
(1956) 03 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 104 of 1954

Ka Sirian Marbaniang

APPELLANT

Vs

H. Cotton and Others

RESPONDENT

Date of Decision : 08-03-1956

Acts Referred:

Assam Autonomous District (Constitution of District Councils) Act, 1951 — Section 28
Constitution of India, 1950 — Article 226
United Khasi-Jaintia Hills Autonomous district (Management and Control of Forests)
Act, 1958 — Section 4

Citation : AIR 1956 Guw 162

Hon'ble Judges : Sarjoo Prasad, C.J; Ram Labhaya, J

Bench : Division Bench

Advocate : H. Goswami and B.M. Goswami, for the Appellant; N.M. Dam, for Respondent No. 1, A.S. Khongpai and N.M. Lahiri for Respondent Nos. 1 and 2, for the Respondent

Judgement

Sarjoo Prasad, C.J.—This is an application under Article 226 of the Constitution of India praying for a writ of mandamus or any other writ of the like nature preventing the respondents from giving effect to or taking advantage of an order passed by the Executive Member, District Council, United Khasi-Jaintia Hills District.

2. The application arises out of a dispute to a plot of land 40" x 8" situated in the Barabazar area of Shillong Municipality. The land in question falls within the area known as the area of the Siem of Myllem. The case of the petitioner who is a vegetable seller is that the Karabazar market in question is managed by the Siem of Myllem and that from time immemorial the Barabazar meets twice a week and these days are called Barabazar and Chottabazar days.

On these days the plot of land is occupied by the lime sellers who are also the opposite party to this application and on other six days of the eight days that constitute the Khasi week, the petitioner along with "others carries on the trade

of selling vegetables and potatoes on the plot in question. This arrangement was going on satisfactorily until in August, 1953 some difference arose between the parties. The lime sellers then approached the Siem for permission to erect a permanent structure on the land, in question.

The petitioners also approached the Siem making a similar offer and also conceding that the lime sellers should be permitted to occupy the stall tree of rent on two days in a week as usual or in the alternative suggesting that the status quo should be maintained. On 20-11-1953 a Myntrie who went to inquire into the matter submitted a report in favour of the opposite party. The matter was eventually heard by the Durbar of the Siem of Myllem which directed that the petitioner and the other vegetable sellers should sell vegetable on the land for four days in the week, whereas the opposite party, the lime sellers should occupy it and carry on their business for another four days, until further orders.

The opposite party do not seem to have been satisfied with this order and they approached the Executive Member of the District Council who on 11-6-1954 set aside the order of the Siem of Myllem, overruled the: claim of the vegetable sellers altogether and directed that the opposite party, the lime sellers alone should be entitled to occupy the land in question in order to carry on their trade in the market.

3. The petitioner challenges the order of the Executive Member substantially on two grounds. It is contended in the first place that the Executive Member had no jurisdiction to interfere with the order of the Siem; and secondly that before making any order adverse to the petitioner and the other vegetable sellers, the order of the Siem being in their favour, the Executive Member should have, according to fundamental principles of justice and equity, given an opportunity to the petitioner and the vegetable sellers to be heard in the matter.

In support of his first contention Mr. Goswami relies upon certain provisions of the United Khasi-Jaintia Hills Autonomous District (Management and Control of Markets) Act, 1953 (Act No. 5 of 1953). This Act was evidently passed by the District Council by virtue of "the powers vested in it under paras 3 and of the Sixth Schedule to the Constitution of India. Paragraph 3 empowers the "District Council to make laws with respect to, amongst others, the allotment, occupation or use of land for the purposes of agricultural or residential or other non agricultural purposes or for any other purpose likely to promote the interest of the inhabitants of any village or town, and para 8 empowers the District Council to assess and collect taxes from land.

There was some suggestion made by Mr. Goswami that the settlement of market does not fall within the purview of para 3(1)(a) of the Sixth Schedule and he wanted to take the extreme line that the Siem of Myllem had since time immemorial been holding these markets and it was the Siem alone who was entitled to make settlement of these lands in the market area; and that this paragraph having no application to the market land as such, the District Council

itself had no jurisdiction to legislate about market land. This extreme contention cannot find favour with us.

It is quite obvious from para 3 itself that the District Council could make laws in regard to land, its use and allotment for any purpose likely to promote the interest of the inhabitants. That purpose could include the holding of a market etc. Then again under para 8 the District Council has the power to levy or assess taxes or tolls in respect of these lands. It is therefore clear that in the exercise of its legislative functions the District Council had authority to enact the law in regard to management and control of markets.

Section 4 of the Act defines what a Siemship means and what is meant by "Siemship Market". The two main sections which are relevant in the present cases are Sections 5 and 9 of the Act. Section 5 says that all markets in the United Khasi-Jaintia Hills Autonomous District shall be under the control of the District Council. This market being in the Siemship Area would therefore by virtue of Section 5 of the Act lie within the control of the District Council. Section 9(a), further provides that the markets in the Siemships shall be managed by the Siems and their Durbars if any, but shall be subject to the control of the District Council according to rules prescribed.

Sections 5 and 9(a) have got to be read together. It is clear that under the Act general control lies with the District Council by virtue of Section 5; but Section 9 clearly provides that the markets shall be managed by the Siems and their Durbars subject to the control of the District Council according to rules prescribed. It is not disputed before us that so far no rules have been prescribed for the purpose.

Mr. Goswami therefore contends that under such circumstances the District Council could not interfere with the order passed "by the Siem" in the present instance, which related to the management and control of the market. He points out that it is true that power has been delegated under the law by the District Council to the Siem, but the limitations under which the powers of the Siem are circumscribed in that regard have been indicated in the statute itself; in that where rules have been prescribed for the purpose, it would be open to the District Council to control the directions of the Siem. But in the absence of any such rules it is not open to the District Council to interfere at any stage of the management.

Of course there is nothing to prevent the District Council to pass another legislation modifying this provision in the law or abrogating the power of the Siem in that regard; but so long as this is not done on the authority of this provision it is not open to the District Council to interfere in the matter without any rule prescribed for the purpose.

It is true that u/s 28 of the Assam Autonomous District (Constitution of District Councils) Rules, 1951, the executive functions of the District Council are vested in the Executive Committee and all orders or instruments made or executed by

the Executive Committee shall be expressed to be-made, by or by order of the District Council; and every such order or instrument if signed by the Chief Executive Member or any other Member of the Executive Committee authorised in writing by the Chief Executive Member shall be deemed to be proper authentication of such order or instrument.

Therefore the Executive Member in this case could under appropriate circumstances act on behalf of the District Council. But as I have already pointed out under the statute itself the District Council had to prescribe rules for interference with the power of the Siem to manage the markets. That interference was only possible under rules prescribed for the purpose and the rules not having been prescribed it appears to us that there was no warrant in law for an arbitrary interference by the Executive Member.

We think it right to give full effect to the intentions of the Legislature, expressed u/s 9(a). United Khasi-Jaintia Hills Autonomous District (Management and Control of Markets) Act, 1953. Otherwise the wholesome provision laid down there, namely that the District Council could interfere according to rules prescribed will be rendered nugatory; and rules or no rules at any such stage an Executive Member would then interfere with the order of the Siem with regard to management of these markets.

4. The second point urged by the learned Counsel is also not without its force. It is admitted in this case that the petitioner was not given any opportunity to be heard before the order in question was passed. The order of the Siem directed that both parties were entitled to sell their articles of the land in question for four days in the week alternately. But the Executive Member sought to deprive the petitioner and other vegetable sellers of their right to sell their commodities on the land in question on the days allotted to them by the order of the Siem and his Durbar. Before such an order could be made, ordinary principles of justice and equity required that the party adversely affected thereby should have been heard or given an opportunity of being heard in the matter. That not, having been done the order is open to serious exception even on that ground.

5. We have already found that the order of the Executive Member is in excess of jurisdiction which the law confers upon him. It goes without saying that although the order is in the nature of an administrative order, this Court is competent to test the validity of such an order in order to give relief to the petitioner; and if it is held that the order was incompetent and passed without jurisdiction by a public body or an individual purporting to act under the authority of law, then this Court is entitled to interfere and set aside such an order.

6. The application must therefore succeed and the order of the Executive Member must be held invalid and unenforceable and the Opposite party is directed not to take any action on the same. There will be no cost of this application. The rule is accordingly made absolute.

Ram Labhaya, J.

7. I agree.