
(2002) 05 GAU CK 0024
In the Gauhati High Court
Case No : Writ Appeal No. 194 of 2002

Sandipan Endow	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 07-05-2002

Acts Referred:

Assam Town and Country Planning (Management of Authority) Rules, 1963 — Rule 8, 8(1), 8(2)
Assam Town and Country Planning Act, 1959 — Section 8B, 8B(4)

Citation : (2002) 2 GLT 42

Hon'ble Judges : R.S. Mongia, C.J.; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : B.K. Sharma, U.K. Nair and S.K. Das, for the Appellant; A. Hazarika, Addl. Sr. G.A., for the Respondent

Final Decision : Dismissed

Judgement

R.S. Monia, C.J.—By a notification No. TCP/19/85 Pt.IV/51 dated 5.9.1998 issued in exercise of powers conferred u/s 8-B(i) of the Assam Town and Country Planning Act, 1959 as amended, the Governor of Assam reconstituted the Silchar Development Authority and appointed Chairman and Various other members for a period of 3 years from the date of issue of the notification. By the said notification Appellant was appointed as Chairman of the Silchar Development Authority. The tenure of the Appellant as Chiarman was to come to an end on 4.9.2001. However, on 26.3.2002 Anr. notification was issued in exercise of powers conferred u/s 8-B(I) of the Assam Town and Country Planning Act, 1959 read with Rule 8(2)(a) of the Assam Town and Country Planning (Management of Authority) Rules, 1963 extending the term of the Appellant as Chairman of the Silchar Development Authority for Anr. 3 years with effect from 4.9.2001. However, Anr. notification was issued on 3.9.2001 cancelling the aforesaid notification dated 26.3.2001 extending the period of Chairmanship of the Appellant which was to commence from 4.9.2001. By Anr. notification of the same date i.e. 3.9.2001 the Deputy Commissioner, Cachar, Silchar was appointed

as Chairman of the Silchar Development Authority and the Appellant was asked to handover charge to him as Chairman on 4.9.2001. The notifications dated 3.9.2001 was made subject matter of challenge by the Appellant as writ Petitioner in WP(C) No. 6358/2001. Initially a stay was granted by the motion bench and the writ petition was admitted. However, Vide judgment and order dated 2.5.2002 the writ petition has been dismissed. Hence, the present appeal.

2. Before advertng to the arguments of the learned Counsel for the parties, we may observe here that the tenure of the office of the Chairman and other members as provided under Rule 8 of the Assam Town and Country Planning (Management of Authority) Rules, 1963 is in the following terms:

8. Terms and conditions of office of the Chairman and other members:

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

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

(a) the Chairman - such period as may be fixed by the State Government, not being less than three years commencing, in 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) members - three years commencing in 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. It is admitted by both sides that in the Act or the Rules there is no specific power with the State Government to extend the period of tenure of Chairman or members. Section 8-B(4) provides for removal of members including the Chairman, which is in the following terms:

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, no 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.

4. Learned Counsel for the Appellant argued that the impugned notification dated 3.9.2001 was issued without giving any notice to the Appellant and no opportunity was given before issuing the said notification cancelling the earlier notification dated 26.3.2001. It was further argued that the impugned notification amounted to removal from the office of Chairman and is therefore, Sub-rule violative of Rule 8(2) of the Rules (supra). The argument of estoppel was also advanced that once the extension had been given by the notification dated 26.3.2001 the same could not have been cancelled, inasmuch as, the notification dated 26.3.2001 gave legitimate expectation to the Appellant that he would continue for Anr. three years commencing from 5.9.2001. Learned Counsel further argued that the power of extension is available in Rule 8(2), inasmuch as, the tenure of Chairmanship can be fixed for more than three years, but it should not be less than three years under the aforesaid rule. None of these arguments found favour with the learned Single Judge and therefore he dismissed the writ petition.

5. Reading of Rule 8(2) (supra) would go to show that the tenure of the office of Chairman can be fixed at the time of appointment by the State Government which is not to be less than three years, but may be three years or more. According to us, once the term is fixed by the Government while issuing appointment the power under the Rule 8(2) gets exhausted. We have gone through the rules and we find no power to give extension. Faced with this situation, the learned Counsel also argued that in an earlier case of a Chairman, who had been given extension, it was found that there was a power to extend. According to us, it is just an obiter. However, we may also note here that after the Chairman had started functioning in the extended period for almost 17 years that the extension was cancelled. Be that as it may, we cannot read into the rules power of extension. Learned Counsel argued that if the power of extension was not there, atleast the power to appoint is there under the same rule and the Chairman who may finish his term can be reappointed as there is no prohibition to hold the office as Chairman more than one time. The question of re-appointment would come only when the tenure is almost coming to an end or has already come to an end. Here, the Appellant was not being re-appointed and was definitely being given extension much before the original term was to come to an end (almost 6 months prior to the initial tenure was to come to an end). According to us, the notification dated 26.3.2001 did not vest any right in the Appellant that he must get extension and continue after 4.9.2001. Even an appointment order can be withdrawn before a person actually takes over. Of course, some justification has to be given. In the present case, before the extension could be affected from 5.9.2001, the same was withdrawn. So far as the argument that this amounts to removal, has no leg to stand. By Virtue of the notification dated 26.3.2001 the Appellant was supposed to hold office from 4.9.2001 and prior to that he had been holding office by Virtue of notification dated 5.9.98 upto 4.9.2001. Therefore he was not being removed while in office. The notification dated 26.3.2001 never became effective, so the question of

cancellation of the notification being treated as removal of the Appellant, does not arise. As stated above, there is no question of estoppel arising in this case as no right came to be Vested in the Appellant by Virtue of the notification dated 26.3.2001.

6. For the foregoing reasons, we find no merit in this appeal. It is hereby dismissed. No order as to costs.