

(1968) 09 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 103 of 1968

Premnath Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-09-1968

Acts Referred:

Assam Panchayat (Constitution) (Amendment) Rules, 1964 — Rule 87, 88
Assam Panchayati Raj Act, 1959 — Section 3, 3(1), 3(2)
Constitution of India, 1950 — Article 226

Citation : (1968) 09 GAU CK 0003

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

Bench : Division Bench

Advocate : J.C. Medhi and G. Bhattacharjee, for the Appellant; G.K. Talukdar, Sr. Govt. Advocate, J.P. Bhattacharjee and D.K. Talukdar for Opp. Party No. 3, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Goswami, J.—This application under Article 226 of the Constitution of India is at the instance of the Petitioner, who is the Resident of the Bahari Gaon Panchayat, and is directed against two orders of the State Government, each dated 12th March," 1968, passed u/s 3 (1) and (2) of the Assam Panchayat Act, 1959 (Assam Act XXIV of 1959), hereinafter called "the Act.

2. The Petitioner's case is that the Government of Assam by a notification dated 2nd March, 1960 declared the area consisting of the villages Bahari, Nij-Bahari and Kal-tali, to be the area of the Bahari Gaon Sabha u/s 3 (1) of the Act, and accordingly the Bahari Gaon Panchayat was duly elected and constituted and has been functioning according to law. He states that the territorial jurisdiction of the Bahari Gaon Sabha covers an area of about 3968 Bighas and its population exceeds five thousand. He further states that Bahari Grazing Re serve is an integral part of the Bahari village and, is within the territorial jurisdiction of the Bahari Gaon Sabha as already notified in 1960. The Government of Assam by a

notification dated 12th March 1968 carved out about 239 Big has of the Bahari Grazing Reserve, since de-reserved for the purpose of a Bazar, from the existing territorial jurisdiction of the Bahari Gaon Sabha and reconstituted a new Gaon Sabha for this area. The Petitioner claims that the said reconstitution is in violation of the provisions of Section 3 of the Act and Rule 88 of the Assam Panchayat (Constitution) (Amendment) Rules, 1964, hereinafter called the Rules. He submits that the procedure laid down under Rule 88 has not been followed in reconstituting the Gaon Sabha, and, as such, the orders of the Government are illegal and inoperative in law.

3. In the counter affidavit by the Government it is claimed that the Government was satisfied on public demand and in the interest of general public that there should be a separate Gaon Sabha for the rehabilitated area and, as such in exercise of its powers u/s 3 (1) and (2) of the Act, it constituted a new Gaon Sabha. It is claimed that the grazing reserve was de-reserved and people from a neighboring village Tarabari, which was eroded away by the Brahmaputra, had to be rehabilitated in this de-reserved area and the Government thought it fit to constitute the same as a new Gaon Sabha.

4. The non-applicants Nos. 8 to 12, who were not originally impleaded in this proceeding, intervened and as they are members of the new Gaon Sabha which has been constituted under the impugned notifications and have already taken their oath of office on 27th May, 1968, as required under the law, they have been allowed to be added as parties under orders of this Court. These non-applicants bring out certain revealing things in their affidavit. They state that resolutions were passed on 29th December, 1968 in the meeting of the Bahari Gaon Panchayat under the President ship of the present Petitioner for the establishment of two Gaon Sabhas out of the area of the present Gaon Sabha, one for the population of the Bahari Grazing Reserve and the other for the remaining area of the existing Bahari Gaon Sabha and that resolutions were also passed by the Chenga Anchalik Panchayat and Barpeta Mahkuma Parishad approving of the above demand of Bahari Gaon Sabha situated within the territorial jurisdiction of the aforesaid Anchalik Panchayat and Mahkuma Parishad. Further, the Petitioner as the President of the Bahari Gaon Panchayat sent letter dated 30-12-63 to the Director of Panchayat, Assam, informing about the above resolutions which have been filed as Annexures I and II to their counter affidavit. They, therefore, deny that the reconstitution of the new Gaon Sabha by the impugned notification was against the will and the opposition of the Gaon Panchayat and the villagers in general. It is sufficient to state that there is no replication by the Petitioner to this part of the affidavit by the non-applicants.

5. Now that the facts are briefly noted, we may look at the notifications. The first notification is dated 2nd March 1960, which may be set out:

No. RDD.169/69/4.- In exercise of the powers conferred under Sub-section (2) of Section 3 of the Assam Panchayat Act, 1959 (Assam Act XXIV of 1959) the Governor of Assam is pleased to declare the names and territorial jurisdiction of

the following Gaon Sabha falling within Chenga Anchalik Panchayat in Barpeta Sub-Division as detailed below:

Name of the Territorial Gaon Sabha jurisdiction 4. Bahari 1. Bharari 2. Nij-Bahrai 3. Kaltali

The other notification came on 12th March, 1968, which may be read:

No. PDA.5/64/339.- In partial modification of Notification No. RDD. 169/60/4, dated the 2nd March, 1960, the Governor of, Assam in exercise of the powers conferred; by Sub-section (2) of Section 3 of the Assam Panchayat Act, 1959 (Assam Act XXIV of 1959), is pleased to declare the territorial jurisdiction of the Bahari Gaon Sabha appearing against item 4, within Chenga Anchalik Panchayat in Barpeta sub-Division as detailed below:

Name of the Gaon Sabha Territorial jurisdiction 4. Bahari 1. Bharari 2. Nij-Bahrai 3. Kaltali

There is also another notification of the same date, which read with the Corrigendum dated 8-4-68, stands as follows:

No. PDA.5/64/341.- In exercise of the powers conferred by Sub-section (1) read with Sub-section (2) of Section 3 of the Assam Panchayat Act, 1959 (Assam Act XXIV of 1959). the Governor of Assam is pleased to declare the name and territorial jurisdiction of the following Gaon Sabha within Chenga Anchalik Panchayat and to add the following item after item 23 of the Notification No. RDD 169/60/4, dated the 2nd March, 1960, namely:

Name of Gaon Sabha. Territorial jurisdiction 24. Bahari Reserve Bahari Grazing Reserve - since de-reserved.

6. Dr. Medhi, the learned Counsel for the Petitioner, submits that once the Bahari Gaon Sabha had been constituted in 1960, it is not open to the State Government without complying with the formalities laid down under Rule 88 to reconstitute the same and declare another new Gaon Sabha out of the original area in order to appreciate this submission we have to read Section 3 of the Act:

3.(1) The State Government may, by notification declare any area to be a Gaon Sabha area for the purpose of this Act.

2. The state Government shall declare the name and territorial jurisdiction of each sabha under sub-section (1) and may any time by notification include any area in and exclude any area from the territorial jurisdiction of the Gaon sabha.

Provided that in a Gaon Sabha area whose population exceeds five thousand such Gaon Sabha shall have the right to establish itself into one or more Gaon Sabhas after eliciting opinion in the manner as prescribed:

Provided further that where such establishment affects any contiguous Gaon Sabha, the opinion of such Gaon Sabha shall also be taken in the manner prescribed:

Provided also that where the establishment of a Gaon Sabha concerns more than one village the State Government shall consider the opinion of the villagers concerned in the manner prescribed before establishing such Gaon Sabha.

It is clear from Section 3 (I) that the State; Government has power under this provision to declare any area to be a Gaon Sabha area for the purpose of this Act. under Sub-section (2), it has also the power not only to declare the name and territorial jurisdiction of the Gaon Sabha declared under Sub-section (1), but has also a reservation of an other power to include any area in and exclude any area from the territorial jurisdiction of such a Gaon Sabha. It is in exercise of the powers conferred by Sub-sections (1) and (2) of Section 3 of the Act that the impugned notifications have been claimed to be made. There are three provisos to Sub-section (2). The first proviso grants a right to a Gaon Sabha, whose population exceeds five thousand, to establish itself into one or more Gaon Sabhas after eliciting opinion in accordance with Rule 88. The second proviso also relates to the establishment of such a Gaon Sabha as is mentioned in the first proviso. The words "such establishment", mentioned in the second proviso, clearly led to that conclusion. Rule 88 has reference to the first and the second provisos of Sub-section (2) and may be set out:

88. Establishment of more than one Gaon Sabha in a Gaon Sabha area having population exceeding five thousand.- When the members of a Gaon Sabha having in its area population exceeding five thousand desire to establish more than one Gaon Sabha they shall send a written petition to the Magistrate signed by at least one-tenth of total members. The Magistrate shall, as soon as possible after receipt of such petition, direct the President of the Gaon Sabha to convene a meeting of the Gaon Sabha for the purpose. The President shall convene such meeting within 15 days from the date of receipt or notice of the Magistrate according to the provisions of the Act and shall place the matter before the meeting for their consideration and decision by a resolution. The President shall record the number of members present in such meeting and those favoring establishment of more than one Gaon Sabha. If a resolution favouring establishment of more than one Gaon Sabha is passed by at least two-thirds majority in such meeting, where at least one-half of the total members is present; the President shall forward the resolution with minutes of the meeting in original to the Magistrate. The Magistrate shall forward such resolution to the State Government embodying concrete proposals with names, boundaries, population, etc., for establishment of such number of Gaon Sabhas as can reasonably be established for decision and for issuing necessary notifications declaring name and territorial jurisdiction of each of such Gaon Sabha.

Provided that if the Magistrate is of opinion that such establishment of more than one Gaon Sabha may affect any contiguous Gaon Sabha, he shall direct the President of such contiguous Gaon Sabha to convene a meeting thereof at such time and place as the Magistrate may specify in this behalf and the President shall thereupon convene a meeting of the contiguous Gaon Sabha and ascertain

its views on the proposed establishment by two-thirds majority in case its area stands to be affected thereby and by simple majority, in any other case; provided that in such meeting not less than one-half of its total members shall be present.

It is clear, therefore, that when a Gaon Sabha has a population exceeding five thousand, such Gaon Sabha has a right to form one or two more Gaon Sabhas in accordance with the procedure laid down under Rule 88 to give effect to the first and the second provisos to Sub-section (2) of Section 3 of the Act. The third proviso to Sub-section (2) of Section 3 has to be read, with Rule 87 and we may now read that Rule:

87. Consideration of opinion of the Villagers in case of grouping of more than one village. When a group of more than one contiguous village is to be declared as a gaon Sabha under the last proviso of Sub-section (2) of Section 3 of the Act the Magistrate shall by calling meetings of adult persons or otherwise, ascertain the opinion of the villagers concerned regarding such grouping and shall forward the same with his own comments to the State Government whose decision thereon shall be final.

The above rule is made in order to give effect to the third proviso. All these provisos relate to establishment of Gaon Sabhas on the initiative of a Gaon Sabha which has already been declared by the State Government. When the initiative is taken by the people, a procedure has been laid down under Rules 87 and 88 and these have got to be followed before the Government is in a position to declare and constitute a Gaon Sabha in conformity with the wishes of the people. The existence of this right in the Gaon- Sabha, and for the matter of that in the people, does not affect the power of the State Government u/s 3 (1) to declare any area to be a Gaon Sabha or u/s 3 (2) to add to or subtract from any area from the Jurisdiction of a Gaon Sabha. The power conferred by Sub-sections (1) and (2) of Section 3 is independent of the right given to the Gaon Sabha in that behalf and these two rights can coexist together without any violence to the scheme and the purpose of the Act. These two rights conferred on the State Government as well as on the Gaon Sabha are naturally exclusive and one does not interfere with the other. Even when the right conferred under the provisos is exercised by the Gaon Sabha and the State Government takes a decision in the matter, it is again the State Government which will be required to issue an appropriate notification u/s 3 (1) or (2) of the Act, as is applicable to a particular case.

7. Dr. Medhi strenuously contended that the provisos are exceptions in this case and to the extent the provisos are applicable, the State Government becomes incompetent to make the impugned orders. In this context he relies on a decision of the Supreme Court in the case of *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, and draws our attention to the following passage at p. 718:

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

In the same decision we have also the following observations.

The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso, would fall within the main enactment, ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.

It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.

We also find in this decision an observation of the Privy Council in *S. M. Railway Co., Ltd. v. Bezwada Municipality* at p. 73, *Madras and Southern Maharatta Railway Co. v. Bezwada Municipality*, laying down the sphere of a proviso as follows:

The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms.

It is difficult to appreciate how the decision which is relied on by Dr. Medhi, helps him in this case. This decision does not support his contention that the State Government's power u/s (1) and (2) could be held to be wiped out by the provisos.

8. Mr. Bhattacharjee, the learned Counsel for the non-applicant No. 3, has also drawn our attention to a decision of the "Supreme Court in the case of the State of Rajasthan v. Mrs. Leela Jain, AIR 1965 SG 1296 where the following observations appear at p. 1300:

So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is "to limit the main part of the section and carve out something which but for the proviso would have been within the operative Part.

What we have stated earlier should suffice to establish that the proviso now before us is really not a proviso in the accepted sense but an independent legislative provision by which to a remedy which is prohibited by the main part of the section an alternative is provided.

The provisos in the instant case before us may be held to have provided a right

which is not there but for this specific provision. In that sense, it cannot be said to be an exception to Section 3(1) or 3(2) at all, but it is only an auxiliary provision which gives an additional right to the Gaon Sabha to move the State Government or reconstitution of Gaon Sabhas, which power the State Government undoubtedly, has independently of such a move from the Gaon Sabha. In the view taken of these provisos, these may as well have formed independent provisions in the Act instead of being provisos to sub-section (2) of Section 3. In this context we may also refer to Maxwell on Interpretation of Statutes, 11th Edition, at p.155, where the following passage occurs:

The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest.

The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail.

A proviso should not be interpreted so as to have greater effect than strict construction of the proviso renders necessary. There is also an eloquent passage quoted in Craies on Statute Law, 6th Edition, at p. 218:

But sections, though framed as provisos upon preceding sections, may exceptionally contain matter which is in substance a fresh enactment, adding to and not merely qualifying what goes before.

In *Local Government Board v. South Stoneham Union*, (1909) AG 57, the House of Lords presided over by Lord Loreburn (L. C.) reversing the order of the Court of Appeal, did not approve of the approach of the Court in attempting to construe a proviso "without regard to the surroundings as if it had dropped from the clouds". A few months later, the same noble Lord on the woolsack in *Rhondda Urban District Council v. Taff Vale Railway. Company*, (1909) AC 253, while construing Section 51 of the Railways Causes Consolidation Act, 1845, observed as follows at page 258:

It is true that Section 51 is framed as a proviso, upon preceding sections. But it is also true that the latter half of it, though in form a proviso, is in substance a fresh enactment, adding to and not merely qualifying that which goes before. So the question really turns upon Section 51 itself. It must be read in the light of what goes before and with a close regard to the purpose of the group of sections to which it belongs....

9. It is, therefore, manifest that these provisos in Section 3 relating to establishment of a Gaon Sabha not having a contemporaneous operation in the same field as Sub-sections (1) and (2) of the said section, which deal with declaration and some other subject, may be considered even as independent provisions which could be given effect to pari passu with the main enactment. The situs of the provisos may not be of particular significance in this case having due regard

to the aim and objects of the section itself. Besides, the expression "at any time" which appears in Sub-section (2) of Section 3 is also clearly relatable to an unbridged power located in the Government without reference to and de hors the conditions laid down under the provisos.

10. From the aforesaid discussion it will be clear that the impugned orders, which have been passed by the State Government in exercise of the powers conferred by Sections 3 (1) and 3 (2) of the Act, are valid orders under the law and no serious objection can be taken to these orders because at some earlier stage the Gaon Sabha itself had moved in the matter. Mr. Bhattacharjee drew our pointed attention to the fact that the Petitioner having himself approached the State Government for reconstituting the Gaon Sabha is estopped from questioning the validity of the impugned notifications. Since, however, the matter has been heard at length, we did not want to dismiss the application on that short ground alone, although we may observe that this should have been another formidable obstacle to the success of this petition.

11. In the result, the application is dismissed and the Rule is discharged, but in the circumstances we make no order as to Costs.

M.C. Pathak, J.

12. I agree.