

(1991) 12 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 4817 of 1991

Narendra Nath Kalita

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 17-12-1991

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Part 3 Chapter 8, Part 3 Chapter 8

Citation : (1992) 1 GLJ 41 : (1992) 1 GLR 89

Hon'ble Judges : U.L.Bhat, C.J. and D.N.Baruah, J

Bench : Division Bench

Advocate : P.K.Tiwari, S.A.Laskar, K.K.Mahanta, B.Choudhury, Advocates
appearing for Parties

Judgement

U. L. Bhat, C.J.—The dispute relates to selection and appointment to the post of Gaonbura of Village Kochdiga and Rupdiga under Barpeta District. Three candidates applied for the post. Selection Committee consisting of the Additional, Deputy Commissioner, SubDivisional, Officer (Civil) and two Executive Magistrates interviewed, assessed the merit of the candidates and prepared a select list in which petitioner was placed as No. 1 and Shri Phanidhar Kalita was placed as No. 2 Accordingly, the petitioner was appointed as Gaonbura. His rival Shri Phanidhar Kalita challenged the selection and appointment by was of an appeal before the Commissioner, Lower Assam Division, Guwahati, who by Annexure 2 order set aside the selection and appointment and directed the appointment to be made of Shri Phanidhar Kalita in the petitioner's place. Petitioner challenged this order in appeal before the Government, who by Annexure 3, order confirmed the Commissioner's order. The Government further directed that since Shri Phanidhar Kalita died pending the appeal, fresh appointment should be made by the Deputy Commissioner in accordance with the relevant Executive Instructions. This was followed by Annexure 4 advertisement issued by the SubDivisional Officer (Civil) calling for applications from local residents for selection to the post of Gaonbura. Petitioner has approached this Court under Article 226 of the Constitution of India contending

that the provisions in the Executive Instructions issued under Notification dated 10.6.85 providing for appeal and second appeal against the selection and appointment of Gaonbura is violative of Articles 14 and 16 of the Constitution of India and unconstitutional and further contending that the appellate and second appellate orders are illegal and seeking a writ of Mandamus directing reinstatement of the petitioner as if he has been removed from service. A copy of the writ petition has been served on Shri S.A. Laskar, learned Senior Govt. Advocate, Assam. We have heard both sides.

2. Annexure VI D is a copy of the notification dated 10.6.85 incorporating certain amendments into Executive Instruction Nos. 162 A to 162 C in Chapter VIII of Part VIII of Assam Land Revenue Manual Vol. 1. Instruction 162A states, inter alia, that Gaonbura shall be appointed by the competent authority, namely the SubDivisional Officer. It further states that in the matter of appointment of a Gaonbura, the authority shall take into consideration (a) the claims of the family of the late Gaonbura (b) the views of the Mouzadar and (c) the suitability of the person for the post. The instruction makes it clear that the post of Gaonbura is a civil post and Gaonbura shall be entitled to protect him under Article 311 of the Constitution of India. Instruction 162 B provides of an appeal to the Deputy Commissioner against the order of appointment, suspension or dismissal of the Gaonbura by the SubDivisional Officer. Instruction 162 C provides for 9. second appeal from the order of the Deputy Commissioner to the Commissioner of the Division. Instruction 162 D provides for a review against the order of the Commissioner of Division before the State Government.

3. Learned counsel for the petitioner has submitted that the challenge in this writ petition is mainly against the vires of instructions 162 B to 162 D providing for appeal and review and if these provisions are struck down the natural consequence is that the orders of the first appellate and second appellate authority against the petitioner would be illegal and the petitioner's appointment would stand. According to the learned counsel for the petitioner these provisions in the Revenue Manual are violative of Articles 14 and 16 of the Constitution for two reasons (1) that no such provision for appeal, second appeal or review exists in relation to appointment to any other civil post in Assam and thereby the post of Gaonbura is treated as different from other posts and the rectification is unreasonable and (2) second appellate and reviewing authorities have unbridled and unguided power and therefore also the provisions are illegal

4. Learned counsel for the petitioner had to agree before us that he has not examined all the rules and executive instructions in relation to civil posts ; however, learned counsel pointed out that in regard to selection made by the Public Service Commission, there is no provision for appeal. Learned counsel has not pointed out any provision of law requiring the Public Service Commission to conduct selection test on any basis other than merit as assessed by performance in written examination or oral interview or on the basis of academic performance. Instruction No. 162 A requires three factors to be taken into account in the

matter of appointment of Gaonbura, namely, the claims of the family of the late Gaonbura, the views of the Mouzadar and the suitability of the person for the post. Considering the powers and functions of Gaonbura, it is only natural that a person with some related backgrounds and tradition should be selected; that is why the claim of the family of the late Gaonbura is required to be taken into consideration. Some importance has been given to the views of the Mouzadar since he is the head of the revenue collecting agency of the area and is expected to be familiar with the requirements of the job in the particular locality and the suitability of candidates. Such criteria are normally foreign to selection and appointment to civil post. Such criteria are required to be taken into consideration in the matter of selection and appointment of Gaonbura in view of the special requirements of the post. Therefore, the post of Gaonbura cannot be treated at par with other civil posts. Even assuming that in regard to appointment to other civil posts in Assam, no right of appeal or review etc. is provided against the appointment, it cannot be said that there is no reasonable classification between the post of Gaonbura on the one hand and the other posts on the other.

5. The argument put forward by the learned counsel for the petitioner that the selection by the Committee under the aforesaid executive instructions must be treated on the same footing as the selection made by the Public Service Commission does not appeal to us. Further in testing the vires of any statute which involves process of decision making, Courts always look to provision for appeal or review or correction as one of the tests of constitutionality or nonarbitrariness of the statute. With a view from this angle and considering the special factors which are required to be taken into account in the matter of selection and appointment to the post of Gaonbura the provision for appeal or review are well considered and those provisions are welcome in that they seek to reduce to the minimum arbitrariness which may creep in the process of selection and appointment.

6. Learned counsel for the petitioner further contends that the appellate authority has been given unbridled and unguided power. It is true that the scope for interference by the appellate authority or the reviewing authority is not specified in instructions 162B or 162C or 162D. This would not imply either that their powers are exactly coextensive with that of the original authority or that these authorities have unbridled or unguided powers. There can be no doubt that the appellate, second appellate or the reviewing authorities are bound by the three criteria or factors indicated in executive instruction No. 162A, i.e. (a) the claims of the family of the late Gaonbura, (b) the view,s of the Mouzadar and (c) the suitability of the person for the post. The appellate and reviewing authority can decide the appeal or review petition only in the light of these factors and of no other factors. Learned counsel for the petitioner tried to argue that the appellate authority has power to conduct independent interview of the candidates. We do not think that there is any basis for accepting such a view. Of course they have the power to assess the result of the interview on the basis of

the proceeding of the Selection Committee made available to them. They have also the power to examine independently the claims of the family of the late Gaonbura. Equally the view of the Mouzadar mayor may not have been correctly understood by the original authority and/or the appellate or reviewing authority has the power to correct the error. It may be pointed out that the appellate or reviewing authority would not have the benefit of experience in the interview and to that extent they will be in a disadvantageous position. Necessarily the higher authorities have to respect the objective result of the interview conducted by the Selection Committee, while the retaining power to correct any errors which may have been committed by the original authority in regard to the criteria indicated in the Instruction 162 A. We are not prepared to agree that these higher authorities have been conferred undrilled and unguided power. That the higher authorities are bound by these criteria is necessarily implied in the scheme of the instructions and the criteria provide the necessary guidelines to them. Their powers are naturally circumscribed by these criteria. The challenge against the executive instructions and the selection fails.

7. The Government as ultimate authority under the instructions have held that fresh selection and appointment to the post of Gaonbura must be made, inasmuch as, Shri Phanidhar Kalita died pending the proceeding.

It is open to the petitioner to apply for the post of Gaonbura in response to the advertisement made. We find no ground to interfere. The writ petition is dismissed with costs.