
(2019) 05 MAN CK 0014

In the Manipur High Court

Case No : Public Interest Litigation No. 15 Of 2019

Atlam & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 22-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 371C
Manipur (Hill Areas) District Councils Act, 1971 — Section 29
Government Of Union Territories Act, 1963 — Section 52
Manipur (Hill Areas) District Council Act, 1971 (Amendment) 2008 — Section 2(a), 3, 4, 29(1)

Citation : (2019) 05 MAN CK 0014

Hon'ble Judges : Ramalingam Sudhakar, CJ; Kh. Nobin Singh, J

Bench : Division Bench

Advocate : R.S.Reisang, S.Suresh, P.Tamphamani

Final Decision : Allowed

Judgement

R.S., CJ

[1] The PIL is filed by the All Tribal Lawyers' Association Manipur (ATLAM) and The United Tribal Peoples' Council Manipur (UTPCM). They filed the writ petition for the following reliefs:-

"(ii) issue a writ in nature of CERTIORARI AND or MANDAMUS thereby quashing the impugned Rules and Amendment Acts. i.e. the Manipur (Hill Areas) District Councils Rules, 1972 and all other subsequent amendments to the Acts on the ground of ultra-vires, void ab-initio, illegal, arbitrary unconstitutional, bias and for want of jurisdiction;

(iii) issue appropriate writ, direction or order in the nature of mandamus, declaration or any other appropriate writ, directing the Respondents to implement and enforce the scheme of Article 371C of the Constitution and the Manipur Legislative Assembly (Hill Areas Committee) Order, 1972 and the Manipur (Hill Areas) District Councils Act, 1971 in letter and spirit,

iv) pass an order directing the respondents to pay monthly allowances or salary as per the need of this generation and in accordance with "Warrant of Precedence" vide Notification dated 27.12.2017, bearing No. 4/3/70-SA (PT.I), issued by Secretary (GAD), Government of Manipur."

[2] Mr. R.S. Reisang, learned senior counsel appearing for the petitioners made a statement across the bar that prayer No.(ii) is not press and therefore, the same is declined. He only pleaded for a Mandamus to direct the State Government to implement and enforce the provisions of Manipur Legislative Assembly (Hill Areas Committee) Order, 1972 and the Manipur (Hill Areas) District Councils Act, 1971 in letter and spirit with consequential reliefs. The learned senior counsel refers to Section 29 of the 1971, Act (Act No.76 of 1971). The Act provides for establishment of a District Councils in the hill areas and the Administrator, as defined under Section 2(a) controls all the administration of the hill areas. Presently, the Hon'ble Governor is the Administrator. In terms of Chapter II Section 3, hill areas is divided into autonomous districts. Chapter II Section 4 provides for constitution of District Councils. The other sections provide for election to the various posts of the District Councils. Chapter III, Section 29 deals with the functions of the District Councils and that powers and functions of the District Councils are assigned by the Administrator to take up the works as defined under Section 29. Section 29 of the 1971, Act reads as under:

"29. Functions of District Councils-(1) Subject to such exceptions and conditions as the Administrator may make and impose, the following matters shall be under the control and administration of a District Council, namely:-

- (i) the maintenance and management of such property, movable and immovable, and institutions as may be transferred to that Council by the Administrator;
- (ii) the construction, repair and maintenance of such of the roads, bridges, channels and building as may be transferred to that Council by the Administrator ;
- (iii) the establishment, maintenance and management of primary schools and the construction and repair of all buildings connected with these institutions and institution of scholarships;
- (iv) the establishment, maintenance and management of dispensaries;
- (v) the establishment and maintenance of cattle pounds including such functions under the Cattle trespass Act, 1871 (1 of 1871) as may be transferred to that Council by the Administrator;
- (vi) the establishment, maintenance and management of markets and fairs and the construction, repair and maintenance of all buildings connected therewith
- (vii) the supply, storage and prevention from pollution of water for drinking, cooking and bathing purposes;
- (viii) the construction, repair and maintenance of embankments and the supply,

storage and control of water for agricultural purposes;

(ix) the preservation and reclamation of soil;

(x) the preservation, protection and improvement of live-stock and prevention of animal diseases;

(xi) public health and sanitation;

(xii) the management of such ferries as may be entrusted to the charge of that Council by the Administrator;

(xiii) the initiation, inspection and control of relief works;

(xiv) the allotment, occupation or use, or the setting apart of land, other than land acquired for any public purpose or land which is a reserved forest, for the purpose of agriculture or grazing for residential or other non-agricultural purposes or for any other purposes likely to promote the interests of the inhabitants of any village or town situated within the autonomous district for which that council is constituted.

(xv) the management of any forest not being a reserved forest;

(xvi) the regulation of the practice of Jhum or other form of shifting cultivation;

(xvii) any other matter which the Administrator may, in consultation with the Hill Areas Committee, entrust to the District Council in the field of agriculture, animal husbandry, community development, social and tribal welfare, village planning or any other matter referred to in section 52 of the Government of Union Territories Act, 1963 (20 of 1963).

[2] It shall be competent for a District Council to recommend to the Government of the Union territory of Manipur legislation relating to the following matters in so far as they concern members of the Scheduled Tribes, namely:-

(a) appointment or succession of Chiefs;

(b) inheritance of property

c) marriage and divorce; and

(d) social customs."

[3] The Act has been amended from time to time. The last amendment to the Act was made in 27.10.2008 gazetted on 28.10.2008.

By Section 8 of the Amendment Act, section 29 of the Original Act was amended to include further subjects bringing within it 26 items of development works.

[4] The grievance of the petitioners is that the District Council is unable to perform the duty specified and as mandated in Section 29 because of lack of allocation of funds. As a result, they are unable to take up good causes specified under section 29. The petitioners, in particular, referred to Annexure-A/4, page 57

of the Report of the Sub-Committee (HAC) submitted to the Chairman on Devolution of Powers to the Autonomous District Councils, Manipur on 11.10.2010. The recommendation of the Sub-Committee (HAC) is as follows:-

"RECOMMENDATION

In considering the powers and functions devolved to the District Councils/ Autonomous Council of the other States, particularly in the North Eastern States, the Sub Committee strongly recommends that the Government of Manipur be urged upon to devolve the executive, financial and administrative powers for all the subjects enumerated in sub section (1) of section 29 of the Manipur (Hill Areas) District Council Act, 1971 (Amendment) 2008 with the existing staff, moveable and immoveable properties, offices/institutions and the required fund to meet the expenditure for payment of salaries and allowances of the staff and implementation of the schemes under the control of the existing 6 (six) Autonomous District Councils, Manipur within their respective area of jurisdictions.

The Manipur (Hill Areas) District Councils (Third Amendment) Act, 2008 published in the official Gazette of the Govt. of Manipur vide notification no 2/56/2008-Leg/L dated Imphal the 27th October 2008 for devolution of powers and functions to the District Councils of Manipur under sub-section (1) of section 29 of the said Act, 2008 being recommended, is attached in Annexure-F."

[5] Despite such recommendation, it is pleaded that no action has been taken. Therefore, repeated memorandum was submitted to the Hon'ble Chief Minister and also to the Member of Legislative Assembly. It has fallen on deaf ears forcing the petitioners to file this writ petition. It is pleaded that the development of hill areas is suffering a lot. The people of the hill areas are left with no alternative remedy except to seek redressal through the Court.

[6] Mr. S.Suresh, learned CGC appears for the Union respondent Nos. 1 and 2 and Mr. P.Tamphamani, learned counsel for the State respondent Nos. 3 and 4. Mr. P.Tamphamanistates that issue raised is a policy decision of the State Government and suitable welfare measures have been taken. The financial allocation is by the Government based on the actual need of the hill districts. The State is providing adequate funds and infrastructures. The Sub-Committee report, if not already considered, will be duly considered by the competent authority.

[7] Mr.S.Suresh, learned CGC states that it is a State Act and there is no role for Union in this matters. The submission is recorded.

[8] We have noted the grievance of the petitioners. We find that if allegation as made in the petition of partisan treatment to the people of hill areas is justified, then the Government is bound to ensure that the provisions of Act No. 76 of 1971 as amended is implemented in letter and spirit. There cannot be a second thought on the implementation of the various welfare schemes for the benefits of

the people of the hill areas. State is bound to act in a manner so as to achieve the objective and purpose of the Act.

[9] With this observations, we direct the Government to take all suitable steps as per law to alleviate the grievance of the people of the hill areas taking into consideration the report of the Sub-Committee (HAC), if not already done.