

(2006) 02 GAU CK 0041
In the Gauhati High Court
Case No : WA No. 570 of 2005

State of Assam and Others

APPELLANT

Vs

Makhan Pegu and Others

RESPONDENT

Date of Decision : 02-02-2006

Acts Referred:

Missing Autonomous Council Act, 1995 — Section 80

Citation : (2006) 2 GLR 516 : (2006) 1 GLT 472

Hon'ble Judges : B. Sudershan Reddy, C.J.;H.N. Sharma, J

Bench : Division Bench

Advocate : A.C. Buragohain, P.K. Mushahari and B.J. Talukdar, for the Appellant;
N. Dutta, G.K. Bhattacharyya, B. Chetri, P. Sarma and B. Choudhury, for the
Respondent

Final Decision : Allowed

Judgement

B. Sudershan Reddy, C.J.—This appeal raises the following questions:

(1) Whether proviso to Section 80 of the Missing Autonomous Council Act, 1995, as amended, confers power on the State Government to remove members of the Interim General Council or the Executive Council as the case may be appointed u/s 80 at the pleasure of the Government?

(2) Whether principles of natural justice are required to be followed before passing orders removing such nominated members of Interim General Council or the Executive Council, as the case may be?

2. This appeal is directed against the judgment and order of the learned Single Judge which allowed the writ petition filed by the respondents herein challenging the order dated 30.11.2004 passed by the State Government removing them from the Executive Council in exercise of powers conferred u/s 80 of the aforesaid Act. Learned Judge took the view that the removal of the writ petitioners on the ground of their unsatisfactory nature of works as Executive Members of the Council is stigmatic in nature and entails civil consequences.

Learned Judge, thus, concluded that such an action could not have been taken without providing any opportunity of being heard to the writ petitioners.

3. Learned Additional Advocate General appearing for the State, inter alia, submitted that there is no notice required to be issued for removing the members of the Interim General Council or the Executive Council as the case may be, inasmuch as, law does not provide for issuing any such notice. There is no assured term for which the members of the Executive Council have been appointed and they hold office during the pleasure of the Governor. It was submitted that the view taken by the learned Judge that opportunity was required to be provided to the writ petitioners before their removal and replacement by others, is erroneous one.

4. Per contra, Shri N. Dutta, learned senior counsel appearing for the Respondents, submitted that the writ petitioners have been removed from the Executive Council on the basis of letter dated 29.11.2004 addressed by the Chief Executive Councilor expressing dissatisfaction with the works of the writ petitioners. The letter is stigmatic in nature casting aspersion on the integrity in performance of duty by the petitioners as members of the Executive Council. Such an order resulting in far reaching civil consequences so far as the writ petitioners are concerned could not have been passed without providing reasonable opportunity of being heard in the matter. The impugned order of removal, according to the learned senior counsel, is based on extraneous consideration and to be precise, on political considerations.

5. Before we proceed to consider the submissions made during the course of hearing of this writ appeal, it would be appropriate to notice Section 80 of the Act, which reads as under:

80. Transitional provision. - The Government shall, as soon as possible, take steps for the constitution of an Interim General Council by nomination and to nominate the executive council therefrom to perform in addition, the function of the village councils till the general council is constituted under this Act.

6. A bare reading of the provisions makes it clear that the Government is duty bound, as soon as possible, to take steps for constitution of an Interim General Council by nomination and to nominate Executive Council therefrom to perform duties till the General Council is constituted in accordance with the provisions of the Act. The whole thing is transitional in nature. The nomination so made to the Interim General Council or to the Executive Council is not for any particular period; it does not assure any tenure as such. They obviously hold the office during the pleasure of the State Government. Precisely, for that reason, the proviso confers unfettered discretion upon the Government to remove any or all of the members of such Interim General Council or the Executive Council, as the case may be, being replaced by any other persons of the Government's choice. The proviso does not admit any other interpretation. The individuals nominated as members to the Interim General Council and as well as Executive Council is a

temporary measure till the General Council is constituted in accordance with the provisions of the Act are liable to be removed or replaced by the Government at any time without assigning any reason whatsoever.

7. In *Mohesh Doley v. State of Assam* 2003 (1) GLT 33, this Court after an elaborate consideration of the matter found that such nominated persons to the General Council or the Executive Council, as the case may be, hold office during pleasure of the State Government. The nomination, if made, on the basis of political considerations, there will be no violation of law if such members are removed or replaced on political consideration. The learned Judge rightly relied on the judgment of the Supreme Court in *Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others*, in which the Supreme Court took the view that "if such appointments made initially by nomination based on political consideration, there can be no violation of any provision of the Constitution in case the Legislature authorize the State Government to terminate such appointments at its pleasure and to nominate new members in their place...such provision neither offends any Article of the Constitution nor the same is against any public or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained...any stigma on the performance or character of the nominated members. It is done purely on political consideration."

8. The view taken by the Division Bench of this Court vide order dated 21.11.2001 made on PIL No.28/2001 that "this must not be vindictive and arbitrary action and/or it should not be used as a tool to throw out political opponent", is required to be understood in the light of the law laid down by the Apex Court in *Om Narain Agarwal* (supra). The Division Bench did not have the advantage of looking into the ratio and principles laid down in *Om Narain Agarwal* (supra).

9. The writ petitioners were nominated/as is evident from the order dated 11.4.2002, by the Governor of Assam while reconstituting the Missing Autonomous General Council and the Missing Autonomous Executive Council by replacing the earlier one. They had not been appointed for any particular tenure. The order by which they have been nominated is self-explanatory in nature, in which it is implicit that a nominated member holds office during the pleasure of the State Government.

10. In *Krishna v. State of Maharashtra* (2001) 2 SCC 441, the Apex Court while interpreting the provisions of the Nagpur Improvement Trust Act, 1936 took a view that "once the doctrine of pleasure is applicable, neither the principles of natural justice would step in nor any question of giving an opportunity before removal would arise". We are of the considered opinion that the doctrine of pleasure was duly incorporated and implicit in Section 80 as well as in proviso to it.

11. The Rule one holds office at the pleasure of the Government has its origin in the Latin phrase "durante bene placito" meaning that the tenure of office except where it is otherwise provided by statute, can be terminated at any time without cause assigned. Whether in a given situation, the stated Rule is fully applicable or not or whether any restrictions or limitations are placed on the exercise of that pleasure and whether those restrictions must be given effect to may depend upon the statutory scheme. In a given case, if there is a breach of restrictions imposed by the Statute by the Government, the matter becomes justiciable and the party aggrieved may be entitled to suitable relief at the hands of the Court.

12. The pleasure of the Government is in no way controlled by any of the provisions under the Statute with which we are concerned for the present. There is nothing to suggest excluding from the operation of the absolute doctrine of pleasure. There is no restriction imposed upon the State Government in whatsoever manner and structuring the exercise of pleasure.

13. It is settled law that the pleasure doctrine relates to tenure of a person to public office. "Tenure" means "manner, conditions or term of holding something" according to Webster's Third New International Dictionary, and "terms of holding; title; authority" according to the Oxford English Dictionary. It, therefore, means the period for which the incumbent of office holds it. In the absence of any tenure to hold the office, the office holder holds the office subject to pleasure doctrine except as expressly provided by the Statute.

14. Be that as it may, whether the impugned Notification replacing the writ petitioners is stigmatic in its nature? The Notification by itself does not cast any stigma on any of the writ petitioners. The Government exercised its power merely replacing the writ petitioners with another set of individuals without assigning any reason whatsoever. But the contention was that the Notification is based on latter dated 29.11.2004 sent by the Chief Executive Councillor addressed to the State Government, which is to the following effect:

I have the honour to inform you that I am totally not satisfied with the works of the following Vice-Chairman and Executive Members of my Council.

1. Shri Bhaben Narah, Vice Chairman.
2. Shri Makhan Pegu, Executive Member.
3. Shri Priya Paban Doley, Executive Member.
4. Shri Hema Lagachu, Executive Member.
5. Shri Mahananda Doley Executive.
6. Shri Jatin Paw, Executive Member.

As such, I would like to request you to pass necessary orders to drop the above mentioned Vice Chairman and Executive Members from the Missing Autonomous Council and in place of them the following persons may kindly be included in the

Council for greater interest and speedy development of the ongoing Schemes of the Council.

15. The impugned Notification does not suggest that the power to replace the writ petitioners has been exercised based on the said letter. In such circumstances, piercing the veil is impermissible and the Court cannot presume that the impugned Notification has been issued based on the said letter. But even otherwise the letter dated 29.11.2004 referred to hereinabove does not cast any aspersion and/or stigma on any of the writ petitioners. Expressing one's dissatisfaction in no manner cast any stigma.

16. For all the aforesaid reasons, we do find any merit in the writ petition and the same shall accordingly stand dismissed.

17. In the result, the judgment under appeal is set aside and the writ appeal is allowed without any order as to costs.