
(1997) 07 GAU CK 0022
In the Gauhati High Court
Case No : Civil Rule No. 4646 of 1996

Prodip Nandy

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-07-1997

Acts Referred:

Assam Town and Country Planning (Amendment) Act, 1962 — Section 8A(2), 8B, 8B(4), 8C
Assam Town and Country Planning (Constitution of Authority) Rules, 1961 — Rule 12, 13, 5, 6
Constitution of India, 1950 — Article 14, 226

Citation : (1998) 4 GLT 83

Hon'ble Judges : M. Sharma, J

Bench : Single Bench

Advocate : B.K. Sharma and M.K. Choudhury, for the Appellant; P.G. Baruah, A.G. and A.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

M. Sharma, J.—In this writ petition under Article 226 of the Constitution the Petitioner has challenged the Notification dated 9.9.96 (Annexure-3 to the writ petition) issued by the Secretary to the Government of Assam, Town and Country Planning Department, whereby he has been removed from the Chairmanship of Silchar Development Authority, By the said notification, the Silchar Development Authority has been Purportedly reconstituted for implementation of the Masterplan and Zoning Regulation for Silchar and by endorsing a copy thereof the Petitioner has been directed to hand over the Charge of the Chairman.

2. The case of the Petitioner is that the Petitioner was appointed as Chairman of the Silchar Development Authority vide notification dated 4.10.91 (Annexure-1 to the writ petition) and the term of the office was for a period of three years from the date of issue of this notification. Thereafter, by a W/T message dated 1.7.95 (Annexure-2) the term was extended for another three years with effect from 1.7.95. The Petitioner's allegation is that the impugned notification dated 9.9.96,

in effect, was an order of removal as Chairman, more particularly it was superseded the earlier W/T message dated 1.7.95. Further allegation of the Petitioner is that the order was actuated by malafide and founded on colourable exercise of power because behind this order political consideration with ulterior motive has played a vital roll. According to the Petitioner the Respondents can remove him from the office of the Chairman before the expiry of the tenure of three years only as per provisions of Section 8-B(4) of the Assam Town and Country Planning (Amendment) Act, 1962 (for short" the Act") and by giving reasonable opportunity to the Petitioner. In the instant case the Petitioner has not been even served with the impugned order of notification. Hence the present petition.

3. I have heard Mr. B.K. Sharma, learned Counsel for the Petitioner and Mr. P.G. Baruah, Advocate General of Assam. Mr. Sharma has submitted that the Petitioner has been removed from the office of Chairman before the expiry of the tenure, therefore, provisions of Section 8B(4) of the Act is applicable, which lays down the conditions precedent for removal of any member including Chairman. It has been further submitted that it is the mandatory requirement and even if the conditions precedent are fulfilled, then also an opportunity to show cause must be given before his removal from the office. However, in this case there is no such compliance, therefore, the impugned order violated the mandatory requirement u/s 18B(4) of the Act. Mr. Sharma has further submitted that Section 8C lays down the terms of office of the Chairman, and Rule 13 of the, Assam Town and Country Planning (Constitution of Authority) Rules, 1961 prescribes the tenure of the Chairman and it shall not be less than three years. Therefore, according to Mr. Sharma the tenure of the Chairman may be more than three years and accordingly the Government extended the period of tenure by the Annexure-2 W/T Message dated 1.7.95.

4. Mr. P.G. Baruah, learned Advocate General appearing for the State has submitted that condition precedent in appointment of the Chairman u/s 8A(2) is that the name of the members elected and appointed shall be published in the Official Gazette and therefore extension of the tenure of the Petitioner as Chairman by the W/T Message dated 1.7.95 after the expiry of the initial term was not a notification as contemplated under Sub-section (2) of Section 8-A of the Act and, therefore, the order for discontinuation of the Chairmanship cannot be termed as removal and hence the Petitioner was not entitled to a notice.

5. On the contentions of the parties the issue for consideration before this Court is-whether the impugned notification is for discontinuation of the Petitioner from the post of Chairmanship of the Authority and it amounts to removal of the Petitioner from office and if so, whether it can sustain under the law.

6. No affidavit-in-opposition on behalf of the Respondents has been filed though time was granted. The learned Advocate General has argued the case on the points of law only.

7. The Assam Town and Country Planning (Amendment) Act, 1962 (Assam Act XXXII of 1962), have laid down the procedure for appointment and removal of the Chairman and Members of the Authority.

Section 8B of the said Act reads as follows:

8B. Composition of the Authority:

(1) The Authority shall consist of the following members, namely-

(a) A Chairman to be appointed by the State Government;

(b)...

(2) Notification of members: The name of the members elected and appointed shall be published in the official gazette.

(3) Disqualification for election or appointment as member: A person shall be disqualified for appointment, nomination or election as a member, if he-

(a) has been convicted of any offence involving moral turpitude;

(b) is an applicant to be adjudicated as a bankrupt or insolvent or is an uncertificated bankrupt or undischarged insolvent;

(c) holds any office of profit under the Authority except those mentioned in Clauses (a), (b), (c) and (d) of Sub-section (1);

(4) Removal of members - The State Government may remove from the Authority any member including the Chairman who -

(a) refuses to act or becomes incapable of acting or absents himself from three consecutive meetings of the Authority and is unable to explain such absence to the satisfaction of the authority.

(b) has so flagrantly abused in any manner his position as a member of the Authority as to render his continuance detrimental to the public interest;

Provided that when the State Government proposes to take any action under any of the above provisions, an opportunity shall be given to the member concerned to show cause why action as proposed should not be taken against him;

(c) ceases to be a member of the local authority from which he was elected

Section 8C of the Act runs as follows:

"8C. Term of office and conditions of service of the Chairman and members of the Authority:

(1) The term of office and conditions of service of the Chairman and members of the Authority shall be such as may be prescribed and they shall be entitled to receive such salaries and allowances as may be fixed by the State Government.

(2) The Chairman or any member may resign his membership of the Authority by

giving notice in writing to the State Government and on the resignation being accepted by the State Government, he shall cease to be a member of the Authority.

(3) Any vacancy created by resignation or removal shall be filled by fresh appointment or nomination by the State Government, or by election, as the case may be.

The provisions of the Rules having relation to Petitioner's case are quoted below:

13. Term of office of Chairman and other Members:

(1) The term of office of the first member including the Chairman and the ex-officio members, shall be commence on such day as may be appointed by the State Government;

(2) The term of office of member including the Chairman but not including the ex-officio member shall be as follows:

(a) The Chairman: such period as may be fixed by the State Government, not being less than three years commencing hi the case of the first Chairman, on the day appointed under Sub-rule (1) and in the case of any subsequent Chairman on the date on which his appointment is notified;

(b) a member appointed or elected in pursuance of Rule 12 in the place of a member who has been permitted to absent himself from meetings of the Authority the period of the absence of the latter number;

(c) Other members - three years commencing in the case of the first members on the day appointed under Sub-rule (1) and in the case of subsequent members on the date on which their election or appointment as the case may be, is notified;

(3) A member shall, if not disqualified for any of the reasons mentioned in Rules 5 and 6 be eligible for re-appointment or re-election at the end of his term of office.

8. In the submissions made before this Court by the learned Advocate General on behalf of the Respondents no reason has been offered for removal of the Petitioner, though this Court by order dated 23.9.96 directed the Respondents to show the reason for which the impugned notification was issued. However, the points raised in the course of the arguments on behalf of the respondents are:- that the appointment of the Petitioner as Chairman has not been notified in the Gazette; that there is no provision in the Act and Rules for extension of tenure ; that principles of natural justice is not required to be followed m this case. In support of his contention the learned Advocate General has referred to and relied on a decision of the Apex Court in M. Venkateswarlu and Others Vs. Govt. of A.P. and Others, Apparently throughout the argument the learned Advocate General did not show any reason for removal of the Petitioner from the office of the Chairman.

9. From the provisions of the Act and Rules stated above, Gazette notification is not a condition precedent for validity of appointment as Chairman. In my view it is a procedural aspect, non-compliance of which will not result in invalidating the appointment, as in this case, Petitioner has no hand towards publication of his appointment in the official gazette. Apparently, the extension was merely a continuation of the first appointment which was published in the gazette. Even in that case, the Petitioner who has been holding the post of Chairmanship in continuation/extension of his earlier appointment is entitled to a notice u/s 8B(4) of the Act. Further, as per Rule 13 of the Rules, the terms of office of the Chairman may be fixed by the State Government not being less than three years, meaning thereby that it can be more than three years, which gives the scope and power of extension. However, there is nothing to show in the Act and Rules to suggest that the Government has no power of extension. Further, the mandatory provisions of Section 8B(4) of the Act dealing with the question of removal of members/Chairman provides that when the State Government proposes to take any action under any of the provisions mentioned in the said Section, an opportunity shall be given to the member/Chairman concerned to show cause why action as proposed should not be taken against him. In the instant case, admittedly no show cause notice or opportunity was given to the Petitioner before issuing the impugned notification. The principle of natural justice is inherent in the statute itself and therefore, it cannot be excluded and it must be followed. It is well settled law that where adverse civil consequences follow pursuant to an order of an authority, natural justice has to be complied with. In that view of the matter, in my opinion, the case referred to by the learned Advocate General is not applicable in the instant case as in the facts and circumstances of the case and in view of the statutory provision in the Rules/Acts, notice ought to have been issued to the Petitioner giving opportunity to show cause why action as proposed should not be taken against him. Ratio of any decision must be understood on the back ground and in the facts and circumstances of each case and has to be decided accordingly. Submission of the learned Advocate General that the appointment of the Petitioner was provisional is not sustainable on the ground that even provisional appointment, in absence of any condition put therein, amounts to continuation of the existing post and in this case also, in the absence of any condition put in, the extension order is a continuation of the earlier appointment and the removal therefrom necessitated notice. From the records produced before the Court, I did not find any ground/reason to remove the Petitioner from the office of the Chairman without affording an opportunity to the Petitioner.

10. In view of my above discussion, I am of the view that the impugned notification is arbitrary and violative of Article 14 of the Constitution, and accordingly, I quash the notification dated 9.9.96 as it cannot sustain under the law.

In the result, the writ petition is allowed. However, in the facts and circumstances of the case, I make no order as to costs.