

Asom Rastrabhasa Prachar Samiti and Another

Vs

State of Assam and Others

Writ Petition (Civil) No. 9960-1 of 1985

(G. L. Oza, Kuldip Singh JJ)

19.09.1989

JUDGMENT

OZA, J. -

1. This writ petition was filed challenging the action taking by the respondent the State Government of Assam under the Asom Rashtrabhasa Prachar Samiti (Taking Over Management and Control) Act, 1984 (Assam Act 23 of 1984) which was an Act enacted by the Legislative Assembly of Assam and received the assent by the Governor of Assam and published in the Assam Gazette Extraordinary dated December 15, 1984. It also challenged the orders contained in Notifications Nos. EPG 57/84/25/A EPG 57/84/30-A and EPG 57/84/51-A dated October 1, 1984, November 10, 1984 and March 19, 1985 respectively issued by the Education (Personnel) Department of the Government of Assam.

2. According to the petitioner in 1929 Lahore Congress under the leadership of Mahatma Gandhi adopted a resolution for the spread of Hindi as the common language for the whole of India with a view to promote national integrity and in pursuance of this resolution institutions for the spread and prachar of Hindi in the non-Hindi areas were established. First of this kind was established in Madras city in the name of Dakshin Bharat Hindi Prachar Samiti then in Wardha for the development and spread of Hindi in the rest of India. Late Bala Raghav Das a devoted disciple of Gandhiji undertook the task of spreading Hindi in the North Eastern part of India and in 1934 eminent local leaders of this region late Tarun Ram Phukan, late Nabin Chandra Bardaloi, late Gopinath Bardaloi, late Krishan Nath Sarma and others joined Baba Raghav Das and the first institution named Asom Hindi Prachar Samiti was formed on November 3, 1938 at Gauhati with late Gopinath Bardaloi the first Chief Minister of Assam under the 1935 Act as its President. In 1948 Asom Hindi Prachar Samiti was renamed as Asom Rashtrabhasa Prachar Samiti with its head office at Gauhati.

3. It is this Asom Rashtrabhasa Prachar Samiti, petitioner 1, which is a registered society under the Societies Registration Act, 1860 with its registered office at Hedayatpur, Gauhati 3 District Kamrup. The registration number of the Samiti which is 18th of 1951 and according to the petitioner this Society has a membership of about 22,000 persons scattered all over the States and Union territories of North Eastern part of India. The Samiti has district committees under its control. The Samiti also has two affiliated bodies namely Manipur Hindi Prachar Sabha, Imphal and the Asom Rashtrabhasa Sewak Sangh. This Samiti has a sole constitution known as Bidhan which is also registered with the Register of Societies Assam at Gauhati. This Samiti is a literary body and under Section 4 of the Bidhan the objects of the Samiti have been stated thus :

(a) To propagate and promote Hindi as a national language in Assam, Meghalaya, Mizoram, Nagaland, Manipur, Tripura and Arunachal Pradesh as provided in Article 351 of the Constitution of India.

(b) To promote efficient, educated, qualified workers of good character to hold out the Indian ideals before the future generations.

(c) To serve the State languages and literatures together with the promotion of Hindi.

(d) To serve the tribal languages and culture through the medium of Hindi language and to create kindness with the tribal brethren.

(e) To undertake a programme of literacy amongst the illiterate.

4. This Samiti according to the petitioners discharges its functions including the holding of examinations in Hindi in the States of Assam, Meghalaya and the Union territory (as they were then) of Mizoram and also production and publication of prescribed text books in Hindi for primary schools, high schools, higher secondary schools and the colleges up to the degree standard. The Samiti holds different examinations twice in a year in which about 60,000 candidates at the time of the filing of this petition on an average used to appear. The successful candidates are issued certificates which are recognised by the Government of India and the Government of Assam and various all-India organisations. The Samiti also imparts training and teaching in Hindi through a large number of Vidyalayas numbering about 400 and through Pramanita Pracharakas i.e., authorised propagators numbering about 5000 scattered all over in the North Eastern part of India. It is also alleged that the Samiti from the very inception had acquitted assets and properties and the assets and properties at the time of the filing of the petition were stated to be :

#1. Building Rs. 70,64,000.002. Printing press with machines and accessories Rs. 15,00,000.003. Furniture fixture Rs. 3,00,000.004. Two portraits Rs. 10,000.005. Vehicle Rs. 35,000.006. Typewriting schools including machines and Rs. 60,000.00 furnitures7. Iron safe Rs. 30,000.008. Compound fixing (leasedlas) Rs. 30,000.009. Bank deposits Rs. 3,43,000.0010. Security deposit with Ashok Paper Mill Ltd. Rs. 30,000.0011. Shares of Assam Coop-apex Bank Ltd. Rs. 5,000.0012. Stock of printing papers and stationeries Rs. 50,000.0013. Stock of text books Rs. 22,00,000.0014. Misc. articles including utensils Rs. 50,00,000.0015. Building materials Rs. 25,00,000.0016. Central library Rs. 10,00,000.0017. Value of the old books Rs. 3,00,000.00 -----
----- TOTAL Rs. 1,24,42,000.00 -----###

5. According to the Bidhan of the Samiti the management and administration of the Samiti is run by elected bodies namely Byabasthapika Sabha (meaning the General Council) and the Karyapalika (meaning the Executive Committee), the term of each body is 5 years from the date of holding of their first meeting. According the term of the Byabasthapika Sabha was to expire on August 9, 1987 (five years from the date of holding the first meeting) which was held on August 10, 1982 and the term of Karyapalika was to expire on August 18, 1987 (five years from the date of the first meeting which was August 19, 1982).

6. Under Section 10 of the Bidhan the Karyapalika of the Samiti consisted of 17 members with the following office-bearers :

(i) Adhyaksha (President) (ii) Karyadhksha (Working President)(iii) Upadhaksha (Vice President) (iv) Mantri (General Secretary) (v) Koshadhyaksha (Treasurer)##

(vi) Six members elected by the Byabasthapika Sabha

(vii) The Education Secretary to the Government of Assam or a member nominated by him.

(viii) Five members of the Byabasthapika Sabha nominated by the Adhyaksha, and

(ix) Pradhan Sachiv (Chief Secretary) and other departmental secretaries of the Samiti.

7. According to the petitioner the first meeting of this last Byabasthapika Sabha was held on August 10, 1982 wherein petitioner 2 was elected unanimously as its Mantri (General Secretary) besides other officer bearers. According to the Bidhan of the Samiti as it stood in 1982, the Chief Minister of Assam was the Ex-officio Adhyaksha of the Samiti but as at the time of holding of the first meeting the State of Assam was under President's rule, consequently the office of Adhyaksha of the Samiti remained vacant as then there was no Chief Minister of Assam. Petitioner 2 and other office bearers of the Karyapalika of the Samiti held the first meeting of the Karyapalika on August 19, 1982 and the Karyapalika was running the day-to-day administration and was managing the affairs of the Samiti according to the petitioner very efficiently and diligently.

8. It is alleged that in early part of 1983 President's rule was lifted from Assam and a Ministry headed by Shri Hiteswar Saikia was installed in power in Assam. But in the meantime the Samiti in its meeting of the Byabasthapika Sabha held on July 17, 1983 passed a resolution for amendment of the provisions of the Bidhan in the following manner :

"That the words contained in Section 16 at page 21 of the Bidhan to the effect that the Chief Minister of Assam shall be the Ex-officio Adhyaksha of the Samiti be deleted. All other such references contained in the Bidhan be also accordingly amended. This amendment shall come into force from today the July 17, 1983."

That the said resolution was adopted in full compliance of Section 30 of the Bidhan and all members present in the meeting except one supported the resolution. This resolution amending Section 16 of the Bidhan was passed considering the difficulties that arose in the working of the Samiti by keeping Chief Minister as the Adhyaksha of the Samiti. According to the petitioner this amendment was thought necessary to keep the Samiti away from politics. According to the petitioner this amendment was introduced in accordance with Section 30 of the Constitution (Bidhan) of the Samiti which provided :

"The Constitution of the Samiti may be amended as follows :

(ka) The proposal for amendment must reach the head office within the month of January every year.

(kha) The amendment proposals will be sent for information to all the members of the Byabasthapika Sabha from the office.

(ga) The amendment will be carried out by the two-third members present."

9. According to the petitioner the procedure stated in this section of the constitution was followed and as only one person opposed the constitution amendment was passed. It is further alleged by the

petitioner that as this amendment was passed on July 17, 1983 from this date the Chief Minister ceased to be the Ex-officio President and since then according to the petitioner he had nothing to do with the Samiti. The post of Ex-officio President was abolished.

10. According to the petitioner respondent 4 after passing of this amendment of the Bidhan on political consideration passed an order dated July 7, 1984 contained in the Notification No. CMS 202/79/319 dated July 7, 1984 whereby respondent 4 purportedly acting as the Ex-officio Adhyaksha of the Samiti declared a state of emergency in the Samiti in exercise of his powers conferred under Section 16(gha) of the Bidhan and dissolved the existing Karyapalika of the Samiti with immediate effect and also constituted an ad hoc body with himself as Chairman and five others as member to manage the affairs of the Samiti. The petitioner has also filed a copy of this order. It is alleged by the petitioner that under this order petitioners 1 and 2 were asked to hand over the charge of the management of the Samiti to the ad hoc committee. Thereupon the petitioner filed a suit being a Title Suit No. 110 of 1984 in the Court of the Assistant District Judge No. 1, Gauhati for a declaration that the order dated July 7, 1984 passed by respondent 4 declaring a state of emergency and by which he dissolved the existing Karyapalika of the Samiti and constituted an ad hoc committee, as void, illegal and without jurisdiction and unenforceable against the petitioner. Society as on the day on which he passed the order he was no longer the Adhyaksha as the Constitution had been amended before that date. Petitioner also prayed for permanent injunction restraining respondent 4 and other members of the ad hoc committee, their agents and servants from giving effect to the order. The petitioners also filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure for the issuance of a temporary injunction.

11. It is alleged that the Assistant District Judge No. 1, Gauhati by his order dated July 19, 1984 issued a notice to the defendants of that suit to show cause as to why a temporary injunction as prayed for by the petitioners should not be granted and fixed August 13, 1984 as the date for sowing cause. The defendants filed their objection on August 21, 1984 and the case was fixed on October 25, 1984 for consideration of the question of issuing a temporary injunction.

12. When the matter was pending in the court for consideration of the question of temporary injunction the Governor of Assam purporting to act under clause (1) of Article 230 of the Constitution of India promulgated an Ordinance called the Asom Rashtrabhasha Prachar Samiti (Taking Over of Management and Control) Ordinance, 1984 and Section 1 clause (ii) of this Ordinance provided that the Ordinance shall extend to all areas over which the Asom Rashtrabhasha Prachar Samiti had its jurisdiction immediately before the commencement of the Ordinance. By a Notification No. EPG 57/84/16 issued under the signatures of respondent 3 the Governor of Assam fixed October 1, 1984 as the appointed day on which the aforesaid Ordinance came into force and Section 3 of the said ordinance provided that the government may constitute a Board for the purposes of taking over the management and control of the Samiti consisting of not more than 9 members. According to the petitioners this Ordinance was issued at the instance of the Chief Minister which was unnecessary, unwarranted and uncalled for and was against the law laid down by the Constitution Bench of this Court. Notification was issued on July 7, 1984. Preamble of which reads as under :

"Whereas the Chief Minister of Assam in his capacity as Ex-officio Adhyaksha of the Asom R.B.P. Samiti is satisfied that deterioration of the financial condition of the Samiti has resulted in financial deadlock and the group rivalry among the members, confrontation between the management and the employees culminating in institution of law suits, hunger strikes by employees and chaos in administration matter have

resulted in administrative deadlock."

The petitioners contended that what is stated in the Preamble is incorrect and misconceived. The financial condition of the Samiti had never deteriorated nor there were any adverse remark by any auditor in the regular auditing of the accounts of the Samiti. It is alleged that even other facts leading to the taking over are wholly incorrect and malicious.

13. Thereafter in 1984 the Assam Legislative Assembly an Act i.e. Act 23 of 1984 replacing the Ordinance and this Act received the assent of the Governor of Assam on August 12, 1984 and was published in the Gazette Extraordinary dated December 15, 1984. Under Section 3 of this Act the Asom Rashtrabhasha Prachar Samiti (Taking Over of Management and Control) Act, 1984, the number of members constituting the Board was raised to 13. By the provisions of this Act virtually the Samiti which was a public body constituted by its members having elected Byabasthapika Sabha and Karyapalika were substituted by Board appointed by the government and all the functions, properties and affairs of the Samiti were taken over by this Board and it is this action taken under the Ordinance and ultimately the Act which is the subject matter of challenge in this writ petition. As this infringes the fundamental rights of the members who constitute the Samiti, their rights under Article 19(1)(c), and by this process of taking over the Samiti has been deprived of its assets and properties and even as alleged by the petitioners government has gone to the extent of changing the name of the institution also. It is alleged that after the passing of this Act the notification under Section 3 was issued which was EPG 57/84/75 dated October 1, 1984 by which the Rashtrabhasha Prachar Board was constituted with respondents 11, 12 and 13 as members and by this order all persons except respondent 12 who was not even the member of the Rashtrabhasha Prachar Samiti were nominated.

14. The petitioners also alleged that in fact all this happened because when the then Chief Minister of Assam learnt about the amendment of the constitution carried out by Byabasthapika Sabha, and that the under the unamended Bidhan was the Ex-officio Adhyaksha had been dropped by the amendment of the constitution, that with mala fide intention he started taking action in a manner in which he could retain the control of the institution. First he invoked the constitution itself by superseding the body by invoking emergency provisions but when that was challenged by a suit, an Ordinance was brought taking over the Samiti as a whole specially replacing the Byabasthapika Sabha and the Karyapalika and later the Ordinance was replaced by the Act and it was contended that this all was the mala fide action of the then Chief Minister of Assam and it is further contended that unfortunately even after the new elections and a new government came into power in Assam the Act which as its title discloses was a temporary measure was continued in perpetuity, and the Samiti is being run by nominated members and the rights of the members of the Samiti under Article 19 have not only been restricted but have been taken away. It was also contended that the history of the Samiti and the manner in which it was formed and the persons who initially constituted the Samiti are of significance because its history and historical background touch the ideological and sentimental aspirations of the people of Assam and the infringement of this right to form an association under Article 19(1)(c) is challenged as mala fide action motivated with selfish political motivation. It is also contended that by the operation of this Act those who have nothing to do with the Samiti or its ideals and who were not even the members of the Samiti have been nominated as the members of the Board and they are supposed to run the affairs of the Samiti whereas those who have contributed their heart and soul for the ideals of the Samiti and who have put in long years of hard labour to build up are deprived of their right to manage the affairs of the Samiti. It is also contended that even the assets and the properties of the Rashtrabhasha Prachar Samiti are being mismanaged by nominated board as it has no moral attachment to the ideals nor aptitude with the

work of the Samiti and the assets are being neutralised.

15. It was also contended that the heading of the Act as it disclosed "An Act to provide for temporary transfer of the management and control of the affairs of A.R.B.P.S. from the Byabasthapika Sabha, Karyapalika and other holders of office of the Asom Rashtrabhasha Prachar Samiti to a Board". This heading of the Act, according to the learned counsel, is just an eyewash as this heading shows that a temporary arrangement was made because the management of the Samiti was not in proper hands and the temporary arrangement was only to improve the functioning of the Society and ultimately it has to be handed over back to the elected body constituted under the Bidhan (constitution of the society registered under the Societies Registration Act) but in fact after the passing of this Act in 1984 till today the respondent State had at no point of time, even though of restoring the body to the normal functioning after holding election in accordance with the constitution of the Society. In fact even during the hearing of this writ petition the counsel appearing for the State was asked to intimate the court if even now the State knowing that this was a temporary measure is intending to restore the Society back with elected functionaries under the constitution. It was indicated that the Government of Assam has no intentions even now to end this temporary arrangement of the Samiti. It is plain that although the Act talks of a temporary measure but it is only an eyewash and by this process the State Government intends to deprive the members of the Society their rights under Article 19(1)(c) for all times to come. In the Act there is no provision providing for restoration of the elected bodies which shows that the use of phrase 'temporary' was just an eyewash.

16. Learned counsel appearing for the State attempted to justify the action however denying that it was not because the constitution was amended and therefore the Chief Minister was annoyed but attempted to suggest that there was some mismanagement of the Society but in any event there was no logic which could be suggested for such a permanent taking over of the Society registered discharging functions which could not be said to be not ideal and which had started working on some ideals which could not be said 'not for public good'.

17. It is clear that now as the Act of 1984 and a Board nominated or appointed under Section 3 of the Act is controlling the affairs of the Society it is not necessary to go into the orders passed by the Chief Minister invoking the emergency powers although the facts which were alleged clearly go to show that except that constitution was amended and the Chief Minister was dropped from the place which he used to enjoy before the amendment of the Bidhan (constitution), there was nothing serious and the Chief Minister who in fact had ceased to be an Adhyaksha because of the constitutional amendment took that action only to stick to the position and the subsequent acts even if mala fide action is not clearly established, as was alleged, we have no hesitation in observing that there appears to be no justification as it is clear that if the Act was enacted to meet a temporary contingency for taking over of the management temporarily it could have provided for the restoration of the elected body in due course. It is significant that this Act is silent and although as quoted above it talks of being temporary Act, it continues and even as stated above there appears to be no intention of the State Government to restore the body back to the elected bodies under the constitution of the society itself. In these circumstances therefore there appears to be no justification for all these actions starting from invoking the emergency provisions till enacting the present Act i.e. Asom Rashtrabhasha Prachar Samiti (Taking Over of the Management and Control) Act, 1984.

18. Except the allegations of mala fides which are not admitted, rest of the facts are not in dispute. The only suggestion made in the counter is that there was mismanagement, delay in examinations and results and it was because of that that management only under this Act was taken over. But

neither in the counter nor during the course of arguments anything could be said on behalf of the State for justification of permanent taking over of the management of the Samiti depriving its members the right under Article 19(1)(c) of the Constitution of India.

19. In the counter it was contended that the legislature of the State was competent under Entry 25 of the List III (concurrent list) Seventh Schedule of the Constitution to enact this law. Entry 25 List III reads :

"25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

The mere perusal of Entry 25 will reveal as to how difficult it will be to stretch Entry 25 of mean the authority to deprive an association of its right under Article 19(1)(c) of the Constitution of India. It would have been a different situation, if the State felt that it wanted to do the same thing what this Samiti was doing and to further the acts of education if it had taken steps to start similar functions at the State level. But here we are simply concerned with the taking over of the management of a registered society having large membership and assets and properties following programme and policies living to the ideals which could not be in any way challenged or adversely commented upon. Article 19(1)(c) of the Constitution provides :

"19. Protection of certain rights regarding freedom of speech, etc. - (1) All citizens shall have the right -

(c) to form associations or unions;"

20. The Constitution Bench of this Court had an occasion to consider exactly a similar situation when a Hindi Sahitya Sammelan was taken over first by a State law and later by an Act of Parliament and this Court considering the question in *Damyanti Naranga v. Union of India* ((1971) 1 SCC 678 : (1971) 2 SCR 840) observed : (SCC p. 684, para 5)

"Further, under Section 7(2) of the Act, the governing body of the new Sammelan is to consist of such number of persons, not exceeding 55, as the Central Government may from time to time determine; and out of these, a number not exceeding seven are to be nominated by the Central Government from among educationists of repute and eminent Hindi scholars. These seven nominees are to be chosen by the Central Government....."

21. In the present case the government has taken the power under Section 3 to appoint a Board and the government can appoint anyone not connected with the Society at all to be in the Board. In the Act which was being examined by the Constitution Bench there were some restrictions on the nominations of persons although the persons were to be nominated by the Central Government but in the present Act it is left to the discretion of the government to appoint the whole of the Board which will take place of not only the Managing Committee i.e. the Karyapalika but also the place of Byabasthapika Sabha which normally used to be an elected body. In this view the observation of the Constitution Bench in *Damyanti Naranga* case (*1*) goes a long way. It is observed in that judgment : (SCC p. 684, para 5)

"This is clear interference with the right to form an association which had been exercised by the members of the Society by forming the Society with its constitution,

under which they were members and future members could only come in as a result of their choice by being elected by their Working Committee."

22. It is therefore clear that so far as the present case is concerned it is not only that the members are introduced, not only that the complete control is left to the Board to be nominated by the government, about the persons no norms have been laid down, the person so nominated could be anyone and no control is kept to those who formed the Society, those who had a right to form an association will be kept away and the Society shall be run by a group of persons nominated by the government in accordance with Section 3. It is therefore clear that what was done in the Sammelan Acts which were under examination in the Constitution Bench judgment referred to above (*1*), much more has been done in this case. In this case virtually the right of association has been taken away and not only that it is a sort of deprivation for all times as it is not even provided that this Board may be an interim Board and thereafter a proper board will be elected but here this Board will continue to control and manage the affairs of the Society. In the Constitution Bench case their Lordships considered the scope of Article 19(1)(c) in the context of what was contemplated in that Act and observed : (SCC pp. 684-85, para 6)

"The right to form an association, in our opinion, necessarily implies that the persons forming the association have also the right to continue to be associated with only those whom then voluntarily admit in the association. Any law, by which members are introduced in the voluntary association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Article 19(1)(c) is confined to the initial stage of forming an association and does not protect the right to continue the association with the membership either chosen by the founders or regulated by rules made by the association itself, the right would be meaningless because, as soon as an association is formed, a law may be passed interfering with its composition, so that the association formed may not be able to function at all. The right can be effective only if it is held to include within in the right to continue the association with its composition as voluntarily agreed upon by the persons forming the association."

It is therefore clear that even on the basis of the pronouncement of the Constitution Bench, the Act and the notification issued under this Act taking over the management of the Rashtrabhasha Prachar Samiti could not be accepted to be in accordance with the Constitution.

23. Apart from this it is also clear that although when the Act talks of a temporary measure in fact, the Act does not provide for as to how when the temporary measure comes to an end the elected Byabasthapika Sabha and Karyapalika would be restored. It is not only that but it is also apparent that since 1984 when this Act was passed and a notification appointing a Board was issued, the government has not chosen to take any steps to restore the Society back to its elected authorities and office bearers, in spite of the fact that we indicated and asked the counsel appearing for the State to let us know even if now the State is intending to restore it back to the Society but unfortunately it appears that without considering the question and its constitutional aspects the reply came that the State has no desire to restore the Samiti and therefore we are left with no option but to decide and decide upholding the Constitution and the right of association conferred under Article 19(1)(c) of the Constitution. We therefore allow these writ petition, set aside the notification issued under the Act enacted by the Assam legislature holding that the Act itself is ultra vires of the Constitution. We

therefore also quash the notification issued under Section 3 of the Act as ultra vires by which a Board was nominated to replace the Karyapalika and Byabasthapika Sabha.

24. At the time when this Board was constituted under Section 3 the Karyapalika and Byabasthapika Sabha duly elected were functioning and they had sufficient time to go on and in this view of the matter were further direct that the Karyapalika and Byabasthapika Sabha which were in existence in 1984 when initially the action under the emergency provisions was taken followed by the notification under the Ordinance and the Act shall be restored back and they shall take over the management of the Samiti from the Board immediately but it is made clear that the Karyapalika and Byabasthapika Sabha which were functioning in 1984 and which we are restoring will within six months from the date of this order hold proper elections in accordance with the constitution to elect a Byanasthapika and Karyapalika. This is necessary because the period of the Karyapalika and Byabasthapika Sabha which was functioning in 1984 has come to an end although from 1984 till today they were not allowed to function. It is further directed that the authorities, officers, the Board or appointed by the Board or the State Government shall restore back all assets and properties of the Samiti to the Karyapalika which will be restored immediately after the passing of this order. The petitioners shall also be entitled to costs of this petition. Costs quantified at Rs. 10,000.

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