
(2012) 08 GAU CK 0025
In the Gauhati High Court
Case No : Writ Appeal No. 270 of 2011

Durbar of Sumer Patorship

APPELLANT

Vs

Jaintia Hills Autonomous District Council and Others

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Constitution of India, 1950 — Article 244(2)
General Clauses Act, 1897 — Section 8(1)

Citation : (2013) 1 GLT 37

Hon'ble Judges : P.K. Saikia, J; Amitava Roy, J

Bench : Division Bench

Advocate : N. Dutta and Mr. J. Roy, for the Appellant; H.S. Thangkhiew and Ms. B. Goyal, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The determination made by the learned Single Judge, proclaiming Dolloi of Elaka Raliang to be the sole authority to hold elections to the office of Pator of Sumer Patorship to the exclusion of the Jaintia Hills Autonomous District Council (for short hereafter referred to as the JHADDC/Jaintia District Council or Council) with consequent annulment of the notifications dated 12.7.2011 and 19.07.2011 of the Jaintia District Council pertaining to such electoral process is in assailment in the instant appeal. The judgment and order dated 19.08.2011, rendered in WP (C) No. (SH) 183/2011 to the above effect is, thus, sought to be reversed. By order dated 23.09.2011, election to this office was temporarily restrained. We have heard Mr. N. Dutta, Senior Advocate assisted by Mr. J. Roy, Advocate for the appellant (respondent No. 4 in the writ proceeding) Mr. HS Thangkhiew. Senior Advocate for the Jaintia District Council and the Executive Committee thereof. We have heard Ms. B. Goyal, learned counsel for the respondent No. 3 (writ petitioner) as well.

2. The pleaded account of the relevant facts would lay the background of the contentious lis. The respondent No. 3/writ petitioner approached this Court

seeking its judicial intervention to invalidate the notifications dated 12.07.2011 and 19.07.2011, declaring the election of Pator of Sumer Patorship under Raliang Elaka as well as notifying the calendar of dates in connection therewith. Contending principally that in terms of Section 3 of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 (for short hereafter referred to as the Act, 1959), the Dolloi of Elaka Raliang, as per the prevailing custom and practice thereat was the sole authority to conduct such exercise, he impeached these initiatives of the Jaintia District Council.

The respondent No. 3/writ petitioner introduced himself to be the duly elected Dolloi of the Elaka concerned holding the office since 2001 and was a permanent resident of Sumer located within the territorial limits thereof (Elaka Raliang) in the Jaintia Hills District in the State of Meghalaya. He asserted that the Chief of the Elaka known as Dolloi is the religious, judicial and administrative head thereof with powers and functions to appoint Headman and Pator along with the Durbar of the Elaka u/s 7 of the Act, 1959 and that in conformity with the prevailing custom and practice since time immemorial, Pator has always been elected/appointed by that process. He repudiated the impugned notifications to be in violation of law and such prevailing customary practice. According to him, the election of Pator of the Elaka concerned used to be by counting of heads as was the mandate of the customary practice being followed from time immemorial.

3. The respondent No. 3/writ petitioner further elaborated that the Elaka Raliang was comprised of more than 70 villages with 3 Patorship, namely, Sumer Patorship, Raliang Patorship and Longlong Patorship and for each Patorship, as separate administrative unit, a Pator is appointed by the Dolloi. He referred to an earlier endeavour made by the Jaintia District Council to appoint an acting Pator of the Summer Patorship in violation of the prevailing customary practice and also of the law laid down by a Division Bench of this Court in CR No. 199/1980, vide its judgment and order dated 01.07.1982. That the impugned notifications are also transgressive of the above judicial determination was asserted as well. The respondent No. 3/writ petitioner with reference to the orders dated 10.12.2010, 28.03.2011 and 24.06.2011 of this Court in WP (C) No. (SH)417/2010 and MC No. (SH)220/2011 in WP (C) No. (SH) 283/2010 has maintained that those permitting the Jaintia District Council to hold elections for appointment of Pator in the Sumer Patorship were not in departure from the statutory mandate empowering the Dolloi to undertake the exercise on the basis of the customs and usages of the Elaka and that the impugned notifications could not be construed to be valid on that count.

4. As the impugned judgment and order would disclose that none of the respondents, though, had participated in the proceedings did offer their affidavit/counter in response to this pleaded averments of the respondent No. 3/writ petitioner. The records, however, reveal that the impugnement of the notifications was sought to be repelled by the Jaintia District Council pleading that the same

did neither infringe nor transgress the statutory mandate of Section 3 of the Act, 1959. It was contended as well that the existing custom of election to the office of Pator by head count or by show of hands without a voter list and identity of voters had been rendered outdated and illogical in the present context besides being fraught with the risk of precipitation of a law order situation given the captious disposition of the electorate centering the event. That holding of elections by secret ballot besides obviating the possibility of intimidatory and retaliatory fall outs, amongst others, voters being induced by interested quarters was contended. That the process is conducted in presence of the Dolloi, who would declare the results of the elections was asserted as well. It was maintained that the notifications did not violate the custom of the Elaka or any statutory provision in force and were intended to effectuate free and fair elections.

5. The appellant/respondent No. 4 with reference to the orders dated 10.12.2010 and 28.03.2011 and 24.06.2011 passed by this Court in WP (C) No. (SH) 417/2010, WP (C) No. (SH) 283/2010 and MC No. (SH) 220/2011, arising out of WP (C) No. (SH) 283/2010, permitting the Jaintia District Council to hold the elections concerned, contended that those having been passed in the proceedings, more particularly, WP (C) No. (SH) 283/2010, instituted by the Durbar of the respondent No. 3/writ petitioner, were binding on him as the same had remained unassailed in any higher forum. He contended as well that with the enlarged size of the electorate of 2600 plus, the customary method of elections by head count or show of hands was neither practicable nor feasible and that therefore secret ballot was the appropriate substitute to ensure free and fair process. That, having regard to the significance of the post of Pator, incumbent whereof, essentially, ought to command respect and confidence of the villagers concerned and that with the method of head count and raising of hands the proceedings are often hijacked by vociferous and minatory strategies was underlined. The possibility of the Dolloi as an interested party to steer the process of election with a slant and thus render it farcical was hinted at as well. According to the appellant/respondent No. 4, the steps taken by the Jaintia District Council was in response to a representation before it by the Durbar of Sumer along with 15 villages, requesting it to conduct the elections through secret ballot voicing at the same time their lack of confidence in the Dolloi. The appellant/respondent No. 4 asserted, as well that the impugned notifications did not violate either the custom of the Elaka or any prevailing statutory provision.

6. The learned Single Judge, by the decision oppugned sustained the plea of the respondent No. 3/writ petitioner adverting to section 3 of the Act, 1959 and a decision dated 01.07.1982 of a Division Bench of this Court rendered in CR No. 199/1980 (Indro Paslein Vs. The Executive Committee, Jaintia Hills Autonomous District Council, Jowai & Ors.) Qua the orders dated 10.12.2010, 28.03.2011 and 24.06.2011 hereinbefore mentioned, while declaring the sole authority and jurisdiction of the Dolloi of Elaka Raliang to hold the elections to the post of Pator of Sumer Patorship inspite thereof, the impugned notifications were set aside. The learned Single Judge concluded that these orders could not be interpreted to

have bestowed any authority on the Jaintia District Council to conduct elections. While holding that in absence of any adequate material, the Court was neither empowered nor could change and/or interfere with the prevailing customary practice of the tribal residing in Sixth Schedule area, the authority and competence of the Jaintia District Council to conduct the elections to the post of Pator of Sumer Patorship was emphatically negated. The Deputy Commissioner of Jaintia Hills District, however, was directed to depute a senior officer under his jurisdiction to act as an independent observer for ensuring trouble free elections in terms of the prevailing customary practice of the Elaka under the authority of Dolloi. A time frame to undertake the exercise was also fixed.

7. Mr. Dutta, has insistently argued with reference to the provisions of the Sixth Schedule to the Constitution of India that as a District Council envisaged therein is endowed with administrative and legislative jurisdictions, the finding of everlasting permanence of the custom authorizing the Dolloi of an Elaka exclusively to hold the elections of Pator is extinctive of such constitutional empowerment and is, thus, per se, unsustainable in law. According to the learned Senior Counsel, the mandate contained in the judgment authorizing the Dolloi along with his Durbar to adopt or follow a procedure ensuring free and fair election infringes upon the legislative domain of the Jaintia District Council outlined in the Sixth Schedule. As the authority to enact a law in terms of the General Clauses Act 1897 signifies the power to amend and/or repeal it and/or re-enact on the same legislative theme such a curial mandamus to the Council not only undermines its sovereignty but also is incomprehensible in law. Adverting to the amendments to the Sixth Schedule of the Constitution of India occasioning changes in the tribal areas under Para 20 thereof, evincing, at the first instance, the creation of a new autonomous district, named Jowai District by excluding the Jowai Subdivision of the United Khasi Jaintia Hills District and eventually designating it to be Jaintia Hills District, the learned Senior Counsel maintained that in face of Section 3 of the Act, 1959 and Jowai Autonomous District (Administration) Act, 1967 (for short hereafter referred to as the Act, 1967) the Acts. Rules and Regulations made by the United Khasi - Jaintia Hills District Council as listed in Appendix-1 thereof (Act. 1967) applied to the then Jowai Autonomous District (now Jaintia Hills District) in so far as they were applicable to it till such time, the Jowai District Council made its own laws. Mr. Dutta, therefore, emphatically urged that in absence of any law made by the Jowai District Council and for that matter the Jaintia District Council, as on date, Act, 1959 (included in Appendix - I to Act, 1967) applied to the Jowai Autonomous District/Jaintia Hills District for all intents and purposes. According to him, Section 3 of the Act, 1967 connoted legislation by reference and, therefore, all amendments to Act, 1959, in absence of any law made by the then Jowai Autonomous District Council and presently the Jaintia Hills Council were applicable vis-a-vis the related issues pertaining to the Jowai Autonomous District/Jaintia Hills District. The learned Senior Counsel referred to the amendments in particular to Section 3 of the Act 1959, incorporated by Act, No-I

of 1969 and Act No-II of 1971 to insist that in terms of the amended provision, the Executive Committee of the concerned District Council was also empowered to issue orders from time to time in the matter of elections or nominations and appointments of Chiefs and Headman. That in the contemporaneous context with the enlarged size of the electorate and in public interest, secret ballot was, even otherwise the call of the hour was underlined by the learned Senior Counsel. Referring to the orders dated 10.12.2010, 28.03.2011 and 24.06.2011. Mr. Dutta urged that the challenge laid by the respondent No. 3/writ petitioner ought to have been spurned in limine on the ground of estoppel and acquiescence. The following decisions were cited to reinforce his assertions, viz, T. Cajee Vs. U. Jormanik Siem and Another, , The State of Madhya Pradesh Vs. M.V. Narasimhan, , 1982 (1) GLR 834, M/s. B.S. Dey & Co. Vs. State of Assam & Ors., Maharashtra State Road Transport Corporation Vs. State of Maharashtra and Others, and Maharashtra State Road Transport Corporation Vs. State of Maharashtra and Others,

8. Mr. Thankhiew appearing for the Jaintia District Council, however, argued with reference to unamended section 3 of the Act, 1959 to contend that in exercise of the overriding executive powers of the District Council contemplated in Rule 28 of the Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951 (for short hereafter referred to as the Rules, 1951) as recognized by this Court in Ewanlangki-Erymbai and Others Vs. Jaintia Hills District Council and Others, , the Jaintia District Council was within its jurisdiction to issue impugned notifications. He reiterated that secret ballot, having regard to the ground realities and the issues pertaining to law and order was an imperative to ensure free and fair elections. According to him, the steps taken by the Jaintia District Council vis-a-vis the proposed elections were in valid exercise of its executive powers vested in it by law for ensuring proper governance and administration of the district. Mr. Thangkhiew placed reliance on the following decisions, viz, Ewanlangki-e-Rymbai and Elaka Jowai Secular Movement Vs. Jaintia Hills District Council and Others, , and Ewanlangki-Erymbai and Others Vs. Jaintia Hills District Council and Others, .

9. Ms. Goyal, per contra, has questioned, to start with, the locus standi of the appellant to pursue the instant appeal. Referring to the definition of the Durbar provided in Section 2(e) of the unamended Act, 1959, the learned counsel has urged that the appellant lacked in authority to initiate the instant proceeding and, thus, on that count the appeal ought to be dismissed. According to her, the orders dated 10.12.2010, 28.03.2011 and 24.06.2011 did not, per se, accouter/empower the Jaintia District Council to conduct the elections of Pator of the Sumer Patorship as a valid substitute of the Dolloi of the Elaka. She urged with reference to section 3 of the Act, 1967 to insist that a plain perusal of the language thereof would reveal that no amendment to the Act, 1959, as it originally stood then, was intended to automatically apply to the areas under the Jowai District Council (presently to the Jaintia District Council). She maintained that the decisions on behalf of the appellant on legislation by reference/

incorporation are inapplicable in the contextual facts as the area was under the Sixth Schedule to the Constitution of India and the enactments being of a District Council. According to her, having regard to the scheme of the Sixth Schedule and the autonomy granted to the District Councils, the laws framed by them would necessarily be regulated by the respective territorial limits of governance thereby. She, therefore, insisted that the amendments, amongst others, to Section 3 of the Act, 1959 having been introduced by the related enactments of the Khasi Hills Autonomous District Council, the same not having been adopted by the Jaintia District Council were not applicable to the areas administered by the latter.

To reinforce this plea, the learned counsel adverted to the Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Amendment Act, 1973 and the Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) 2nd Amendment Act, 1975 to highlight that though these instruments incorporated amendments to the Act, 1959, Section 3 thereof, as originally framed, was left untouched. Ms. Goyal, therefore, emphatically pleaded that no interference with the impugned judgment and order is warranted. She relied on the following decisions to buttress her contentions *Motor General Traders and Another Vs. State of Andhra Pradesh and Others*, , *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, , *State of Jharkhand and Another Vs. Govind Singh*, , *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others*, and *Ewanlangki-Erymbai and Others Vs. Jaintia Hills District Council and Others*, .

10. The pleadings available, the documents in support thereof and the legislations referred to in by the parties have been duly attended to. The preliminary demur against the maintainability of the instant appeal by the respondent No. 4 in the writ petitioner needs to be addressed at the threshold. The appellant, as the writ petition would disclose, was essentially not impleaded as a respondent. It got arrayed as Durbar of Sumer Patorship represented by its Secretary, Shri Aphrian Paslein, Jowai, Jaintia Hills District, Meghalaya. That none of the respondents had filed any affidavit-in-opposition has been referred to hereinabove. The learned Single Judge, as the impugned judgment and order would reveal, however, duly recorded their contentions. The appellant/respondent No. 4 did participate in the adjudication being represented by its learned counsel pleading for the validity of the impugned notifications of the Jaintia District Council.

11. The expression "Durbar" has been defined in the Act, 1959 (prior to its amendment) vide the UKJHAD (Appointment and Succession of Chiefs and Headmen) Act No. 1 of 1969 (for short hereafter referred to as the Amendment Act of 1969).

Section 2 (e):-"Durbar" means Durbar constituted by the District Council under any law to guide the Chief in running the administration of the Elaka and pending the constitution of such Durbar, the existing customary Durbar recognized as

such by the Executive Committee with the subsequent approval of the District Council shall be deemed to be such a Durbar.

12. Subsequent to the amendment, this expression as adverted hereto before stood defined thus:- "Durbar Pyllun", means a Durbar Hima or a general Durbar of the Elaka to be convened by the chief within 30 days from the date, a requisition is made by not less than one-third of the members of the Durbar as defined in clause (f) above, or by not less than 50 adult male residents of the Elaka; provided that the Executive Committee approves the agenda and or the purpose for which the meeting of the Durbar is sought to be requisitioned.

13. To appropriately evaluate the plea of want of locus of the appellant, the definition of the expression "The Chief and its Durbar" provided in section 2 (f) of the Act, 1959, as above, need be noticed as quoted hereunder:

2(f) "The Chief and his Durbar" means an Executive Durbar presided over by the Chief of the Elaka with certain Headmen as members, the number of which shall be determined, and the names of which shall be approved, by the Executive Committee on the recommendation of the Durbar of the Chief and all the Headmen of the Elaka. The function of this Durbar is to run the day-to-day administration of the Elaka.

14. A cumulative reading of the definitions of the expressions "Durbar". "Durbar Pyllun" and the "The Chief and his Durbar" in our comprehension irrefutably denotes that the Durbar is a body constituted/approved by the District Council to conduct the day-to-day administration of the Elaka and amongst others to guide the Chief (which includes a Dolloi as defined in section 2(a) of Act, 1959) of the Elaka. Not only, the definition of Durbar connotes an element of permanence in the entity, attention of this Court has not been drawn to any material on record that the Durbar of Sumer Patorship is non-existent or that Secretary. Shri Aphrian Paslein, Jowai, Jaintia Hills District, Meghalaya is no longer authorized to represent it as done in the writ proceeding as well as in the present appeal. In the above factual and legal premise, the assailment to the maintainability of the appeal on the ground of lack of locus standi of the appellant lacks persuasion and is negated.

15. To reiterate, the learned Single Judge had laid great emphasis on the judgment and order dated 01.07.1982, passed in Indro Paslein (supra), to return the finding that the Dolloi of the Elaka Raliang was the sole authority to hold elections for appointment of Pator in the Sumer Patorship in accordance with the existing laws and customs prevailing in the Elaka. A perusal of this decision reveals that the challenge in the related proceeding was against the appointment of the respondent No. 5 therein, as the Acting Pator of the Sumer Patorship. The writ petitioner's averment made therein that as per the custom prevalent in the area, the Pator of Sumer was to be appointed and confirmed by the Dolloi and his Durbar had remained unrefuted. This was construed to be an admission of the correctness of such assertion. Referring to Section 3 of the Act, 1959, as it

stood prior to its amendments in 1969 and 1971 as adverted to hereinabove, it was held that in terms thereof, the jurisdictional District Council had no authority in law to make the appointment of Acting Pator.

The background of the evolution of the Jaintia District Council and the concomitant laws did not figure for scrutiny. The adjudication recorded in the judgment and order dated 01.07.1982 was, thus evidently in a limited context of the facts bearing on the appointment of Acting Pator by the Jaintia District Council. Having regard to the expanded anvil of legal and factual projections in this appeal, the decision in *Indro Paslein* (supra), in our view, is not of any decisive significance.

16. A plain perusal of the orders dated 10.12.2010, 28.03.2011 and 24.06.2011 passed in WP (C) No. (SH) 417/2010 and MC No. (SH)220/2011 in WP (C) No. (SH) 283/2010 also do not deal with the issues bearing on the applicability or otherwise of section 3 of the Act, 1959 as amended by Amendment Acts of 1969 and 1971. The impact of the Act, 1967 as well, did not fall for judicial scrutiny. Noticeably, these orders permitted the Jaintia District Council to conduct the election of Pator of Sumer Patorship by secret ballot in presence of the Chief of the Elaka and also did on its prayer grant extension of time therefor. In WP (C) No. (SH) 283/2010, as well as, in MC No. 220/2010, the Dolloi, Elaka Raliang was a party and logically the orders dated 28.03.2011 and 24.06.2011 were passed in his presence without any remonstrance. The impugned notifications dated 12.07.2011 and 19.07.2011, as the same would divulge, were issued pursuant to the orders dated 10.12.2010 and 24.06.2011 referred to hereinabove. These orders as well to reiterate though, had permitted the Jaintia District Council to conduct the elections to the office of the Pator at Sumer Patorship under Elaka Raliang, there was no occasion to examine the applicability or otherwise of section 3 of the Act, 1959 as amended vide the Amendment Acts of 1969 and 1971 to such exercise.

17. A brief preface of the constitutional perspective qua the autonomy, dominion and the jurisdiction of the District Council envisaged under the Sixth Schedule to the Constitution of India would be an apt initiation to the pith of the debate encountered by the adjudicative pursuit in hand.

18. Article 244 (2) of the Constitution of India (as it stands today) enjoins that the provision of the Sixth Schedule would apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. Para I of the Sixth Schedule predicates that the tribal areas, in each item amongst others of Part-II of the Table appended to paragraph 20 thereof would be autonomous districts. In terms of sub-paragraph 3 of para 1, the jurisdictional Governor, may, by public notification, amongst others, include/exclude any area in any of the part of the said table, create a new autonomous district, unite two or more autonomous districts or parts thereof, so as to form one autonomous district, alter the name of any autonomous district and define the boundaries of any such district.

Paragraph 20 elucidates that the tribal areas catalogued under Part-II thereof pertain to the State of Meghalaya and are designated as Khasi Hills District, Jaintia Hills District and Garo Hills District. These areas under Part-II of the Table appended to para 20 of the Sixth Schedule as originally framed were composed of the United Khasi - Jaintia Hills District and the Garo Hills District. The North-Eastern Areas (Re-Organization) Act, 1971 enforced w.e.f. 30.12.1971 was an enactment to provide for the establishment of the States of Manipur and Tripura and to provide for the formation of the State of Meghalaya and of the Union Territories of Mizoram and Arunachal Pradesh by reorganization of the existing State of Assam and for matters connected therewith. Thereby, inter alia, by way of amendment to the Sixth Schedule to the Constitution, the tribal areas under Part-II of the Table appended to paragraph 20 thereof were shown to be comprised of the United Khasi-Jaintia Hills District, the Jowai District and the Garo Hills District.

19. The insertion of the Jowai District as above, in Part-II of the Table appended to paragraph 20 of the Sixth Schedule is traceable to the notification No. TAD/R/50/64, dated 23.11.1964 notifying the creation of a new autonomous district christened as Jowai District by excluding the Jowai Subdivision of the United Khasi Jaintia Hills District w.e.f. 01.12.1964 by the Governor of Assam in the exercise of his powers under Clauses (c), (e) and (g) of paragraph (1)(3) of the Sixth Schedule. The notification, amongst others, disclosed that the creation of the new autonomous district was on a consideration of the report of the Commission appointed for the purpose and further that the boundaries of the Jowai District would be those of the Jowai Subdivision of the United Khasi-Jaintia Hills District.

20. Subsequent thereto, by notification No. DCA. 31/72/11, dated 14.06.1973, the United Khasi-Jaintia Hills District and the Jowai District were re-designated as the Khasi Hills District and the Jaintia Hills District respectively. The notification mentioned that the renaming of the autonomous districts was in exercise of the power conferred by Clause (ff) of sub-paragraph (3) of paragraph 1 of the Sixth Schedule to the Constitution of India by the Government of Meghalaya. Vide the said notification corresponding amendments in paragraph 20 of the Sixth Schedule to the Constitution were incorporated. The configuration of the tribal areas in Part-II of the Table of paragraph 20 of the Sixth Schedule at present is as already indicated i.e. Khasi Hills District, Jaintia Hills District and the Garo Hills District.

21. This recital of the metamorphosis of the tribal areas of the State of Meghalaya, notwithstanding, a few provisions of the Sixth Schedule to the Constitution of India bearing on the statutes involved and the powers of a District Council deserve allusion.

Paragraph 2 thereof enjoins a District Council for each autonomous district with the composition as prescribed. Such District Council would be a body corporate by the name respectively of the district concerned with perpetual succession and

a common seal capable to sue and of being sued in that name. Sub-para (4) of para 2 mandates that the administration of an autonomous district, if not vested in any Regional Council, would rest with the District Council. Para 3 confers powers on the District Councils for autonomous districts to make laws with respect, amongst others, to the appointment or succession of Chiefs or Headmen. Subparagraph 3 thereof, ordains that all laws so made shall be submitted forthwith to the Governor and until assented to would have no effect. Paragraph 4 confers judicial powers to the District Council to the extent as indicated therein. In terms of paragraph 11, all laws, rules and regulations made by a District Council or a Regional Council, as the case may be, have to be published forthwith in the Official Gazette of the State and on such publication would have the force of law. Paragraph 12 A vis-a-vis the State of Meghalaya predicates the application of Acts of Parliament and of the Legislature of the State to Autonomous Districts and Autonomous Regions thereof.

22. A survey of the provisions of the Sixth Schedule as above, would demonstrate in unequivocal terms the independence and paramountcy of a District Council in the matter of overall administration of tribal area(s) within its jurisdictional limits. The Sixth Schedule comprehends executive legislative and judicial roles of a District Council being appropriately attired therefor. The Sixth Schedule to the Constitution of India is a self-contained code, in which, the District Councils and the Regional Councils with their jurisdictions outlined have been assigned sovereign status with powers and the dominion commensurate thereto. The plea against the permissibility of impingement upon such constitutionally conferred powers, thus, cannot be discounted.

With the creation of the Jowai Autonomous District, to join the course of events consequent upon the creation of the Jowai Autonomous District in 1964, in exercise of its powers under the Sixth Schedule, the District Council of Jowai Autonomous District enacted the Act, 1967 and the same was published on receiving the assent of the Governor concerned. The preamble to this Act, which set out the exigency therefor, revealed the following features:-

- 1) It was felt expedient to make provision for the administration of the Jowai Autonomous District.
- 2) The Jowai District Council had no Law. Rules and Regulations till then.
- 3) All laws, Rules and Regulations made by the United Khasi-Jaintia Hills District Council had applied in this district in the past.
- 4) It was necessary to make arrangements for the application of certain Acts, Rules and Regulations made by the United Khasi-Jaintia Hills District Council.

The Act provided that it would come into force w.e.f. 11.04.1967 and extend to the whole autonomous district hitherto known as Jowai Sub-Division.

The words "the District", "The District Council", "The Executive Committee" appearing in the Acts, Rules and Regulations made by the United Khasi-Jaintia

Hills District Council as mentioned in Schedule I to the Act were construed to mean "The Jowai Autonomous District", "The Jowai District Council" and "The Executive Committee" of the District Council of the Jowai Autonomous District". In Appendix-I, amongst others, the Act, 1959 was listed to be one of the enactments contemplated to apply to the Jowai Autonomous District.

23. By the operation of section 3 of Act, 1967, with its inclusion in appendix I, the Act, 1959, was legislatively ordained to apply to the whole of Jowai Autonomous District "for the time being", till such time the Jowai District Council made its own law.

24. The march of events next witnessed amendments to the Act, 1959 by the Amendment Acts of 1969 and 1971, recasting more importantly Section 3 of the Act, 1959 dealing with the election or nomination and appointment of Chief and Headmen. Though, not in the thick of the dissensus, it would be appropriate to notice the definition of the words "Chief" and "Headman" under the Act, 1959 as originally enacted and following its-aforementioned amendments as extracted hereunder:-

Section 2(a)_ "Chief" means a Syiem, a Lyngdoh, a Dolloi, a Sirdar or a Wahadadar as the case may be of any Elaka.

This definition remained unaltered on the above amendments.

25. Section 2(k)_ "Headmen", means a Myntri, a Syiem Raid, a Basan, a Lyngdoh Raid, a Matabor, Elector, a Pator, a Sangot and village elder.

With the amendments as above, a Sirdar, Shnong, Sirdar Raid and Rangbah Shnong have been brought within the purview of the expression "Headmen".

26. The original and the amended section 3 of Act, 1959, are also extracted herein-below in succession:-

3. Elections and Appointment of Chiefs and Headmen:- Subject to the provision of this Act and the Rules made thereunder all elections and appointments of Chiefs or Headmen shall be in accordance with the existing customs prevailing in the Elaka concerned".

Amended:

3. Election or Nomination and Appointment of Chief and Headmen:- Subject to the provisions of this Act and the Rules made thereunder, all elections or nominations and appointment of Chiefs and Headmen shall be in accordance with the existing custom or prevailing in the Elaka concerned and or in accordance with the orders as the Executive Committee may issue from time to time. The Secretary of the Executive Committee or any Officer appointed by the Executive Committee in this behalf shall be the Returning Officer for all nominations or elections under this section.

27. While there is no dispute that the election of Pator is envisaged by section 3,

the polemic is qua the applicability of the amended section 3 of Act, 1959 to the Jowai Autonomous District (now renamed as Jaintia Hills District). Whereas, it has been insisted on behalf of the appellant that in the face of 1967 Act, with particular reference to Section 3 thereof, the Act, 1959 with all its amendments, in absence of laws to the contrary made by the Jowai/Khasi Hills District Council on the same theme would be wholly applicable to the Jaintia Hills District for all matters provided thereby, the plea of the respondent No. 3/writ petitioner is opposed thereto. Reference to the Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Amendment Act, 1973 (for short hereafter referred to as the Act, 1973 and the Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) (2nd amendment) Act, 1975 (hereafter for short referred to as the Act, 1975) has been strenuously made to contend that as Section 3 of Act, 1959, as originally framed, was not amended by these two legal instruments, vis-a-vis the Khasi Hills District, the same, in the original complexion applied in the matter of elections or nominations and appointment of Chief and Headmen thereof.

28. A bare perusal of Act 1973 and Act 1975 exhibits that those are the enactments of the Jaintia District Council in exercise of power under paragraph 2 of the Sixth Schedule to the Constitution of India introducing amendments to the Act 1959 in its application to the Jaintia Hills Autonomous District. These amendments visibly have not touch upon Section 3 of Act 1959, as it stood on the dates of these legislations i.e. 10.11.1973 and 13.12.1975 respectively.

29. A close scrutiny of original and amended Section 3 of Act, 1959 would demonstrate that whereas, in the former, all elections and appointments of Chiefs and Headmen were to be conducted in accordance with the existing customs prevailing in the Elaka concerned as per the new provision in the alternative, it is permissible to administer the same in accordance with the orders of the Executive Committee of the concerned District Council. The Secretary of the Executive Committee thereof or any Officer appointed by the Executive Committee is to be the Returning Officer for all nominations or elections thereunder. These two provisions when placed in juxtaposition, however, do not spell extinction of the role of the existing custom prevailing in the Elaka in the elections or nominations and appointments of Chiefs and Headmen thereof by the amendment.

30. Be that as it may, the issue of moment is the underlying purport of Act, 1967 vis-a-vis the Act, 1959 in particular in its applicability to the Jaintia Hills District with all its amendments as on date. This assumes significance, in absence of any specific law and independent legislation made by the Jaintia District Council on the aspects covered by Act, 1959 and in total substitution thereof. To reiterate, the Act, 1973 and the Act, 1975 are by way of amendments of Act, 1959 to the extent as indicated therein, but do not have the potential or efficacy of replacing the same as a whole. These two enactments, though, have not referred to Section 3 of Act, 1959, the form and essence of this legal provision, vis-?-vis, the

Jaintia Hills District would be contingent on the interpretation of section 3 of Act, 1967 and the import thereof. Does Section 3 of Act, 1967 signify legislation by reference or incorporation is thus the quaere.

31. Section 3 of the Act, 1967, enacted by the then Jowai Autonomous District Council in exercise of its powers conferred by paragraph 11 of the Sixth Schedule to the Constitution of India strutting the centre stage of the debate demands its extraction as a prefatory imperative to the survey of the judicial pronouncements bearing on the legal conundrum:-

3. Application of Acts, Rules and Regulations made by the United Khasi-Jaintia Hills District Council.

The Acts, Rules and Regulations made by the United Khasi-Jaintia Hills District Council as listed in appendix I and such other reference thereon in respect of the Officers, etc., shall apply to the Jowai Autonomous District in so far as they are applicable to it for the time being till such time when the Jowai District Council makes its own laws.

The preamble to this Act, as adverted to hereinabove, exudes that on the date of the enactment thereof, the Jowai District Council had no Laws, Rules and Regulations of its own and the said legislation was felt necessary to effectuate an arrangement for the application of certain Acts, Rules and Regulations made by the United Khasi-Jaintia Hills District council for the administration of the Jowai Autonomous District. Admittedly, the Act, 1959, was one of the legislations listed in appendix I.

Section 3 on a dialectical analysis yields the following three salient attributes:-

- i) The Acts, Rules and Regulations made by the United Khasi-Jaintia Hills District Council as listed in appendix I and such other reference thereon in respect of Officers, etc., would apply to the Jowai Autonomous District.
- ii) Such application would be for the time being.
- iii) The duration of such application would be till such time the Jowai District Council made its own laws.

32. There is no dissension at the Bar that till date neither the Jowai Hills Autonomous District Council nor the Jaintia District Council had made laws either replacing the Act, 1959 as a whole or legislating an independent enactment on the aspects enfolded in the Act 1959 barring Act 1973 and Act 1975 addressed to hereinabove.

33. In The State of Madhya Pradesh Vs. M.V. Narasimhan (supra), their Lordships, while dwelling on the subtle features of legislations by reference and incorporation, laid the following proposition:-

14. On a consideration of these authorities, therefore, it seems that the following proposition emerges: Where a subsequent Act incorporates provisions of a

previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases: (a) where the subsequent Act and the previous Act are supplement to each other; (b) where the two Acts in *pari materia*; (c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and (d) where the amendment of the previous Act, either expressly or by necessarily intendment, applies the said provisions to the subsequent Act.

34. Dilating on the same view their Lordship in Maharashtra State Road Transport Corporation (*supra*), while observing that the legislative practice to borrow the provisions of an earlier Act on a particular subject by making a broad reference to an earlier enactment or some or most of its provisions is a convenient measure to avoid verbatim repetition of the said provisions, affirmed that any modification in the said provisions of the earlier Act would apply *mutatis mutandis* to the matters governed by the latter legislation. Their Lordships elucidated that if there is a definite indication in the latter enactment as to the applicability or otherwise of subsequent amendments in the prior Act, no difficulty would surface, but the problem would emerge in absence of such indication. It was enounced with reference to the two distinct devices of legislation i.e. incorporation by reference and mere reference or citation of earlier statute in the latter Act, that in the former case, any change in the incorporated statute by way of amendment or repeal would have no effect on the incorporating statute. However, in the latter case, any modification in the earlier statute from time to time would have its impact on the statute in which it is referred to. In such a situation, the provisions in the earlier statute with their amendments would have to be read into the latter enactment in which they are referred to unless any such subsequent amendment is inconsistent with a specific provision already in existence. That the pursuit to decipher the true visage of the enactment involves a probe into the legislative intention and/or an insight into the working thereof was underlined. One of the indices, their Lordships fathomed with reference to the decision in Privy Council in AIR 1931 149 (Privy Council) , was whether the extent of modifications made in the provisions of the earlier Act, while broadly adopting the same in the latter enactment are "numerous and substantial", so much so to indicate that the intention on the part of the legislature was not to travel beyond the provisions of the borrowed Act as they existed at the time of framing of the subsequent enactment.

35. In a later decision, the Hon"ble Apex Court in Rakesh Vij Vs. Dr. Raminder Pal Singh Sethi & Ors. (*supra*), enunciated that the determination whether a legislation was by way of incorporation or reference is more a matter of construction by the courts keeping in view the language employed by the statute, the purpose of referring or incorporating provisions of an existing Act and the effect of it on the day-to-day working. That the prime duty of the courts is to assume that any law had been made by the legislature to serve public

purpose was emphasized. It quoted with approval its earlier observation in *U.P. Avas Evam Vikas Parishad Vs. Jainul Islam and Another*, , that to determine as to whether a particular legislation falls in the category of referential legislation or legislation by incorporation depends upon the language used in the statute in which reference is made to the earlier legislation and other relevant circumstances.

36. This Court in reiteration of the above recognized distinctive traits of the two types of legislative tools clarified in *M/s. B.N. Dey & Co. Vs. State of Assam & Ors.*, (supra) that legislation by incorporation is a common legislative measure employed by the legislature, where it for convenience of drafting incorporates the provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt and once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute. Their Lordships observed further that when there is no actual incorporation, but the intention is only to refer to another statute for the purpose of implementing the referring statute, section 8(1) of the General Clauses Act, 1897 would apply and consequently any modification in the provisions of the enactment referred to in the incorporating Act would have to be read therein unless a different intention appears.

37. Applying the above judicially adumbrated norms distinguishing the two legislative measures adverted to hereinabove, we are of the unhesitant opinion, having regard to the language applied in section 3 of the Act, 1967 and the factual backdrop thereof that it signified legislation by reference, vis-a-vis, the enactments catalogued in appendix I thereof, till, however, the then Jowai Autonomous District Council (presently Jaintia District Council) made its own laws in substitution thereof. The expressions "for the time being", "till such time" and "makes its own laws" are precisely obvious determinants in support of this conclusion. In other words, in absence of any law made by the then Jowai Autonomous District Council followed by the Jaintia District Council in abrogation of Act, 1959 as a whole, the touch ups effected by the Acts, 1973 and 1975, in our comprehension, do not, ipso facto, signify that the other amendments, meanwhile occasioned in the Act, 1959, amongst others, remodeling section 3 thereof would be inapplicable to the Jaintia Hills District. None of the factors indicated in the above referred decisions at the Bar attest against recognition of the Act, 1967 in general and section 3 thereof in particular to be a legislation by reference and not one by incorporation.

38. The decision in *Prabodh Verma & Ors. Vs. State of Uttar Pradesh & Ors.* (supra), defining a distinction between a section of an Act and the enactment as a whole is not of decisive relevance. That, an infinite extension of application of unequal laws militate against their character as temporary measure and that the decision to withdraw the application of unequal laws to equals cannot be delayed

unreasonably was observed by the Apex Court in H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, . This decision is not only founded on existence and invocation of unequal laws to equals, a feature which the legislations involved herein do not bear in our estimate, this observation in the attendant facts and circumstances is of no avail to the respondent No. 3/writ petitioner.

39. In State of Jharkhand & Anr. Vs. Govind Singh (supra), the Hon"ble Apex Court while recalling the oft quoted fundamental principles of statutory interpretation reiterated that when the words applied in a statute are clear and there is neither any obscurity nor ambiguity and the intention of the legislature is thereby clearly conveyed, there is no scope for the court to innovate or take upon itself a task of amending or altering the statutory provisions. While emphasising that the line which separates adjudication from legislation, though thin, ought not to be crossed or erased, their Lordships underlined that a construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity. It was enunciated that where the language of a statute is clear, the intention of the legislature is to be gathered therefrom and the judges should not assume the role of a lawmaker for exhibition of judicial valour.

39. A. The following invaluable excerpts from pages 28, 29, 36, 45 & 199 the hallowed treatise "The Interpretation of Statutes" by Maxwell, (12th Edn.) are convincingly clinching:-

"The rule of construction is "to intend the Legislature to have meant what they have actually expressed." The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used," for "it is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law."

.....

Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient: words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the court is to expound the law as it stands, and to "leave the remedy (if one be resolved upon) to others".

.....

A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an appeal from

one quarter sessions to another, it was observed that such a provision, though extraordinary and perhaps an oversight, could not be eliminated.

.....

If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one.

40. In the wake of the genre of the Act, 1967, attributed as above, we are of the unhesitant opinion that Section 3 of Act, 1959, as amended by Act, 1969 and Act, 1971 continues to apply to the present Jaintia District Council and, thus, the elections or nominations and appointment of Chiefs and Headmen as contemplated therein would essentially be guided thereby. The deduction to the contrary would signify total disregard to the progression of events as on date since the enactment of this statute and in particular of Act, 1967. A plain reading of Section 3, however, does not signify the substitution or exclusion of the custom prevailing in the Elaka or denudation of its relevance in the matter of elections or nominations and appointment of Chiefs and Headmen. The amended Section 3 only prescribes two alternatives to undertake the election, nomination or appointment of Chiefs and Headmen i.e. either by resorting to the existing custom prevailing in the Elaka or in accordance with the order(s) of the Executive Committee of the Jaintia District Council.

41. Be that as it may, in view of the determination made hereinabove, the impugned judgment and order is unsustainable in law and on facts and is, thus, interfered with. The plea that the authorities cited at the Bar dwelling on the legal nuances of legislation by reference and incorporation have no application to the laws framed under the Sixth Schedule to the Constitution of India lacks in persuasion.

42. The decision of the Apex Court in Ewanlangki-E-rymbai & Ors. Vs. Jaintia Hills District Council (supra), in affirmation of the verdict of this Court dealt with contextual facts different from those as obtained herein and in particular negated the challenge to the notification of the Jaintia Hills Autonomous District Council announcing the programme for election of Dolloi in the Elaka Jowai on the ground of discrimination as the process was sought to be limited only to non-Christians. The aspect, amongst others, of the impact of the Act, 1967 on Act, 1959 and Section 3 thereof did not arise for scrutiny. Having regard to the determination as above, the plea of supervening authority of the Jaintia Hills District Council in the exercise of its executive powers under Rule 28 of the

Assam and Meghalaya Autonomous District (Constitution of District Council) Rules, 1951, does not call for any scrutiny. The appeal is, thus, allowed. The impugned judgment and order dated 19.8.2011, passed in WP (C) No. (SH) 183/2011 is set aside. The election to the post of Pator in Sumer Patorship under the Elaka Raliang would now be expeditiously held in accordance with the amended Section 3 of Act, 1959 referred to hereinabove. No costs.