

(2016) 11 GAU CK 0101

In the Gauhati High Court

Case No : Writ Petition (C) Nos. 5373, 6506, 6516, 6532, 6534, 6545, 6547, 6548, 6551, 6561, 6575, 6582, 6586, 6598, 6603, 6646, 6659, 6663, 6692, 6726, 6726, 6749, 6773, 6777 and 6828 of 2016

The Sub-Divisional Minorities Development Board

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 GauLJ 709 : (2016) 5 GauLT 199

Hon'ble Judges : A.K. Goswami, J.

Bench : Single Bench

Advocate : Mr. T.C. Chutia, GA and Mr. Y. Doloi, Addl. AG, for the Respondents; Mr. S.K. Talukdar, Mr. A.J. Atia, Mr. B.D. Goswami, Mr. A.M. Borbhuiyan, Mr. A. Roshid and Mr. A.B.T. Haque, Advocates, for the Petitioners

Final Decision : Dismissed

Judgement

A.K. Goswami, J. - WP(C) No.5373/2016, (2) WP(C) No.6506/2016, (3) WP(C) No.6516/2016, (4) WP(C) No.6532/2016, (5) WP(C) No.6534/2016, (6) WP(C) No.6545/2016, (7) WP(C) No.6547/2016, (8) WP(C) No.6548/2016, (9) WP(C) No.6551/2016, (10) WP(C) No.6561/2016, (11) WP(C) No.6575/2016, (12) WP(C) No.6582/2016, (13) WP(C) No.6586/2016, (14) WP(C) No.6598/2016, (15) WP(C) No.6603/2016, (16) WP(C) No.6646/2016, (17) WP(C) No.6659/2016, (18) WP(C) No.6663/2016, (19) WP(C) No.6692/2016, (20) WP(C) No.6726/2016, (21) WP(C) No.6749/2016, (22) WP(C) No.6773/2016, (23) WP(C) No.6777/2016 and (24) WP(C) No.6828/2016 are being disposed of by this common order.

2. I have heard Mr. A.J. Atia, learned counsel for the petitioners in WP(C) No.6506/2016, WP(C) No.6545/2016, WP(C) No.6547/2016, WP(C) No.6551/2016, WP(C) No.6659/2016, WP(C) No.6663/2016, Mr. S.K. Talukdar, learned counsel for the petitioners in WP(C) No.5373/2016, WP(C)

No.6532/2016, WP(C) No.6548/2016, WP(C) No.6561/2016 WP(C) No.6575/2016, WP(C) No.6582/2016, WP(C) No.6586/2016, WP(C) No.6726/2016, WP(C) No.6749/2016; Mr. B.D. Goswami, learned counsel for the petitioners in WP(C) No.6516/2016 and WP(C) No.6534/2016; Mr. A. Roshid, learned counsel for the petitioners in WP(C) No.6692/2016, WP(C) No.6828/2016; Mr. A.B.T. Haque, learned counsel for the petitioners in WP(C) No.6773/2016 and WP(C) No.6777/2016, Mr. A.M. Borbhuiyan, learned counsel for the petitioners in WP(C) No.6598/2016, WP(C) No.6603/2016 and WP(C) No.6646/2016. I have also heard Mr. Y. Doloi, learned Additional Advocate General, Assam as well as Mr. T.C. Chutia, learned Government Advocate, Assam.

3. WP(C) No.5373/2016, WP(C) No.6506/2016, WP(C) No.6545/2016, WP(C) No.6547/2016, WP(C) No.6551/2016, WP(C) No.6646/2016, WP(C) No.6659/2016, WP(C) No.6663/2016, WP(C) No.6726/2016 are filed by Sub-Divisional Minorities Development Boards of Karimganj, Golaghat, Morigaon, Dibrugarh, Dhakuakhana, Hailakandi, Gossaigaon, Diphu and Silchar, respectively, along with their respective Chairmen.

4. WP(C) No.6532/2016, WP(C) No.6561/2016, WP(C) No.6575/2016, WP(C) No.6582/2016, WP(C) No.6598/2016, WP(C) No.6603/2016, WP(C) No.6749/2016, WP(C) No.6777/2016 are filed by Sub-Divisional Scheduled Castes (SC) Development Boards of Nagaon, Morigaon, Tinsukia, Hojai, Silchar, Lakhimpur, Karimganj and Barpeta, respectively, along with their respective Chairmen.

5. WP(C) No.6548/2016, WP(C) No.6586/2016, WP(C) No.6692/2016, WP(C) No.6773/2016, WP(C) No.6828/2016 are filed by Sub-Divisional Other Backward Classes (OBC) Development Boards of Hojai, Nagaon, Lakhimpur, Karimganj and Silchar, respectively, along with their respective Chairmen.

6. WP(C) No.6516/2016 is filed by Project Implementation Committee (PIC), Integrated Tribal Development Project (ITDP) Boards of Goalpara, Morigaon, Hojai and Mangaldoi along with their respective Chairmen.

7. WP(C) No.6534/2016 is filed by Sub-Divisional Welfare Boards for Scheduled Tribes (ST) of Goalpara, Rangia, Mangaldoi, Hojai and Bongaigaon along with their respective Chairmen.

8. Challenge in WP(C) No.5373/2016, WP(C) No.6506/2016, WP(C) No.6545/2016, WP(C) No.6547/2016, WP(C) No.6551/2016, WP(C) No.6646/2016, WP(C) No.6659/2016, WP(C) No.6663/2016, and WP(C) No.6726/2016 is the order dated 26.08.2016 passed by the Commissioner & Secretary to the Government of Assam, Welfare of Minorities and Development Department, whereby the aforesaid Boards were dissolved along with others. By the said order, jurisdictional Deputy Commissioners/Sub-Divisional Officers (Civil) were directed to take over charges of the respective Boards and to continue to hold the charges till new Boards are constituted. The order, without the names of the Boards, etc., which are mentioned in a tabular form, is extracted herein

below:

"The Governor of Assam is pleased to dissolve the below mentioned Sub-Divisional Minorities Development Boards which were earlier constituted vide Notifications mentioned therein with immediate effect.

*** **

The concerned Deputy Commissioner/Sub-Divisional Officer (Civil) will take over charges of the concerned Sub-Divisional Minorities Development Board and will continue to hold the charge till new Sub-Divisional Minorities Development Boards are constituted."

9. Karimganj, Golaghat, Morigaon, Dibrugarh, Dhakuakhana, Hailakandi, Gossaigaon, Diphu and Silchar Sub-Divisional Minorities Development Board were constituted on 18.01.2016, 12.06.2012, 12.06.2012, 12.06.2012, 31.07.2013, 04.07.2013, 13.12.2013, 12.06.2012 and 03.08.2012, respectively.

10. Challenge in WP(C) No.6532/2016, WP(C) No.6561/2016, WP(C) No.6575/2016, WP(C) No.6582/2016, WP(C) No.6598/2016, WP(C) No.6603/2016, WP(C) No.6749/2016, WP(C) No.6777/2016 is an order dated 20.10.2016 passed by the Additional Chief Secretary to the Government of Assam, Welfare of Minorities & Development Department, dissolving the Sub-Divisional Scheduled Castes (SC) Development Boards. The relevant portion of the impugned order dated 20.10.2016 reads as under:

"In the interest of public service and smooth functioning of the Central and State Sector Schemes for the development of Scheduled Castes, the Governor of Assam is pleased to dissolve all the Sub-Divisional Welfare Boards for Scheduled Castes (excluding District Council areas) constituted by the Department with immediate effect."

11. Nagaon, Morigaon, Tinsukia, Hojai, Silchar, Lakhimpur, Karimganj and Barpeta Sub-Divisional Scheduled Castes (SC) Development Boards were constituted on 31.07.2015, 07.01.2015, 12.06.2015, 12.06.2015, 02.06.2015, 07.10.2015, 18.02.2015 and 26.02.2015, respectively.

12. Challenge in WP(C) No.6548/2016, WP(C) No.6586/2016, WP(C) No.6692/2016, WP(C) No.6773/2016, WP(C) No.6828/2016 is an order dated 20.10.2016 passed by the Commissioner and Secretary to the Government of Assam, WPT and BC Department, dissolving the Boards. The relevant portion of the impugned order dated 20.12.2016 is reproduced herein below:

"In the interest of public service and smooth functioning of the Central and State Sector Schemes for the development of Other Backward Classes, the Governor of Assam is pleased to dissolve all the Sub-Divisional Welfare Boards for Other Backward Classes (excluding District Council areas) constituted by the Department with immediate effect."

13. Hojai, Nagaon, Lakhimpur, Karimganj and Silchar Sub-Divisional Other

Backward Classes (OBC) Development Boards were constituted on 13.07.2015, 01.03.2016, 30.12.2015, 07.01.2015 and 17.07.2015, respectively.

14. Challenge in WP(C) 6516/2016 is an order dated 20.10.2016 passed by the Commissioner and Secretary to the Government of Assam, WPT and BC Department, dissolving the Project Implementation Committee (PIC), Integrated Tribal Development (ITDP) Boards. The relevant portion of the impugned order reads as follows:

"In the interest of public service and smooth functioning of the Central and State Sector Schemes for the development of Scheduled Castes, the Governor of Assam is pleased to dissolve all the Project Implementation Committee of Integrated Tribal Development Projects for Scheduled Tribes (excluding District Council areas) constituted by the Department with immediate effect."

15. Project Implementation Committee (PIC), Integrated Tribal Development (ITDP) Boards of Goalpara, Morigaon, Hojai and Mangaldoi were constituted by Notifications dated 19.10.2015, 02.11.2015, 29.09.2015 and 06.01.2016, respectively.

16. Challenge in WP(C) 6534/2016 is an order dated 20.10.2016 passed by the Commissioner and Secretary to the Government of Assam, WPT and BC Department, dissolving the Sub-Divisional Welfare Boards for Schedule Tribes. The relevant portion of the impugned order reads as follows:

"In the interest of public service and smooth functioning of the Central and State Sector Schemes for the development of Scheduled Tribes, the Governor of Assam is pleased to dissolve all the Sub-Divisional Welfare Boards for Scheduled Tribes (excluding District Council areas) constituted by the Department with immediate effect."

17. Sub-Divisional ST Development Boards of Goalpara, Rangia, Mangaldoi, Hojai and Bongaigaon were constituted by Notifications dated 16.10.2015, 29.09.2015, 29.09.2015, 16.10.2015 and 19.11.2015, respectively.

18. There is a Notification dated 20.02.2014, whereby guidelines were issued for constitution of SC/ST/OBC Development Boards at the Sub-Divisional Welfare Offices (SDWO) and constitution of PICs in ITDPs. Amongst others, as per the said Notification dated 20.02.2014, prospective candidates are required to make applications for appointment as Chairman/Members of the Board along with recommendation from the Deputy Commissioner concerned. The term of office as indicated in the Notification reads as under:

"Term of Office:

The term of office of the Board shall not exceed five years. The term of office shall be reckoned with effect from the date of notification constituting the Board. Provided that, if the Government is of the opinion that circumstances so exist whereby the orderly conduct of business of the Board is not possible, the

Government may by notification dissolve the Board."

19. Subsequently, a Notification was issued on 12.09.2014 in modification of the Notification dated 20.02.2014 requiring submitting of applications with recommendation from the Deputy Commissioner/Minister (in-charge) concerned. By the said Notification dated 12.09.2014, the term of office of the Board was amended to the effect that same shall not exceed three years.

20. One more Notification was issued on 08.05.2015, whereby it was laid down that if there is any proposal for dissolving the existing Project Implementation Committee/Development Boards, the reason for the same would be clearly indicated and that if there is any proposal for removal of any Member, the enquiry report establishing the facts, after giving reasonable opportunity to the Member, should be enclosed.

21. So far as Sub-Divisional Minorities Development Boards are concerned, a Notification dated 02.07.2014 was issued by the Secretary to the Government of Assam, Welfare of Minorities and Development Department, framing certain guidelines relating to constitution and functioning of the Sub-Divisional Minorities Development Boards. The term of Office, as laid down in Clause-4 of the Notification dated 02.07.2014, reads as follows:

"IV. Term of Office:

The term of office of the Board shall not exceed five years. The term of office shall be reckoned with from the date of notification constituting the Board. Provided that, if the Government is of the opinion that circumstances so exist whereby the orderly conduct of business of the Board is not possible, the Government may by notification dissolve the Board."

22. The order constituting the Sub-Divisional Minorities Development Boards provides that the tenure of the Board shall be (i) till a new Board is constituted by the Government; (ii) till the Board enjoys the confidence of the Government; and (iii) if any charges of illegality established against the Board, the Board may be dissolved by the Government at any point of time.

23. Learned counsel appearing for the Sub-Divisional Minorities Development Boards have submitted that though such Boards were constituted prior to coming into force of the aforesaid notification dated 02.07.2014, the notification will apply to existing Boards and, therefore, they having not completed a period of five years, the impugned order of dissolution is clearly not sustainable in law. They also submit that there was no formation of opinion that circumstance had existed as a result of which orderly conduct of the business of the Board was not possible. It is submitted that as the Boards are not reconstituted, even in terms of the order constituting the Board, the impugned order is plainly not sustainable in law as condition precedent was not fulfilled.

24. Learned counsel appearing for SC/ST/OBC Boards as well as PIC, ITDP have submitted that none of the Boards/PIC had completed three years from the date

of issue of the notification constituting the Boards/PIC and, therefore, the impugned order of dissolution of the Board/PIC is, ex facie, illegal and arbitrary. They have submitted that the impugned orders had been issued in violation of the principles of natural justice. They also submit that dissolution of the Boards before the tenure of three years may be permissible only if there was formation of an opinion that circumstance had existed as a result of which orderly conduct of the business of the Board was not possible. However, as the impugned orders do not reflect recording of any formation of opinion and satisfaction, the same are liable to be set aside and quashed. Learned counsel for the petitioners have also submitted that assuming that power is vested on the State Government on the touchstone of doctrine of pleasure, the same cannot be invoked arbitrarily and for collateral purposes, as had been done in the instant case. Reliance is placed in this connection in the judgement of the Apex Court in the case of B.P. Singhal v. Union of India & Anr., reported in (2010) 6 SCC 331.

25. Mr. Y. Doloi, learned Additional Advocate General, Assam as well as Mr. T.C. Chutia, learned State counsel, submit that all these writ petitions are covered by the judgement and order of this Court rendered in the case of Mahadev Panging v. State of Assam, reported in (2016) 2 GLR 831 and, therefore, they are liable to be dismissed at the threshold. It is submitted that the Chairmen/Members of these Boards/PIC are not appointed to any selection post and constitution of the Boards/PIC was not by any selection process, as is generally understood, and Boards/PIC are constituted by way of nomination only. The petitioners cannot claim any indefeasible right to continue for a fixed period. This Court had held that it is the prerogative of the State to replace and reconstitute the Boards/PIC by applying the doctrine of pleasure. They contend that plea raised with regard to violation of principles of natural justice is entirely misplaced. It is submitted that by order dated 23.05.2016 in the case of Tarun Namasudra v. Union of India & Ors. [WP(C) No.4595/2015 and other connected cases], the judgement rendered in Mahadev Panging (supra) was followed.

26. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

27. As the learned Additional Advocate General, Assam and the learned State counsel have submitted that these cases are covered by the judgement rendered in Mahadev Panging (supra), at the outset, it will be only appropriate to consider as to whether these cases are covered by the aforesaid judgement.

28. While rendering the judgement of Mahadev Panging (supra), this Court had considered the law laid down in B.P. Singhal (supra) and thereafter, at Paragraphs-20, 21 and 22 had observed as follows:-

"20. As noted above in none of the notifications constituting the board and appointing the petitioners as Chairman any fixed tenure was specified. It was only on 20/02/2014, the Government issued guidelines regarding constitution and functioning of the boards. The qualifications/disqualifications and the method

of selection etc. were also laid down. As regards the tenure of office, for the first time, it was laid down that the same shall not exceed five years, meaning thereby that the same could be less than 5 (five) years also. By bringing the modification vide Annexure-3 notification dated 12/09/2014, the term of office of the board was specified to be not exceeding 3 (three) years. As in the case of 5 (five) years in the case of 3 (three) years also, having regard to the specification "not to exceed", coupled with the nature of selection and appointment, it cannot be said that the petitioners are entitled to hold office for a fixed tenure of five years. As per their own showing, no such fixed tenure was available for any boards and for that matter in all the boards.

21. Above apart, the petitioners are also not occupying any selection post. The post they had held are purely in the domain of the Doctrine of Pleasure and not otherwise. In the notifications constituting the respective board and nominating the members, it was never specified that their term of office would be for five years. For the first time in 2014, two notifications, referred to above, were issued laying down the guidelines towards constituting the board and selecting the members. In these two notifications also, no fixed tenure has been prescribed. What has been said is that the term of office shall not exceed 5 (five) years (now three years). Pursuant to such notifications, all the boards have been dissolved and reconstituted.

22. Another point urged by the petitioners is that the private respondents were not appointed as per the requirement of the guidelines. In the counter affidavit filed by the respondents, it is their specific case that they were recommended by the concerned Minister. It being within the domain of the Government to appoint and re-appoint members and also to constitute and reconstitute the board, I am of the considered opinion that the issue raised in this writ petition cannot be viewed within the principles of judicial review exercising writ jurisdiction."

29. So far as the Sub-Divisional Minorities Development Boards are concerned, the order constituting such Boards did not specify any specific tenure. It must be noted that all the Sub-Divisional Minorities Development Boards were constituted prior to coming into force of the notification dated 02.07.2014, which provided that term of the office of the Board shall not exceed five years. As regards SC/ST/OBC Boards/PIC, the term of the office of the Board shall not exceed three years and, therefore, for such Boards/PIC also, there is no fixed period providing term of the office. The Chairmen/Members of the Sub-Divisional Minorities Development Boards/SC/ST/OBC Boards/PIC are not occupying any selection post and these are not statutory bodies also. Though in Mahadev Panging (supra), PIC/ITDP and SC Boards were under consideration, Sub-Divisional Minorities Development Boards, ST/OBC Boards are also on the same footing as PIC/ITDP and SC Boards. In Mahadev Panging (supra), PIC/ITDP and SC Boards, constituted prior to issuance of notification dated 20.10.2014, were under consideration. However, the same will have no material bearing in respect of Boards/PIC, which were constituted subsequent to the issuance of the said

notification. Though there is a selection committee for the purpose of making appointment, in Mahadev Panging (supra), having regard to the specification that the term of office of the Board "shall not exceed three years", coupled with the nature of selection and appointment, this Court had observed that it cannot be said that the petitioners in the said cases are entitled to hold office for a fixed tenure. This Court had held that the posts held by the Chairman and the Members of the Boards are purely in the domain of doctrine of pleasure. It was held in the said case that the constitution and reconstitution of the Board is at the pleasure of the Government and there is no enforceable right of the nominated Members to continue to hold office for any fixed tenure. In that view of the matter, I am of the considered opinion that this batch of writ petitions are covered by the judgement and order rendered in the case of Mahadev Panging (supra).

30. In view of the above discussions, I find no merit in these writ petitions and accordingly, they are dismissed. No cost.