
(2009) 03 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition (C) No. 78 of 2008

R. Lalsiama

APPELLANT

Vs

Lai Autonomous District Council and Another

RESPONDENT

Date of Decision : 19-03-2009

Acts Referred:

Citation : (2010) 1 GLR 210 : (2009) 3 GLT 229

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Advocate : S.N. Meitei, for the Appellant; N. Sailo, Helen Dawngliani and Dinari J. Azyu, for the Respondent

Judgement

H. Baruah, J.—Heard Mr. S.N. Meitei, Learned Counsel for the petitioner as well as Mr. N. Sailo assisted by Mrs. Helen Dawngliani, appearing on behalf of the respondents.

2. The Notification dated 24.7.2008 bearing Memo No. V.12011/4/2007-08-LADC/LAD issued by the Executive Member on behalf of the Chief Executive Member, Lai Autonomous District Council, Lawngtlai dissolving Lungpher Village Council is under challenge in this writ petition.

3. The brief facts involved in this writ petition may be recorded as under:

Village Council of Lungpher Village is within the administrative jurisdiction of Lai Autonomous District Council. The petitioner was duly elected as a member of the Village Council of Lungpher Village in the Village Council General Election 2007 for a period of 3 years. After his election as a member, he was duly elected as President of the said Village Council by Notification No. V.12011/2/2007-LADC/LAD dated 15.11.2007 issued by the Executive Member i/c Lai Autonomous District Council, Lawngtlai. By Notification dated 16.11.2007 under Memo No. V.12011/3/2007-LADC/LAD, the Vice-President and the Secretary of the said Lungpher Village Council were also elected from amongst the elected members of the Village Council. The Village Council is a statutory and democratic institution

created under the provisions of the Lai Autonomous District Council (Village Council) Act, 2007. Election of the members, constitution, power and function including dissolution etc. are clearly defined and regulated by the said Act of 2007.

4. The LADC under whose jurisdiction Lungpher Village Council is administratively discharging its functions, on receipt of a complaint against the Village Council constituted a Commission comprising three members to look into the complaint vide Notification No. V. 12011/4/07-LADC/LAD Dated 9.7.2008. The Commission, it is alleged that without issuing any show cause and offering an opportunity of being heard in respect of the allegations so brought, made an enquiry and submitted a report on the basis of which the impugned notification dissolving the Village Council came up. It is also alleged that although, the petitioner was supplied with copy of a notification of constitution of a Commission alongwith a copy of the complaint, no show cause was issued by the Commission to project its case in answer to the allegations so brought. That apart, the petitioner was not given opportunity of being heard in respect of the complaint, charges brought against. There is total violation of the principles of natural justice for which the impugned notification cannot stand in the eye of law. The petitioner, therefore, prays this Court to set aside and quash the notification by which the Village Council has been dissolved.

5. This writ petition has been opposed by the respondents by filing counter. In answer to the allegations brought in the writ petition, it is contended that all possible steps were adopted while making enquiry into the allegations brought against the Village Council. Complaint so made was brought to the knowledge of the writ petitioner, but the writ petitioner, despite bringing the matter into his knowledge, willfully abstained from taking part in the enquiry. It is also contended in the counter that since the provisions of the Act do not provide the procedure for enquiry, issuance of notice, etc., was not called for and on that count, the enquiry so made cannot be branded as illegal. The Commission while making the enquiry had taken all matters into consideration and submitted a report to the LADC. LADC was pleased to dissolve the Lungpher Village Council by the impugned notification. The respondents further pleaded that there is no merit in the writ petition and is liable to be dismissed.

6. There is no denial from the respondents that before proceeding with the enquiry and after receipt of the complaint, show-cause notice was issued to the writ petitioner to answer the allegations. There is also no denial from the side of the respondents that before proceeding with the enquiry, article of charges were formulated and served on the writ petitioner to answer the allegations so brought in. There is also no denial that the writ petitioner had taken part in the enquiry and had given all opportunity to him to answer such allegations. Mr. S.N. Meitei, Learned Counsel for the petitioner submits that when none of the above procedures had been followed by the respondent authorities, the impugned notification cannot stand, the enquiry being violative of the principles of natural

justice. Mr. S.N. Meitei, in support of his contention relies in a decision in the case between Canara Bank Vs. V.K. Awasthy, Mr. S.N. Meitei mostly relies Paragraph 10 of the judgment which reads as under:

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principles is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works 1963 (143) ER 414, the principles was thus stated:

Even God did not pass a sentence upon Adam, before he was called upon to make his defence, "Adam" says God, "Where are thou has thou not eaten of the tree whereof I commanded tree though should not eat.

Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

7. From the scrutiny of the averments made in the petition as well as the counter, it is apparent that except the supply of copy of the notification of the constitution of the Commission enclosing a copy of the complaint, before embarking on the determination of the dispute between the parties, no show-cause notice nor article of charges was supplied to the writ petitioner facilitating him to answer the allegations/charges. It is also found from the averments of either party that the writ petitioner was not called upon to take part in the enquiry or in other words, he was not heard in respect of the allegations. Before taking an administrative action involving civil consequences against by a quasi-judicial body, the principle "Audi Alteram Partem" should be followed. No one should be condemned unheard. It is submitted by Mr. S.N. Meitei that "notice" is the first limb of the principles of natural justice. Neither the first limb had been complied with nor the principle "Audi Alteram Partem" followed by the Commission. The reports so prepared and submitted by the commission resultantly gave rise the impugned notification which is apparently violative of

the principles of natural justice. Mr. S.N. Meitei, therefore, urges this Court to set aside and quash the notification by which Lungpher Village Council has been dissolved.

8. Admittedly, no notice was issued nor any opportunity was offered to the writ petitioner to project his case as against the allegations before arriving such decision. The stand taken by the respondents that no notice nor the principle of "Audi Alteram Partem" are required to be followed since the Act does not provide the manner in which the enquiry is to be conducted. Mr. N. Sailo, Learned Counsel for the respondents firmly adheres to the averments made by the respondents. It is submitted by him that since no procedure is provided in the Act for such enquiry, issuance of notice etc. is not mandatory. The enquiry was conducted by the Commission in the manner in which it was to be conducted and nothing illegality had been committed by the Commission. The impugned notification dissolving the Village Council, according to Mr. N. Sailo does not warrant any interference from this Court.

9. I have given my anxious consideration to the facts involved in this case and the averments made in the counter by the respondents and the law enunciated by the Supreme Court in the case between Canara Bank v. V.K. Awasthy (supra). Before taking any administrative action involving a civil consequences, a duty was cast upon the respondent authorities or duly constituted Commission to adhere to the principles of natural justice when some allegations were brought against the Village Council. Adequate opportunity ought to have been offered to the writ petitioner to project his case. When no such opportunity was afforded by the Commission so constituted by the LADC, there appears, a complete violation of the principles of natural justice. The impugned notification that cropped up on the basis of the enquiry report cannot sustain.

10. Having considered all the facts and circumstances of the case and all other matters in its entirety including the law laid down by the Supreme Court, this Court is of the view that the notification warrants interference.

11. In the result the notification dated 24.7.2008 under Memo No. V.12011/4/2007-2008-LADC/LAD is accordingly set aside and quashed.

12. The writ petition accordingly stands disposed of.