

(2001) 02 GAU CK 0004
In the Gauhati High Court
Case No : Writ Petition (C) No. 2332 of 1999

Nirmal Narzary and Others	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Bodoland Autonomous Council Act, 1993 — Section 24, 25, 25(3)
Constitution of India, 1950 — Article 226

Citation : (2001) 1 GLT 448

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : A.S. Choudhury, R. Mazumdar and A. Maleque, for the Appellant;
B.J. Talukdar, Y.K. Phukan, A. Choudhury and P.K. Mushahari, for the Respondent

Judgement

P.G. Agarwal, J.—Heard Mr. A.S. Choudhury, learned counsel for the petitioners, Dr. Y.K. Phukan, learned counsel for the respondent No. 3, Mr. P.K. Mushahari, learned counsel for the respondent Nos. 7,8 and 9 and Mr. B.J. Talukdar, learned Govt. Advocate for the State of Assam.

2. Bodoland Autonomous Council, for short, BAC, was constituted vide Bodoland Autonomous Council Act, 1993, with the object to grant autonomy to a particular community, namely, Bodo, living with the defined area under the Act. Sections 24 and 25 of the said Act provide for authority of BAC to regulate certain subjects and accordingly 38 subjects falling within the BAC area were transferred to the BAC and later it was delegated with executive power within its area relating to the above 38 subjects. u/s 25(3) of the said Act, BAC has been delegated with power to recruit Class-III and Class-IV employees.

3. The present eight petitioners living in the BAC area had applied for certain posts of Forest Guard and Forester Grade-I (Class-IV and Class-III) posts and the selection committee constituted by the BAC considered their case and recommended their names for appointment. However, the Conservator of Forests, Western Assam Circle, Kokrajhar also constituted another selection

committee and while the process was going on, the BAC authorities requested the respondent State to make appointment in favour of the persons selected by the BAC. As no appointments were made, the petitioners have approached this court under Article 226 of the Constitution of India to quash the selection committee constituted by the Principal Chief Conservator of Forests, Assam vide order dated 23.10.1998 and for a direction to act as per selection made by the BAC as the posts fall under the BAC area.

4. The respondent BAC have filed an affidavit supporting the case of the petitioners and stating inter alia that the BAC has authority to make appointment in respect of Grade-III and Grade-IV posts. It may be mentioned that the States of Assam has not filed any affidavit-in-opposition. Respondent No. 3 the Conservator of Forests, Western Assam Circle, Kokrajhar has filed an affidavit stating inter alia that some portion of the Western Assam Circle fall under the Geographical Circle of the BAC and some area are under the other Districts of Assam and as such the Principal Chief Conservator of Forests exercises his control over the entire area including the BAC area. It is further stated that the Forest Department in BAC are is still under control of the Government of Assam through the establishment of the Principal Chief Conservator of Assam, who controls the funds for salary, maintenance and development of forest included in BAC area and appointment, transfer and posting etc. of the employees.

5. In view of the Office Memorandum dated 10.1.1994 issued by the Govt. of Assam, there is no dispute at the Bar that appointment in respect of Class-III and Class-IV posts relating to 38 subjects and falling under the BAC area is to be made by the Council. Learned counsel for the respondent No. 3 and the State Govt. referring to the various letters issued by the BAC from time to time (Annexures-4 to 8(a)) submits that the BAG itself had written to the respondent for making appointment which goes to show that the BAG was not exercising its power for recruitment to Class-III and Class-IV posts under the Forest Department. Mr. P.K. Mushahari, learned counsel for the respondent BAC on the other hand submits that the selection was made by the BAC as per authority given to it and for the administrative convenience only the Principal Chief Conservator of Forests was asked to make appointment. As per Annexure-1 letter dated 10.1.1994, it was further clarified that hence forth no recruitment in respect of Class-III and Class-IV posts as mentioned above would be made by the concerned Departments. Forest is one of the subjects which was entrusted to the BAC. Hence it is held that the constitution of the selection committee by the Principal Chief Conservator of Forests vide notification dated 23.10.1998 was without jurisdiction and the PCCF has no power to constitute any selection committee for recruitment to the posts of Grade-III and Grade-IV falling under the BAC area. It is also submitted that the said committee was constituted without associating BAC In any manner. On the other hand, the committee constituted by the BAC does not include any one from the Forest Department. The lack of co-ordination between the BAC and the Forest Department might be the root cause for the present situation bringing the entire matter to a standstill.

Respondent No. 3 has also challenged the selection of the petitioners by the BAC on the ground that the selection was not proper and in accordance with the rules and regulations and no physical test as provided under the rules was carried out. In the circumstances I would like to observe that it will be in the fitness of things and for proper implementation, the senior officials of the Forest Department may be associated with the selection process made by the BAC.

6. Now coming to the question of non-appointment of the petitioners, learned counsel for the respondent State of Assam has submitted that no indefeasible right has accrued to the petitioners because of their empanelment. The law is well settled on this point. There is no allegation that persons below the list or persons who were not selected, have been appointed. As a matter of fact there is no allegation against the respondent Forest Department that appointment or request has been made without approval of the BAC. On perusal of the materials on record it seems that the petitioners were not appointed on two counts vide letter dated 4.12.1998. The Divisional Forest Officer, Kachugaon Division informed the Deputy Secretary, Bodo Land Autonomous Council, Kokrajhar as follows :-

"Ref. :- Your letter No. BAC/F/6/97-98 dt.2.9.1998.

Sir,

I have the honour to inform you that as stated in your letter no, under reference, I am to inform you that the following officiating persons has already been regularised vide your letter no. as follows: -

1. Sri Danesh Basumatary, Fgd., BAC(E)215/96/Petn-II 27 dt. 30.7.97.
2. Sri Mangal Basumatary, " -do-
3. Sri Matilal Narzary, Fr-I -do-
4. Sri Diptiminirah Mushahary, Fgd - -do-
5. Sri Sufal Iswary, Fgd-BAC/E/237/96/31 dt.20.3.97
6. Sri Chasen Ch. Basumatary, " -do-

The above officiating person already regularised as per your approval letter and the following person has already been approved by your honour but no vacancy in that period. Now some senior Forest Guard under this Division has already been allowed to officiate as Forester-II as follows:-

1. Sri Amar Ch. Brahma, Approved vide BAC's letter No. BAC/E/304/97/39 dt. 20.5.1998.
2. Sri Biren Brahma, -do-
3. Sri Danswarang Brahma. BAC/E/6/597-98/52 dt.3.6.98
4. Sri Ratan Kr. Brahma, -do-

5. Sri Muluk Ch. Borgoyari, -do-
6. Sri Kamal Kr. Borgoyari, -do-
7. Sri Ramen Mushahary, BAC/F/6/97-98/72 dt. 15.6.1998.
8. Sri Tarendra Narzary, -do-

The officiating vacancy is filled up finally by P.C.C.F., Assam as per seniority of all Assam basis. So, no appointment could be made though he received approved list of candidate. We are untemplating to appoint these candidate when clear vacancy arise."

7. In para-(iv) of the affidavit-in-opposition of respondent No. 3 it is stated as follows:-

The officers of the Forest Department of the aforementioned Divisions sometimes happen to be in awkward position as the BAC approves names of more than 8 candidates for appointment against a single vacancy. For example 2 posts of Forester-I fell vacant under Haltugaon Forest Division and having this information, the BAC Kokrajhar recommended and approved names of 13 persons for appointment in the said post. On many occasions the deponent received approval from the BAC disproportionate to the vacancy under his jurisdiction. On the other hand, persons after obtaining such approval from the BAC, start pressurising the deponent and his subordinate officers in different ways for appointment which cause immense problem in smooth running of the administration."

8. Mr. A.S. Choudhury, has submitted that the above affidavit has been filed by the respondent No. 3; but no such allegation was made by the Principal Chief Conservator of Forests or the State of Assam. Mr. Choudhury was fair enough to submit that against a single existing post, not more than one person can be accommodated or appointed and if the recommendation is for more than one person, the matter needs examination and consideration. This court will not like to enter/examine the above disputed fact as to what is the particular number of existing posts and the recommendations made by the BAC. It is therefore directed that the Principal Chief Conservator of Forest, Assam, Guwahati will examine the entire matter and determine the vacancy in Class-III and Class-IV posts under the Forest Department falling under the BAC area and thereafter consider the various recommendations made by the BAC and pass necessary orders in accordance with law. The exercise shall be completed within a period of three months.

9. Subject to the observations made above, the writ petition stands disposed of.