

## Uttar Dhemaji Gaon Panchayat and Others Vs State of Assam and Others

**Court:** Gauhati High Court

**Date of Decision:** May 25, 2007

**Acts Referred:** Constitution of India, 1950 " Article 243E, 243K, 243U

**Citation:** (2009) 5 GLR 272 : (2007) 3 GLT 899

**Hon'ble Judges:** T. Nanda Kumar Singh, J

**Bench:** Single Bench

### Judgement

T. Nanda Kumar Singh, J.

By these writ petitions, the petitioners are challenging the impugned order No. PDA 95/2007/2 dated

29.3.2007 issued by the Joint Secretary to the Government of Assam, Panchayat & Rural Development Department and such being the situation,

these writ petitions are being disposed of by this common judgment and order.

2. Heard Mr. A.M. Mazumdar, Mr. A.K. Goswami, Mr. N. Dutta, Mr. A.S. Choudhury learned senior counsels appearing for the petitioners as

well as Mr. A. K. Phukan, learned Advocate General appearing for the State of Assam. Also heard Mr. M.U. Mahmud, learned Standing

Counsel, Assam State Election Commission.

It would be apt to reproduce the impugned order dated 29.3.2007.

Government of Assam

Panchayat & Rural Development Department

Dispur: Guwahati

No.PDA.95/2007/2

dated Dispur, the 29th March, 2007

Notice

This is for information of all concerned that on completion of tenure of 5 (five) years with effect from the date of its first meeting, all Gaon

Panchayats, Anchalik Panchayats and Zilla Parishads shall automatically stand dissolved. Upon such dissolution all properties of such Gaon

Panchayats, Anchalik Panchayats and Zilla Parishads shall be vested in the Government till constitution of new bodies.

However such automatic dissolution shall not take effect where there are direction and order of the Court.

Sd/-A. Phukan, IAS

Joint Secretary to the Government of

Assam, Panchayat & Rural Dev. Department.

3. The learned Counsels appearing for the petitioners as well as the respondents are of unanimous view that these writ petitions are to be

considered and disposed of in the light of the Constitutional mandates under Article 243E of the Constitution of India. Article 243E of the

Constitution of India reads as follows:

243 E. Duration of Panchayats, etc. (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for

five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning

immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed--

(a) Before the expiry of its duration specified in Clause (1);

(b) Before the expiration of a period of six months from the date of its dissolution.

From bare perusal of the impugned order dated 29.3.2007 and also from the submissions of the learned Counsel appearing for the State

respondents it is crystal clear that the Government of Assam issued the impugned Order/Notification for dissolution of the all Gaon Panchayats,

Anchalik Panchayats and Zilla Parishads only on the ground that tenure of five years with effect from the date of its first meeting had expired.

4. Section 5 of the Assam Panchayat Act, 1994 speaks about the establishment of Gaon Panchayat and Section 6 of the said Act clearly relates

with the Constitution of the Gaon Panchayat. Section 7 of the said Act deals with the duration of the Gaon Panchayat. The duration of the Gaon

Panchayat, save as otherwise provided in the Act, shall continue for a term of five years from the date appointed for its first meeting. The meaning

of the terms "first meeting" are clear from Clause (3) of Section 6 of the said Act that the first meeting of the Gaon Panchayat will be the meeting of

the Gaon Panchayat for election of the Vice President amongst the members in the manner prescribed. Such being the situation the duration of the

Gaon Panchayat will be five years from the date of first meeting of the Gaon Panchayat i.e. the meeting for election of Vice President from amongst

the member in the manner prescribed.

5. u/s 31 of the said Act, for each Development Block there shall be an Anchalik Panchayat having jurisdiction, save as otherwise provided in this

Act, over the entire Development Block jurisdiction excluding such portion of the Block as are included in a Town Committee. Section 32 of the

Assam Panchayat Act 1994 deals with the Constitution of Anchalik Panchayat. u/s 35 of the said Act, every Anchalik Panchayat, save as

otherwise provided in this Act, shall continue for a term of five years from the date appointed for its first meeting. The first meeting of the Anchalik

Panchayat would be the meeting for election of President and Vice President of the Anchalik Panchayat respectively according to Section 37 of

the Assam Panchayat Act, 1994.

6. u/s 64 of the Assam Panchayat Act, 1994, for every district there shall be Zilla Parishad having its jurisdiction, save as otherwise provided in this

Act, over the entire district excluding such portions of the district as are included in a Municipality or a Municipal Corporation, as the case may be,

or under the authority of Town Committee or Sanitary Board or Cantonment area or any notified area contrary to it under any law for the time

being in force. Section 65 of the Act deals with the Constitution of Zilla Parishad and the term of the Zilla Parishad is mentioned in Section 68 of

the said Act. Section 68 of the Assam Panchayat Act, 1994 clearly mentions that every Zilla Parishad except as provided in the Act, shall continue

for a period which shall not exceed five years from the date of holding the first meeting. The first meeting of the Zilla Parishad would be the meeting

for election of the President and Vice President of the Zilla Parishad u/s 70, amongst the members directly elected u/s 65(1)(i) of the said Act.

7. u/s 125 (i) of the Assam Panchayat Act, 1994, the Gaon Panchayat, Anchalik Panchayat and Zilla Parishad may be dissolved if in the opinion of

the Government the concerned Panchayat or Parishad exceeds or abuses its powers or is not competent to perform or make persistent default in

the performance of the duties imposed on it under the Act or any other law for the time being in force, by an order of the Government published in

the official Gazette. u/s 125(4)(a) all the powers and duties of the Gaon Panchayat or Anchalik Panchayat or Zilla Parishad shall during the period

of its dissolution be exercised and performed by such person or persons as the Government may from time to time appoint in this behalf; Section

125(4)(b) provides that all the property vested in the Gaon Panchayats or Anchalik Panchayats or Zilla Parishads shall, during the period of

dissolution vest in the Government.

8. In the present case it is the admitted fact that the dissolution of the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads are not for the

reasons mentioned in Clause (1) of Section 125 of the Assam Gaon Panchayat Act, 1994. In other words dissolution of the Gaon Panchayats,

Anchalik Panchayats and Zilla Parishads, in the present writ petitions are not for the reasons mentioned in Clause (1) of Section 125 but because

of the lapses on the part of the State Government as well as on the failure of the State Election Commission to perform their bounden duties to

comply the mandates of the Constitution provided in Article 243E of the Constitution of India where under an election to constitute a Panchayat

shall be completed before the expiry of its duration and before expiry of the period of six (6) months from the date of his dissolution.

9. The State respondents i.e. respondent No. 1, State of Assam, respondent No. 2, Commissioner and Secretary to the Government of Assam,

Panchayat and Rural Development Department, Dispur and respondent No. 3, the Joint Secretary to the Government of Assam, Panchayat &

Rural Development Department, Dispur filed their joint affidavit-in-opposition stating that on completion of the duration of five years of all the

Gaon Panchayats, Anchalik Panchayats and Zilla Parishads from the date of the first meeting, all the Gaon Panchayats, Anchalik Panchayats and

the Zilla Parishads were dissolved vide impugned notice/order dated 29.4.2007 as per the provisions of the Assam Panchayat Act, 1994 and also

as per the Constitutional mandate. It is also further stated in their affidavit that the decision taken by the Government for dissolution of the Gaon

Panchayats, Anchalik Panchayat and Zilla Parishad was not with a view to appoint any ad-hoc bodies for management of the Gaon Panchayats,

Anchalik Panchayats and Zilla Parishads. The State Government-respondents also state in their affidavit that the State Government had already

completed the process for delimitation of Gaon Panchayats, Anchalik Panchayats and Zilla Parishads Constituencies for holding election by the

State Election Commission and necessary funds are being provided to the State Election Commission as per the proposal submitted by the State

Election Commission. As per the provision of Article 243K of the Constitution of India, the State Election Commission is to function independently

of the State concerned in the manner of superintendence, direction and control of the election and preparation of electoral rolls and for the conduct

of all election to the local bodies (Panchayat and Municipality local body). From the affidavit-in-opposition of the State respondents, it appears

that the State respondents are alleging that the State Election Commissioner is responsible for failure to hold the election of the Panchayat and the

Zilla Parishad in compliance of the mandate of the Constitution mention in Clause (3) of the Article 243E of the Constitution of India.

10. The State Election Commission by filing affidavit-in-opposition gives the reasons for the failure to comply the mandate of the Constitution under

Clause (3) of Article 243E of the Constitution of India, which are contradictory to the case of the State-respondents in their joint affidavit. The

State Election Commission in affidavit-in-opposition state that the failure of performance of their constitutional duties for holding Panchayat election

as per the Constitutional mandate within the period of five years were because of the failure of the State Government to fix tentative date proposed

for holding Panchayat Election in the State of Assam. The State Election Commission also state in the affidavit that the Assam State Election

Commission was established in the year 1994 and since then it has been running under the Directorate of Panchayat and Rural Development

particularly in financial matters. The other reasons for the failures on the part of the State Election Commission to perform its duties as per the

Constitutional mandates to hold the election of the Panchayat is because of the failure on the part of the State respondents to release the funds for

holding the election.

11. u/s 114 of the Assam Panchayat Act, 1994, the superintendence, direction and control of the preparation of electoral roll and the conduct of

all elections to the Panchayats shall be vested in a State Election Commission consisting of State Election Commissioner to be appointed by the

Governor. The Government shall when so requested by the State Election Commission, make available to the State Election Commission such staff

as may be necessary for the discharge of the functions conferred on the State Election Commission under the Act. It is the admitted fact that the

Governor of Assam has appointed the State Election Commission. From the conjoint reading of Article 243K of the Constitution of India and

Section 114 of the Assam Panchayat Act, 1994 it is crystal clear that it is the State Election Commission who shall conduct election to the

Panchayat and Zilla Parishads and also it is the bounden duty of the State Government to make available to the State Election Commission such

staff as may be necessary for the discharge of the function conferred on the State Election Commission and also available the funds for holding the

election.

12. The Apex Court in Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and Others, had analyzed Article 243U of the

Constitution of India which is pari-materia with the Article 243E of the Constitution of India. The Apex Court in Kishansing Tomar (supra) held

that it is incumbent upon the State Election Commission and other authorities to carry out mandate of the Constitution and also to see that a new

Municipality is constituted in time and the elections to a Municipality are conducted before the expiry of its duration of five years as mandatory

specified in Article 243U(1) of the Constitution of India. The State Election Commission shall not put forward any excuse based on unreasonable

ground that the election could not be completed in time.

Para Nos. 13,14,19,20 and 21 of SCC in Krishansing Tomar (supra) are quoted hereunder:

13. The effect of Article 243U of the Constitution is to be appreciated in the above background. Under this article, the duration of the municipality

is fixed for a term of five years and it is stated that every municipality shall continue for five years from the date appointed for its first meeting and

no longer. Clause (3) of Article 243U States that election to constitute a municipality shall be completed--(a) before the expiry of its duration

specified in Clause (1), or (b) before the expiration of a period of six months from the date of its dissolution. Therefore, the constitutional mandate

is that election to a municipality shall be completed before the expiry of the five years" period stipulated in Clause (1) of Article 243U and in case

of dissolution, the new body shall be constituted before the expiration of a period of six months and elections have to be conducted in such a

manner. A proviso is added to Sub-clause (3) of Article 243U that in case of dissolution, the remainder of the period for which the dissolved

municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the

municipality for such period. It is also specified in Clause (4) of Article 243U that a municipality constituted upon the dissolution of a municipality

before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued

under Clause (1) had it not been so dissolved.

14. So, in any case, the duration of the municipality is fixed as five years from the date of its first meeting and no longer. It is incumbent upon the

Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new municipality is constituted in time and

elections to the municipality are conducted before the expiry of its duration of five years as specified in Clause (1) of Article 243U.

19. From the opinion thus expressed by this Court, it is clear that the State Election Commission shall not put forward any excuse based on

unreasonable grounds that the election could not be completed in time. The Election Commission shall try to complete the election before the

expiration of the duration of five years" period as stipulated in Clause (5). Any revision of electoral rolls shall be carried out in time and if it cannot

be carried out within a reasonable time, the election has to be conducted on the basis of the then existing electoral rolls. In other words, the

Election Commission shall complete the election before the expiration of the duration of five years" period as stipulated in Clause (5) and not yield

to situations that may be created by vested interests to postpone elections from being held within the stipulated time.

20. The majority opinion in *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman* held that the fact that certain claims and objections are not finally

disposed of while preparing the electoral rolls or even assuming that they are not filed in accordance with law cannot arrest the process of election

to the legislature. The election has to be held on the basis of the electoral rolls, which are in force on the last date for making nomination. It is true

that the Election Commission shall take steps to prepare the electoral rolls by following due process of law, but that too, should be done timely and

in no circumstances, it shall be delay so as to cause gross violation of the mandatory provisions contained in Article 243U of the Constitution.

21. It is true that there may be certain man-made calamities, such as rioting or breakdown of law and order, or natural calamities which could

distract the authorities from holding elections to the municipality, but they are exceptional circumstances and under no (sic other) circumstances

would the Election Commission be justified in delaying the process of election after consulting the State Government and other authorities. But that

should be an exceptional circumstance and shall not be a regular feature to extend the duration of the municipality. Going by the provisions

contained in Article 243U, it is clear that the period of five years fixed there under to constitute the municipality is mandatory in nature and has to

be followed in all respects. It is only when the municipality is dissolved for any other reason and the remainder of the period for which the dissolved

municipality would have continued is less than six months, it shall not be necessary to hold any elections for constituting the municipality for such

period.

13. Mr. A.K. Phukan, learned Advocate General appearing for the State Government as well as Mr. N. Medhi and Mr. M.U. Mahmud, learned

Counsel appearing for the State Election Commission submit that the constitutional authorities like the State Election Commission and also the

State Government are duty bound to carry out the mandate of the Constitution under Article 243E of the Constitution of India to hold election to

constitute Gaon Panchayat, Anchalik Panchayat and Zilla Parishad before the expiry of the duration; and therefore, they are admitting the failure of

the State Government and State Election Commission to fulfill the mandate of the Constitution to hold the election for Constitution of Gaon

Panchayats, Anchalik Panchayats and Zilla Parishads before the expiry of the term. But the core question in the present cases is that who would be

the appropriate authority to function the Gaon Panchayat, Anchalik Panchayat and Zilla Parishad in the interregnum i.e. the period from the date of

dissolution of the Panchayats and the Zilla Parishads to the date of the constitution of new Gaon Panchayats and Zilla Parishads after completion of

the election in compliance with the mandate of the Constitution of India. In the present case, admittedly all the Gaon Panchayats, Anchalik

Panchayats and Zilla Parishads are not dissolved for the fault of the concerned Panchayat and the Zilla Parishad u/s 125(i) of the Assam Panchayat

Act, 1994 but the dissolution was because of the failure on the part of the State Government and the State Election Commission to perform their

duties to fulfill the mandate of the Constitution of India to hold election to constitute the Gaon Panchayat, Anchalik Panchayat and Zilla Parishad

before the expiry of duration i.e. within five years from the date of their first meeting. Therefore, the State Government by taking the advantage of

their own wrong cannot take over the functioning of all the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads through their employees till

the Constitution of the new Gaon Panchayats, Anchalik Panchayats and Zilla Parishads after the completion of the election. It is well settled

principle of law that no one can take the advantage of his own wrong. Reference to be made to the decision of the Kerala High Court (Full Bench)

in Kanakku Kumara Pillai Thanu Pillai Vs. Mathevan Mathevan of Aravamkadu Karakkattu Madathu Veedu and Another, and the decision of

Shri. Amrik Singh and Others Vs. Union of India (UOI) and Others, wherein the Apex Court held that if there was any administrative lapses the

concerned employee could not be victimized.

14. From the above discussion and also in the peculiar facts and circumstances of writ petitions wherein the State-respondents and the State

Election Commission have admitted their failure to perform their duties to carry out the mandate of the Constitution of India discussed above, these

writ petitions are disposed of with the following directions-

(a) The State Election Commission as contemplated under Article 243 K of the Constitution of India and the Section 114 of the Assam Panchayat

Act, 1994 is to function independently of the State Government in the matter of their power of superintendence, direction and control and conduct

of all the election to all the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads.

(b) The State Election Commission has to fix the date for holding election to all the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads.

(c) The State respondents are to fulfill the requirements of the State Election Commission as maybe necessary for the discharge of the functions of

the State Election Commission for holding election to all Gaon Panchayats, Anchalik Panchayats and Zilla Parishads.



(d) The Gaon Panchayat, Anchalik Panchayat and Zilla Parishad whose terms had expired because of the failure on the part of the State

respondents and the State Election Commission to fulfill the mandates of the Constitution to hold the election before the expiry of their term shall be

allowed to function till the constitution of the new Gaon Panchayats, Anchalik Panchayats and Zilla Parishads after completion of the election but

they are not allowed to take any major policy decision, make any expenditure from the funds other than the payment of salaries of the staffs and

routine function of the office without the permission of this Court.

(e) All the elections to the Gaon Panchayats, Anchalik Panchayats and Zilla Parishads shall be completed on or before 31.10.2007.

15. For compliance with the above directions, this Court is of the considered view that the impugned notice dated 29.3.2007 is necessary to be set

aside. Accordingly, the impugned notification is quashed and set aside. Parties are to bear their own cost.