

(2006) 09 GAU CK 0054

Gauhati High Court

Case No: None

Mahesh Doley and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Sept. 18, 2006

Acts Referred:

- Missing Autonomous Council (Amendment) Act - Section 80

Citation: (2007) 2 GLR 7 : (2006) 3 GLT 832 : (2003) 1 GLT 33

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

Bench: Division Bench

Judgement

B. Sudershan Reddy, C.J.

These three writ appeals are directed against the same judgment and order dated 24.9.2002 made in WP(C) No. 2490/02 passed by a learned Single Judge of this court.

2. The matter arises under the provisions of Missing Autonomous Council Act, 1995 and Missing Autonomous Council (Amendment) Act, 1997.

3. The appellant in WA No. 530/02 challenged the Notification dated 11th April, 2002 issued in the name of the Governor reconstituting the Interim Missing Autonomous General Council and Missing Autonomous Executive Council by replacing the earlier interim General Council and Interim Executive Council constituted vide Notification dated 29th July, 1998.

4. The learned Single Judge found that the 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 Single Judge, however, held that the removal simpliciter of a nominated member from the Interim Missing Autonomous Council is possible without observing the principles of natural justice, "no such

removal is possible if it is inflicted as a measure of punishment or is stigmatic in nature".

5. The learned Single Judge on consideration of the materials available on record found the removal of the appellant (in WA No. 530/02) is stigmatic in its nature and the same has been resorted to in an arbitrary manner and without adhering to the principles of natural justice. The learned Judge accordingly quashed the Notification dated 11th April, 2002.

6. Being aggrieved by that portion of the judgment the Interim Missing Autonomous Council and others and as well as the State preferred WA No. 505/02 and WA No. 506/02 and whereas one of the writ petitioner preferred WA No. 530/02 challenging the view taken by the learned Judge to the effect that nominated persons to the General Council or the Executive Council, as the case may be, hold office during pleasure of the State Government.

7. In our considered opinion, the subject-matter that arises for our-consideration in these appeals is not res integra but squarely covered by the decision rendered by a Division Bench of this court in [State of Assam and Others Vs. Makhan Pegu and Others](#). This court while interpreting Section 80 of the Act held as follows:

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

8. This court further held that the doctrine of pleasure is duly incorporated and implicit in Section 80 as well as in proviso to it. Relying on the decision of the Supreme Court in [Krishna v. State of Maharashtra \(2001\) 2 SCC 441](#) the Division Bench took the 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. It is also held that 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".

9. In the light of the law declared by this court we are constrained to hold that the operative portion of the impugned judgment of the learned Single Judge that the removal of the appellant in Writ Appeal No. 530/02 is stigmatic in nature and the same has been resorted to arbitrarily and without adhering to the principles of natural justice is untenable and unsustainable in law.

10. In our considered opinion the expression "removed and replaced" employed in proviso to Section 80 may have to be understood in proper context. Both the words used convey the same meaning of replacement of nominated members at pleasure. The word "removed" may perhaps give rise to an unnecessary debate and had the Legislature not used the said word it would not have resulted in this litigation. It is not any removal as is commonly understood which is always stigmatic and what the Legislature intended is only replacement.

11. In the instant case, no doubt a show cause notice was issued to the appellant (in WA No. 530/02) making certain allegations and requiring an explanation to which he submitted a detailed explanation. The authority for whatever reason did not proceed further in the matter pursuant to the show cause notice but replaced him and other members in exercise of the power under proviso to Section 80 of the Act. Thus, it is a clear case of replacement of nominated members by other set of nominated members in the same manner by which the appellant has been nominated along with other members. A plain reading of the impugned Notification itself does not suggest and cast any stigma on the writ appellant. The Government exercised its power conferred under the proviso to Section 80 of the Act and accordingly replaced the appellant and others with another set of individuals without assigning any reason whatsoever. The court in the circumstances cannot presume that the impugned Notification has been issued in an arbitrary manner. Once the principles of natural justice are excluded from the operation of Section 80 and its proviso, the question of issuing any show cause notice and observing the principles of natural justice does not arise, The learned Single Judge having held that the doctrine of pleasure was duly incorporated and implicit in Section 80 of the Act ought not to have reviewed the decision making process on the touchstone of principles of natural justice.

12. Suffice it to hold that the impugned Notification by itself does not cast any stigma on the writ appellant and other nominated members who are replaced by the impugned notification.

13. In the result, the WA No. 505/02 preferred by the Interim Missing Autonomous Council and others and as well as WA No. 506/02 preferred by the State of Assam

are allowed and operative portion of the judgment setting aside the Notification dated 11.4.2002 is accordingly set aside. We hold that the impugned Notification does not suffer from any illegality and/or infirmity. Consequently, WA No. 530/02 preferred by the writ petitioner/appellant shall stand dismissed. Parties to bear their own costs.