
(1994) 04 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 2658 of 1992

Holiram Terang

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-04-1994

Acts Referred:

Constitution of India, 1950 — Article 163, 227, 50, 94

Citation : AIR 1995 Guw 15

Hon'ble Judges : S.N. Phukan, Acting C.J.; M. Sharma, J

Bench : Division Bench

Advocate : H. Roy, B.D. Das, H.K. Sarma, for the Appellant; N.M. Lahiri, S.N. Bhuyan and A.M. Mazumdar, Generals, A.H. Saikia, Central Govt. Standing Counsel, A.K. Choudhury, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Phukan, C.J. Actg.

1. This writ petition under Article 226 of the Constitution has Ministers of the State of Assam and at present he is a sitting member of the State Assembly. It has been stated that he has also interest in various activities of the State, more particularly in the autonomous district of Karbi Anglong constituted under the Sixth Schedule to the Constitution. In this connection, it may be stated that there are two district councils in the State of Assam, namely, Karbi Anglong Autonomous District Council and North Cachar Hills Autonomous District Council. These Councils were formed in the year 1952.

2. The main grievance of the writ petitioner is that the Governor by invoking powers under sub-para (2) of paragraph 16 of the Sixth Schedule to the Constitution took over the administration of the District Council on number of occasions which is whimsical, arbitrary and for political purpose. Hence the writ petitioner has challenged the constitutional validity of the above provision of the Sixth Schedule to the Constitution.

3. Considering the importance of the matter, this Court, apart from the respondents, also issued notices to all the Advocates General of the North Eastern Region and they also addressed this Court. It may be stated that Mr. N.M. Lahiri, senior-most Advocate General, defended the above provision of the Sixth Schedule and his argument was adopted by the Advocates General of the States of Assam and Arunachal Pradesh.

4. Two counter-affidavits have been filed, one on behalf of the State of Assam and the other on behalf of the Union of India. In the counter filed on behalf of the State of Assam, it has been stated that the notifications which were issued under paragraph 16(2) of the Sixth Schedule to the Constitution were in accordance with the provision of the Constitution, and also to uphold the justice for the people when the elected persons to the District Council were acting against the interest of the people. It has also been stated that the said members had also indulged in malpractices like corruption, financial mismanagement, favouritism and disrespect to the people. According to the State Government the power under paragraph 16(2) is exercised only when the District Council is incapable of managing the affairs of the Council. The allegations of the writ petitioner that the powers conferred on the Governor by paragraph 16(2) of the Sixth Schedule are unguided and the same can be used for co-lateral purpose for achieving other objects have been denied. It has also been stated in the affidavit of the State Government that after issuance of the notification under paragraph 16(2) of the Sixth Schedule the matter was discussed in the State Assembly.

5. In the counter-affidavit on behalf of the Union of India filed by Desk Officer of the Ministry of Home Affairs it has been denied that the provisions of paragraph 16(2) of the Sixth Schedule give unguided powers and it can be used for collateral purpose for achieving an alien object and can be misused easily. It has specifically been stated that the provisions of above paragraph are not violative of Article 14 of the Constitution.

6. We have heard Mr. H. Roy and Mr. B.D. Das for the writ petitioner and Mr. N.M. Lahiri, Mr. S.N. Bhuyan and Mr. A.M. Mazumdar, learned Advocates General for the States of Meghalaya, Assam and Arunachal Pradesh respectively. We have also heard Mr. A.H. Saikia, learned Central Government Standing Counsel and Mr. A.K. Choudhury, learned Government Advocate, Assam.

7. Before we consider the submissions made at the Bar, we may extract below the provisions of Articles 94, 356 and paragraphs 2(6A), 14 and 16 of the Sixth Schedule to the Constitution:

"94. A member holding office as Speaker or Deputy Speaker of the House of the People -

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker to

the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the House of the People passed by a majority of all the members of the House:

Provided that no resolution for the purpose of Clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution :

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution."

"356. (1) If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by proclamation -

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking the previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before

the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving, the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation :

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People."

"2. (6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor:

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist, which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate:

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces."

"14. (1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, including matters specified in Clauses (c), (d), (e) and (f) of sub-paragraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in

the State generally and in particular on -

- (a) The provision of education and medical facilities and communications in such districts and regions;
- (b) The need for any new or special legislation in respect of such districts and regions; and
- (c) The administration of the laws, rules and regulations made by the District and Regional Councils;

and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of the State.

(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State."

"16. (1) The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by Public Notification order the dissolution of a District or a Regional Council, and -

- (a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or
- (b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months :

Provided - that when an order under Clause (a) of this paragraph has been made, the Governor may take the action referred to in Clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election:

Provided further that no action shall be taken under Clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.

(2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification, assume to himself all or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months:

Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.

(3) Every order made under sub-paragraph (2) of this paragraph with the reasons therefore shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the order, unless, before the expiry of that period it has been approved by the State Legislature."

8. The first contention of the learned counsel for the petitioner is that sub-paragraph (2) of paragraph 16 contains unguided power. In this connection, learned counsel has submitted that the basis, of satisfaction of the Governor is not specified in the said sub-paragraph (2) unlike Article 356 of the Constitution. That apart, it has been urged that in case of District Council it has legislative, executive and judicial powers and by exercising powers under sub-paragraph (2) of paragraph 16 the Government may take all the powers whereas in case of Article 356 judicial power is not taken over. The legislative powers of the Legislative Assembly are entrusted to the Parliament.

9. In reply, Mr. Lahiri, learned Advocate General, Meghalaya, has submitted that the provision of sub-paragraph (2) of paragraph 16 is a constitutional provision and the Constitution maker in its wisdom has incorporated this sub-paragraph (2) by the Assam Reorganisation (Meghalaya) Act, 1969.

According to Mr. Lahiri this had to be done keeping in view the experience and the working of the Sixth Schedule since 1952 when District Councils were formed. Regarding unguided power Mr. Lahiri has submitted that the question cannot arise as sufficient provisions have been made in sub-paragraph (3) of paragraph 16.

10. The main thrust, as stated above, is that the power given to the Governor under sub-paragraph (2) of paragraph 16 is unguided. It has been urged that though in Article 356 of the Constitution the President can invoke powers on receipt of the report from the Governor, but in case of sub-paragraph (2) of paragraph 16 there is no such provision for getting a report before invoking the power by the Governor. In our opinion, this cannot be said to be unguided powers inasmuch as Governor has to act with aid and advice of the Council of Ministers and the Council of Ministers will tender advice only on the basis of some reports.

11. Another contention on behalf of the writ petitioner is that the District Council has got legislative powers, but if the administration is taken over by the Governor by invoking powers under sub-paragraph (2) of paragraph 16 there is no provision for delegating such legislative power to any elected representative of the people, such as State Assembly. In this connection a reference has been made to Article 356 of the Constitution to the effect that while exercising powers under this Article the legislative function of State Assembly is performed by the

Parliament.

12. We are unable to accept the contention inasmuch as even if such powers are exercised by any other authority under sub-paragraph (3) of paragraphs of the Sixth Schedule any law made by such authority has to be submitted to the Governor for his assent. This is a check for performing legislative function by any other authority. We may also refer to provisions underlying paragraph 6 of the Sixth Schedule which empowers the District Council to establish market, etc. and may also make regulation. But this paragraph also provides that such regulation will require previous approval of the Governor. Reference may also be made to paragraph 10 of the Sixth Schedule which empowers the District Council to make regulation. Under sub-paragraph (3) of paragraph 10 all such regulations have to be submitted to the Governor for his assent.

13. Thus even in respect of legislative function we find that during the period under which administration is taken over by the Governor by invoking powers under sub-paragraph (2) of paragraph 16 there is a check in making any law including regulation inasmuch as the Governor shall have the control before such law or regulation can be enforced.

14. The next submission on behalf of the writ petitioner is that by invoking sub-paragraph (2) of paragraph 16 even judicial powers can be taken over by the Governor. We are unable to accept the contention of the learned counsel for the petitioner inasmuch as under paragraph 4 of the Sixth Schedule the District Council can only establish Courts within the limitation prescribed in the said paragraph. Once Courts are established, they perform judicial function independently under the supervision of the High Court under Article 227 of the Constitution. That apart in paragraph 4 itself sufficient provisions have been made regarding the control of the Courts established by District Council by the High Court and the Supreme Court. Therefore, this contention has also no force. It has been urged on behalf of the writ petitioner that in case of dissolution of the State Assembly Speaker continues to hold office but that is not so in case of Chairman of a District Council. Regarding Speaker there is specific constitutional provision in Article 94 and he continues to hold the office by virtue of this constitutional provision, Therefore, his position cannot be compared with the position of the Chairman of a District Council.

15. The framer of the Constitution has made adequate provision by introducing sub-paragraph (3) in paragraph 16 of the Sixth Schedule. This sub-paragraph (3), *inter alia*, provides that any order made under sub-paragraph (2) of paragraph 16 shall have to be laid before the Legislature of the State and unless it is approved by the State Legislature the order passed under sub-paragraph (2) shall cease to operate after 30 days from the date on which the State Legislature first sits after issue of the order. This is a sufficient check on the Executive for exercising powers under sub-paragraph (2) of paragraph 16 of the Sixth Schedule to the Constitution.

16. For the reasons stated above, we do not find any merit in the present petition. Accordingly, Rule is discharged and the petition is dismissed. Parties to bear their own cost.