
(1970) 05 GAU CK 0006
In the Gauhati High Court

Nirasingh Momin and Others

APPELLANT

Vs

Jengno Marak and Others

RESPONDENT

Date of Decision : 26-05-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1970) 05 GAU CK 0006

Hon'ble Judges : P.K. Goswami, C.J.; M.C. Pathak, J.; D.M. Sen, J

Bench : Full Bench

Judgement

P.K. Goswami, C.J.—The question of law referred to this Full Bench arises out of a proceeding u/s 145, Criminal P. C. pending in the Court of the Magistrate. First Class, Garo Hills, Tura.

2. The facts giving rise to the proceeding involving likelihood of breach of peace with respect to certain land, where jhum cultivation is being carried on. are not material for the present cur-POSE. The matter came up before my learned brother Pathak, J. who referred the question of law which appears to be raised by the petitioner to the effect that Rule 23 (2) and Rule 24 (1) of the Garo Hills Autonomous District (Administration of Justice) Rules, 1953. hereinafter called "the Rules" are ultra vires Para 4 of the Sixth Schedule to the Constitution of India. It has been also mentioned in the reference that a Division Bench decision of this Court in Sita Devi Thapa Vs. The Commandant, 6th Battalion Assam Rifles, and Others, (Manick Syiem v. U. Rose Mohan Roy) and the decision reported in (1963) 15 GAU 66 (U.F. Siem v. U. Lebanon Kharkongor) and an unreported decision in Criminal Ref. No. 18 of 1963 (Assam) (U. Swip v. U. Rober) may require reconsideration.

3. Mr. Goswami. the learned Counsel for the petitioners, who had earlier appeared before the Single Bench, has formulated his points in the following way:

(1) After the constitution of the Garo Hills District Council Court by virtue of Paragraph 4 (1) of the Sixth Schedule to the Constitution, the jurisdiction to try

all suits and cases in Garo Hills except those mentioned in Paragraph 5(1) of the Sixth Schedule vests in the District Council Court to the exclusion of all other Courts, if both the parties are of scheduled tribes. In the instant case both the parties being of scheduled tribes and cases u/s 145, Criminal P. C. not being cases mentioned in Paragraph 5 (1) of the Sixth Schedule, the District Council Courts alone have jurisdiction to try the present case to the exclusion of all other Courts including Court of Deputy Commissioner and his Assistants.

(2) The District Council by framing a Rule cannot take away the Powers conferred by the Constitution upon the District Council Courts to try suits and cases not falling under Paragraph 5 (1) of the Sixth Schedule, and Rule 23 of the Rules is beyond the Rule making power of the District Council and contravenes the provisions of Paragraph 4(1) of the Sixth Schedule.

(3) The District Council has no authority under the Constitution to confer power on the existing Courts, namely Courts of Deputy Commissioner and his Assistants, and as such. Rule 23 of the Rules conferring power On the existing Courts is void.

(4) Rule 24 of the Rules is in excess of the power of the District Council and is void and hence the proceeding u/s 145, Criminal P. C., before the Assistant to the Deputy Commissioner, is without jurisdiction.

4. While considering the submissions of Mr. Goswami. we have got to take note of the material Rules. The above Rules were made by the Garo Hills District Council in exercise of the powers conferred under sub-para (4) of the Sixth Schedule to the Constitution of India with the previous approval of the Governor of Assam. Paras 4 and 5 of the Sixth Schedule may be set out:

4. Administration of Justice in Autonomous Districts and Autonomous Regions : -

(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any. within the district may constitute village councils or Courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-Paragraph (1) of Paragraph 5 of this Schedule apply, to the exclusion of any Court in the State and may appoint suitable persons to be members of such village Councils or presiding officers of such Courts, and may also appoint such officers as may be necessary for the administration of the laws made under Paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any Court constituted in that behalf by the Regional Council, or if in respect of any area within an autonomous district there is no Regional Council, the District Council for such District or any Court constituted in that behalf by the District Council, shall exercise the powers of a Court of appeal in respect of all suits and cases triable by a village council or Court constituted

under sub-paragraph (1) of this paragraph within such region or area, as the case may be other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply and no other Court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.

(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.

(4) A Regional Council or District Council, as the case may be may with the previous approval of the Governor make rules regulating -

(a) the constitution of village councils and Courts and the powers to be exercised by them under this paragraph:

(b) the procedure to be followed by village councils or Courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;

(c) the procedure to be followed by the Regional or District Council or any Court constituted by such council in appeals and other proceedings under sub-paragraph (2) of this paragraph:

(d) the enforcement of decision and orders of such Council and Courts:

(e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.

5. x x x x x x x (1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on Courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure. 1908, or, as the case may be, the Code of Criminal Procedure. 1898. as he deems appropriate, and thereupon the said Council. Court or Officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) x x x x x x x (3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure. 1898. shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

(4) x x x x x x x

Rule 23 and Rule 24 of the above Rules will also be material in this connection:

23. (1) A Subordinate District Council Court shall not be competent to try suits and cases -

(a) to which the provisions of sub-paragraph (1) of Paragraph 5 of the Sixth Schedule to the Constitution apply unless the Court has been authorised by the Governor to exercise such powers for the trial of particular class or classes of cases and suits specified in that behalf by the Governor as required under the said Sub paragraph (1) of Paragraph 5 of the Sixth Schedule.

(b) in which one of the parties is a person not belonging to a Scheduled Tribe.

(c) in respect of offences - (enumerated under three sub-heads)

(2) Unless specially empowered by the Governor by notification in the Gazette a Subordinate District Council Court shall not be competent to exercise powers in -

(a) x x x x x x x (b) x x x x x x x (c) x x x x x x x (d) x x x x x x x (e) x x x x x x x (f) disputes as to immovable property of the nature similar to that contemplated u/s 145 of the same Code:

(g) x x x x x x x

24. (1) Suits and cases referred to in Rule 23 shall continue to be tried and dealt with by the existing Courts until such time as the Governor deems fit to invest the Subordinate District Council Court with such powers by notification in the Gazette.

(2) For the purpose of this rule the existing Courts mean the Courts of the Deputy Commissioner and his Assistants.

5. Mr. Goswami lays considerable stress upon the expression "to the exclusion of any Court in the State" in Para 4 (1) of the Sixth Schedule. According to the learned Counsel, when a District Council Court is constituted, other Courts in the State are automatically excluded under this provision. This argument is based on a misconception of the provision. Para 4 CD empowers the District Council to constitute certain Courts mentioned therein for trial of suits and cases of specified description to the exclusion of any Court in the State. There is, however, no notification produced before us excluding any Courts as such. On the other hand, Rule 24 saves the powers of the existing Courts for the time being for trial of suits and cases referred to in Rule 23, which expressly puts a bar to the trial of these matters by the Subordinate District Council Court. Under Rule 24 (2) the existing Courts mean the Courts of the Deputy Commissioner and his Assistants. Regarding a case in the nature of Section 145, Criminal P. C., a Subordinate District Council Court shall not be competent to try the same unless specially empowered by the Governor by an appropriate notification. Such a notification is not produced before us. Hence, jurisdiction of the Deputy Commissioner and his Assistants is kept alive and by virtue of Rule 24 (2), they are competent to try cases of this nature involving disputes as to immovable property.

6. Being faced with this position, the learned Counsel makes his other submissions to the effect that Rules 23 and 24 are ultra vires and void. The Rules

were made by the Garo Hill District Council with the previous approval of the Governor of Assam, in exercise of the powers conferred under sub-paragraph (4) of Paragraph 4 of the Sixth Schedule to the Constitution of India. Under sub-paragraph (4-a) of Paragraph 4. a District Council is empowered to make rules regulating the constitution of village councils and Courts and the powers to be exercised by them under this paragraph. Rules 23 and 24 find place in Chapter IV, Part II of the Rules, in a group of rules relating to the Subordinate District Council Court. When under Para 4. sub-para (4-a) a District Council is empowered to make Rules for constituting Courts describing their powers, there is nothing in excess in the rule making power envisaged in Para 4 (4) in making the various provisions under Rules 23 and 24. When power is given to make rules for constitution of Courts describing the powers of those Courts, the authority concerned is competent to make provisions for exercise of powers by the various Courts. If, therefore, until such time as the Governor deems fit certain rules are made by the District Council to carry on the administration of Justice in a particular way by constituting certain Courts and conferring only specified powers to be exercised by them and permitting the existing Courts to exercise other Powers not conferred on the Courts constituted by the District Council, no invalidity or infirmity is attached to such rules. Para 4 of the Sixth Schedule confers the necessary power on the District Council and the only limitation therein is the previous approval of the Governor. The District Council has the freedom within the four corners of the power conferred under sub-para (4) of Paragraph 4 to make whatever rules they consider necessary for carrying on the administration of justice in these areas with the previous approval of the Governor. It stands to reason that in these areas help will have to be taken from the existing Courts for some length of time so that the administration is carried on in a smooth and efficient manner. It is clear that the District Council itself in its wisdom thought it fit to make these rules with the previous approval of the Governor and nothing is pointed out to us how these rules framed by the District Council are void or ultra vires Paragraph 4 of the Sixth Schedule to the Constitution. The District Council had the power to make rules under Para 4 (4) and the rules are neither void nor in excess of the power of the District Council.

7. We also do not see any reason to differ from the Division Bench decision of this Court in *Sita Devi Thapa Vs. The Commandant, 6th Battalion Assam Rifles, and Others*, (supra) and the unreported decision in Criminal Reference No. 18 of 1963 (Assam) (supra) which followed it, wherein Rule 22 of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules. 1953, which is in pari materia with these rules came up for consideration and the Court held the same to be intra vires. ILR (1963) Gau 66 (supra) was on another point and need not be considered by us in view of the submissions made by the learned Counsel.

8. Since all the submissions raised by the learned Counsel fail the preliminary objection as to Jurisdiction of the learned Magistrate is overruled. The revision petition will now go back to the learned Single Judge for disposal.

M.C. Pathak, J.

9. I agree.

D.M. Sen, J.

10. I agree.