appointment, the person so appointed cannot be said to have held a post under the State Government which might attract the provisions of Article 311. In the instant case the admitted position is that the Petitioner was appointed a gaonbura and he was given the sanad by the Additional Deputy Commissioner, who had no jurisdiction to do so and who was not authorised by the State Government to exercise that power by any general or special order or by any Executive Instruction at the relevant time. That being the position, even though the Petitioner might be functioning as the gaonbura for the said period, his initial appointment being without jurisdiction and without any authority, he cannot be deemed to be holding a post under the State Government. The Petitioner was at the most an impostor to the office of the gaonbura. That being the position, the Deputy Commissioner while setting aside the order of the Additional Deputy Commissioner dated 14-7-67 was not required to follow the procedure laid down in Article 311 of the Constitution of India. After all, the remedy under Article 226 of the Constitution of India is a discretionary remedy and when the Petitioner claims it under Article 226, he must satisfy the Court at least prima facie that he was appointed by an authority having jurisdiction to do so, which he failed to do in this case.

9. In the circumstances, we hold that the Petitioner is not entitled to any remedy in this petition. The petition is dismissed. The Rule is discharged. We make no order as to costs.

P.K. Goswami

10. I agree.