
(1995) 08 GAU CK 0028
In the Gauhati High Court
Case No : Civil Rule No. 3674 of 1993

Upendra Reang

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 29-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 332(3), 332(3A), 371F
Tripura Tribal Areas Autonomous District Council (Constitution, Election and Conduct of Business) Rules, 1985 — Rule 106(1), 14(2), 6, 7, 8
Tripura Tribal Areas Autonomous District Council Act, 1979 — Section 2, 5, 6, 6(2)

Citation : (1995) 3 GLR 307

Hon'ble Judges : V.K. Khanna, C.J;Anup Deb, J

Bench : Division Bench

Advocate : B.K. Das and P.K. Mushari, for the Appellant; N.M. Lahiri, General for Meghalaya, S.N. Bhuyan, General for Assam, K.N. Choudhury, Central Govt. Standing Counsel, A. Chakraborty, General for Tripura, S. Majumder and B.P. Kataki for Tripura and B.K. Paul, for the Respondent

Judgement

Anup Deb, J.—By this Public Interest Litigation, the Petitioner belonging to Scheduled Tribes Community in the State of Tripura seeks to invoke the jurisdiction of this Court under Article 226 of the Constitution of India and prayed, inter alia, for the following main reliefs:

(i) A writ in the nature of Mandamus and/or any other appropriate writ, or direction striking down Rule 6 of the Tripura Tribal Areas Autonomous District Council (Constitution and Election) Rules, 1985 as violative of provision under paragraph 2(6) of Sixth Schedule to the Constitution of India and ultra vires the Constitution of India;

(ii) A writ of quo warranto on the Respondents No. 4 to 10 ousting them forthwith from the public offices being held by them as userpers and unauthorised and illegal holders of public offices w.e.f. 19.7.90 i.e. since the sitting of first general meeting of the council;

(iii) A direction/order directing the Respondent State to make amendment to the impugned Rule in accordance with the provision of paragraph 2(6) of the Sixth Schedule so as to provide constitution of District Council by elected tribal members for a meaningful tribal self governance in the tribal areas of the State of Tripura;

(iv) A direction/order declaring the seats so far represented by Respondents No. 4 to 10 as vacant and order fresh election of members to the District Council from the aforesaid Constituencies for the remaining term of office of the existing Council;

2. The Petitioner seeks adjudication of the following points relating to the construction of relevant point contained in the Sixth Schedule to the Constitution;

(a) Whether the District Council is to be constituted by the elected tribal representatives only without giving proportional representation to non-tribal residents living in the tribal areas of the State of Tripura;

(b) Whether the provision under paragraph 2(1) of the Sixth Schedule to the Constitution of India intend to constitute District Council by elected tribal representation only.

3. For appreciating the points arising in the case and the argument addressed on behalf of the parties it will be necessary to briefly consider the historical backgrounds and the constitutional position in Tripura before and after its integration with the dominion of India

4. The origin of the name "Tripura" cannot be conclusively traced back to any recorded source of history. A common belief is that the name "Tripura" has originated from "Tripura Sundari" - the presiding deity of the land. Another view is that Tripura has been coined from two Tripuri words "Tri" and "pra". In Tripuri "Tri" means water and "pra" means near. It is believed that originally the land was known as Tripura, meaning a land adjoining the water, (Tripura District Gazetteers "Chapter-I, page - 1). Tripura is a hilly state being bounded by Bangladesh in North-western side and partly by Assam and Mizoram in North-Eastern side. Hence, it is a critical Border State.

In this Sub-continent (India), Tripura claimed itself as one of the oldest Princely Hindu State. The Scholars in history believed that the very existence of this State recorded even before three thousand years of the beginning of Christian (sic). It has a number of reference in Hindu legends like "Puranas", "Mahabharat". It has to uphold its identity throughout the centuries defeating to the series of aggression of the different race and religion. In the glorious days of Tripura State, it has a much bigger geographical areas touching upon boundaries the Bhamha (Brahmadash)(Myanmar) on the east, the Sunderban in the west, Kamrup in the north and the Bay of Bengal in the South.

The present area of Tripura is 10,491.69 sq. Km. having its population (Provisional) 27, 57, 205 according to 1991 census (Tripura Government Diary

1995). The population of Tripura has been increasing since the days of independence as a result of massive influx of the displaced persons from East Pakistan due to communal disturbances. Soon after the partition of the country, Indo-Pak war in 1965 and finally at the liberation of East Pakistan in 1971 (Tripura District Gazetteers, Chapter-1 Page 2 to 3).

The State located in a strategic international boundaries, Tripura is almost surrounded by Bangladesh excepting a little contiguity with Indian Union through the North East boundaries of Assam and Mizoram. It has 839 Km. boundaries with Bangladesh, 109 Km. with Mizoram while 53 Km. with Assam State. It is at present one of the member States of North-Eastern Region comprising of SEVEN States popularly known as State of SEVEN sisters.

The Bengalee and Tribal people constitute the true major ethnic groups in Tripura, making the bulk of the population. The Tribal community in Tripura are the Tripura, Riang, Jamatia, Nawatia, Halam, Kuki, Lusai, Mog and Chakma", Besides these tribes there are Uchi, Garo, Santal, Chaimal, Orang, Munda, Bhutia Lepcha, Vil and Khasia Tribes. Excepting the Garos, "Uchai, Chaimal and the Khasia the rest non-indigenous Tribes came into Tripura as Tea Garden labourers from Bihar, Orissa and Madhya Pradesh and ultimately settled here later on. Besides these 19 scheduled tribes there are some Manipuri who settled were in connection with the matrimonial relation established between the Royal families of Tripura and Manipur. In the past the Tribal populations were predominant but with passage of time and establishing cultural contact with the neighbouring areas population of plainsmen steadily increased. The Bengalee people who came from the neighbouring areas and districts of Bengal now constitute the most predominant community in the population of Tripura (Tripura through the ages, Roy Choudhury N.R Chapter-7, Page 89).

The rulers of Tripura encouraged the in flux of the, Bengalee people mainly out of two considerations. The first and foremost was to increase the revenue of the State by giving land rights to persons settling in Tripura. Secondly, the rulers of Tripura highly valued the cultural contact with the Bengalees. Moreover, the rulers of Tripura wanted to utilise the services of the Bengalees for reorganisation of the States archaic administrative machinery, modled (sic) on the system shaped by the Muslims in Bengal (Ibid-89).

The influx of the population gradually increased and ultimately outnumbered the Tribal population in Tripura, (Ibid 90). The last ruling chief but not the least ruler was Maharaj Bir Bikram Kishore Manikya Bahadur reigned from 1927 to 1947. After the death of Maharaj Bir Bikram Kishore Manikya Bahadur on 17th May, 1947, Maharani Kanchan Prava Devi ruled this State for two years and few months on behalf of her minor son Maharaj Kirit Bikram Manikya Bahadur who never had the occasion of taking over the administration of Tripura as a ruling chief (Bhattacharjee Bani Kantha, Tripura Administration, 1986 Edn.p-160-209). Thus Maharani Kanchan Prava Devi acted as the regent or representative of the ruler on behalf of her son till she signs the Tripura Merger Agreement on 9th

September, 1949. (Tripura Merger agreement in white paper on Indian State Government of Tripura, Ministry of States).

According to the merger agreement the Tripura acceded to the Union when Tripura Administration passed order on October 15, 1949. The order provided for appointment of Chief Commissioner as the head of Administration of Tripura. The merger agreement on September 9, 1949 and the Tripura Administrative order of October 15, 1949 put an end the royal dynasty on the day of October 15, 1949. Tripura was given the statehood of Indian Union on 21st January, 1972 (Bhattacharjee Bani Kanta, Tripura Administration, 1986 Edn. Page 209-229).

Growth of total population compared with natural population in the four decades in Tripura in the first part of the current century are as under:

Year Actual population. percentage of increase, Natural population. Percentage of increase.

1310 TE 1901 AD 1,73,325 - 1,29,583 -

1320 TE 1911 AD 2,29,613 32.5% 1,49,322 15.2%

1330 TE 1921 AD 3,04,437 32.6% 2,08,409 39.6%

1340 TE 1931 AD 3,82,450 25.6% 2,74,610 31.3%

Density of population in Tripura Total population/Sq. Miles,

Year

1281 TE

1871 1290 TE

1881 AD 1300 TE

1901 AD 1310 TE 34

1911 AD 1320 TE 42

1921 AD 1340 TE 56

1931 AC 74

***** **** *****

1981 AD 196 1 Sq K.M.

1991 AD 263 1 Sq K.M.

5. The Petitioner's case as gathered from the petition and arguments advanced by learned Counsel appearing for the Petitioner is as follows:

The most spectacular feature of Tripura is that one tribal majority state ruled by tribal kings has started reducing to minority after the independent princely State has merged with the Union of India on October 15, 1949 with the status of "C"

category State. It has attained the full has attained on January 21.1972 with its area of 10.491 Sq. kms. The indigenous people, that is, the Tripuris (tribals of Tripura) are found to continue majority in Tripura even before the Indo-Pak war in 1965. The huge in flux from the erstwhile East Pakistan during the Bangladesh war in 1971 has outnumbered the tribal population in the State.

Tribals who are educationally backward and simple in nature are found helpless in the sudden competition in the field of trade and business and also in all fields along with the comparatively developed and experienced people.

The huge influx from Bangladesh has also created pressure on the land and economy of Tripura. Most of the mainlands have been alienated to the non-tribal refugees and this on-flow process has compelled the tribal to shift from the plain lands and urban areas to hilly region to settle there. Very few percentage of tribal population can be found in the head quarters of ten Sub-Divisions and District towns of Tripura which are located in the plain and fertile areas. Two-thirds of the population of Tripura live in those areas which constitute only one-third of the total areas of the State. This population is alarmingly increasing due to continuous infiltration of Bangladesh nationals to Tripura. On the other hand, once majority tribal population has reduced to 31% of the total population in the State. The trend of the population is that it continues to come down more and more. Tribals have lost almost all their plain lands, homesteads in urban areas and they also lost their livelihood in their day to day natural process. They have been compelled to take shelter in a most barren and hilly areas which are devoid of facilities of modern life.

Now a feeling of insecurity and fearfulness comes to the mind of minority people whether tribals will be reduced to further minority in future, It is admitted fact that "To be a minority in ones homeland is a curse". "No tribal majority State in the North-Eastern Region has reduced to minority like Tripura. The Tribal people of Nagaland or Mizoram continues to be majority in their States or in oilier parts of the country where tribals were minority they continue to be reduced into minority. In Tripura tribals have settled in the hilly areas with tribal compactness where they are majority in the region.

That against this back drop, there had been concerted demand for setting up a Tribal Autonomous Council for the tribal areas of the State of Tripura to provide self Government and thereby protect their socio-economic and cultural interests. It is stated by the Petitioner that thereafter "Tripura Tribal Areas Autonomous District Council, Act, 1979" was enacted under the legislative power given to the State in the Seventh Schedule to the Constitution of India. The Constitution and composition of District Council under the said 1979 Act is provided u/s 5 and the Delimitation of Constituencies is provided u/s 6 of the aforesaid Act, 1979. The Government of Tripura defined the Tribal Areas u/s 2(h) of the 1979 Act and constituted the District Council comprising the areas mentioned in Schedule 1 of the said Act. The State also delimited 28 territorial constituencies u/s 6(2) of the 1979 Act for the purpose of election of 28 members of the District Council. Out of

these 28 Constituencies according to the Petitioner 21 had been reserved for Scheduled Tribes and the rest 7 (seven) seats had been kept as general seats. The first District Council was constituted on January 15, 1982 under the provision of the said 1979 Act.

The Tripura Legislative Assembly passed a resolution on March 19, 1982 and again on February 11, 1983 urging upon the Government of India to apply the provisions of the Sixth Schedule of the Constitution of India to the Tribal areas of the State of Tripura. The State Government also recommended amendment of the Constitution for the purpose. The Government of India considered it necessary to give constitutional sanctity to the District Council which was functioning under the 1979 Act with a view to meet the aspirations of the tribal population, the Parliament passed a bill for the purpose and enacted the Constitution (Forty-Ninth Amendment) Act, 1984.

The Petitioner further stated that in exercise of powers conferred by sub-paragraph (6) of Paragraph 2 of the Sixth Schedule to the Constitution of India, the State of Tripura framed the "Tripura Tribal Areas Autonomous District Council (Constitution and Election) Third Amendment Rules, 1985 for the Constitution of the District Council for the Tripura Tribal Areas comprising the Tribal Areas Specified Part-II-A of the table appended to paragraph 20 of the said Schedule. Rule 6 of the said Rule provides for composition of District Council. Rule 7 of the said Rules provides for appointment of officer for the purpose of delimitation while Rule 8 provides for procedure for delimitation of the Constituencies of the District Council.

This Petitioner further stated that with reference to the constitutional background it appreciate the reason for incorporating the provisions of the Sixth Schedule to the Constitution of India, the Advisory Committee on Minorities Fundamental Rights etc. headed by V.J. Patel in the Constituent Assembly of India, set up two sub-committees, namely, (1) The North East Frontier (Assam) Tribal and excluded areas and excluded and partially excluded areas (other than Assam) and (2) The North East Frontier (Assam) Tribal and excluded Areas. Latter Sub-committee was headed by Assam's late Premier Gopinath Bordoloi. The Sub-Committee visited the hill areas of the North East Region, except the hill areas of Tripura and submitted a report to the aforesaid committee of the Constituent Assembly on July 28, 1947. In terms of this recommendation, the said Sub-committee made detailed recommendations on constitution, powers and functions of the District Council. The Constitution of District Council is provided under paragraph B(1) and (2) of the Appendix. The recommendations of the said sub-committee were placed before the Constituent Assembly, discussed and debated over. Modification/alterations were made and given a finality which was incorporated in the Sixth Schedule to the Constitution of India. The recommendation of the sub-committee as quoted above, were amended and incorporated in paragraph 2 of the Sixth Schedule.

It is further submitted by the Petitioner that though the original recommendation

of the aforesaid Sub-Committee intended to provide election of non-tribals to the District Council. It was disapproved by the Constituent Assembly and in its place a provision for nomination of 4 persons by the Governor has been provided. This was done keeping in view that the main objectives of the District Council is to provide a system of self governance to tribals to remove the material disparities between the advanced and backward sections of the society to strengthen the bonds of unity between the tribal and non-tribal masses, to emancipate not only tribal people but also all the deprived people from all kinds of injustice and exploitation.

The Petitioner also quoted the address of the Architect of the Indian Constitution Dr. B.R. Ambedkar which reads as follows:

. . .the position of the tribals of Assam, whatever may be the reason for it, is somewhat analogous to the position of the Red Indians in the United States as against the white emigrants there. Now, what did the United States do with regards to the Red Indians? So far as I am aware, what they did was to create will are called Reservations or Boundaries within which the Red Indians lived. There are a republic by themselves. No doubt, by the law of the United States they as citizens of the United States. But that is only a nominal allegiance to the Constitution of the United States. Factually they are a separate, independent people. It was (sic) by the United States that their laws and modes of living, their habits and manner life were so distinct that it would be dangerous to bring them at once shot, so to say, within the range of the laws made by the white people for white persons and for the purpose of the while civilization.

I agree that we have been creating Regional and District Councils to some extent on the lines which were adopted by the United States for the purpose of the Red Indians. But my point is that those who have based their criticism of this schedule on this fact, namely that we are creating Regional and District Councils, have altogether failed to understand the binding factors which we have introduced in this Constitution.

I do not therefore, agree that in creating the Regional Councils and the District Councils, we have cut up the population of Assam into water-tight compartments, viz. tribals and non-tribals. On the other hand, we have provided as I have stated, many cycles of participation in which both can politically come together, influence each other, associate themselves with each other, and learn something from one another. . . .

(vide pages 1025-1027 vol. 9 Constituent Assembly Debates).

The Petitioner submitted that the position of Tripura Tribals is the same although nothing was stated about them. According to the Petitioner, Parliament has acknowledged this fact and extended the provision of Sixth Schedule by effecting the Constitution (Forty-Ninth Amendment) Act, 1984.

The Petitioner further stated that general election was held on July 8, 1990 to

constitute the present District Council under the Tripura Tribal Areas Autonomous District Council Constitution and Election Third Amendment Rules, 1985. In the 30-member house, 21 tribal and 7 non-tribal members were elected and 2 members were nominated by the Governor. The Respondents No. 4 to 10 were the non-tribal members elected from the non-reserved Constituencies.

The basic feature under the provisions of Sixth Schedule is that they purport to provide for self-governance by the tribal people in the "tribal areas" mentioned in the table under Paragraph 20. The provisions under Sixth Schedule are therefore self-contained and they deal with all relevant topics to preserve this basic feature. The word "autonomous" is used in the said schedule to inform that the districts and regions mentioned in the table are governed by the local tribal people. The "autonomy" that is to say the possession of the right of self-government is the key note of the provisions. The framers of the Constitution has, therefore, provided that the laws made by parliament or the legislature of the State would not run automatically in these autonomous tribal areas. The laws are either made by the District Councils or are applied by them. The administration of justice is achieved by the District and Regional Councils through their own agencies except that in serious offences the Governor has to decide whether to invest the Councils with jurisdiction to try them.

The basic feature in respect of the Sixth Schedule is one of the basic/features of the Constitution of India. The impugned provisions under Rule 6 of the 1985 Rules is violative of this basic feature of the Constitution inasmuch as it has provided for election of one-fourth non-tribal members to the District Council and thereby provided for sharing of power by non-tribals in the governance of tribal area in Tripura.

The Petitioner further submitted that paragraph 2 of the Sixth Schedule docs not provide for proportional representation in the Constitution of District Councils and Regional Councils unlike the constitution of House of people and the State Legislative Assemblies. As stated earlier the original proposal made in the Constituent Assembly for proportional representation in the Constitution of District/Regional Councils was not approved. Hence, there is no scope for election of the non-tribal members to the District Council. The impugned provision under Rule 6 of the 1985 Rules is therefore, violative of paragraph 2 of the 6th Schedule to the Constitution of India and liable to be struck down.

The Petitioner further stated that the Respondents No. 4 to 10 were elected under the unconstitutional/illegal provision of Rule 6 of the 1985 Rules, Once the impugned Rule 6 is held unconstitutional/illegal as violative of para 2 of the Sixth, Schedule, the election of the Respondents No. 4 to 10 is liable to be set aside and held that they were holding office from 19.7.90 in an illegal and unconstitutional manner. The occupation/holding of office by the Respondents No. 4 to 10, ex facie, is unauthorised, unconstitutional and illegal and this Hon"ble Court may issue a Rule on them in exercise of extra ordinary power under the writ of quo warranto and oust them from their offices as userpers of a

public office.

The Petitioner further submitted that the power conferred on the Governor and for that matter the State of Tripura, under Paragraph 2(6) is not wider in ambit than the provision under paragraph 2(1) of the Sixth Schedule which provide for election of members of District Councils on the basis of adult suffrage and nomination of 4 persons. The State has made the provision under Rule 6 in excess of the power conferred under Para 2(1) and hence it is liable to be ultra vires and struck down.

The Petitioner stated that there is no nexus between the provision of proportional representation as made under Rule 6 of the 1985 Rules and the avowed object, of providing autonomy/self-governance sought to be provided to the backward-tribal people of the State. The autonomy/self-governance to the tribesmen of Tripura is a scheme of administration guaranteed under the Constitution of India. The impugned provision, if allowed to operate, would defeat, the object of Sixth Schedule and therefore, it is required to be struck down as violative of constitutional scheme and its provisions.

Further case of the Petitioner is that a significant change has been effected to Article 332(3) of the Constitution of India by incorporating Article 332(3A) which provide for reservation of all the seats, except one, in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland. The provision of Article 332(3A) seems to have been made in violation of principle of proportional representation. It is not possible to maintain proportional representation with arithmetical precision nor is it a declared basic requirement in each and every part of the territory of India. The geo-political position, socio-political back-ground, political exigencies, differing degrees of political development and maturity of various parts of the country may not justify standards based on mathematical accuracy. There is no denying the fact that the District Council has been created on the basis of these considerations and it is more justified in the case of district council to reserve all the seats for the tribal people. In fact, the Parliament in its matured wisdom made the provision under para 2(1) to constitute the district council by elected tribal representatives. Such provision should not be understood in the constitutional philosophy as derogating from the democratic principle. The impugned Rule has reflected the immaturity of the State legislature as it has failed to appreciate the need and purpose of self-governance under the Sixth Schedule.

6. The case of the State of Tripura and the Chief Secretary to the Government of Tripura, Respondents No. 1 and 2 as stated in their affidavit-in-reply filed on March 1, 1995 is as follows:

The writ petition is based on some emotional and sentimental aspects and also based on some historical and factual position of the State of Tripura. The writ petition to a great extent oblivious towards the reality existing in Tripura at present. The reality is this due to partition of the country during independence in

1.947 and also for communal disturbances in the then East Pakistan and also due to the Bangladesh war in 1971 lakhs of helpless poor non-tribals influx in the State of Tripura. Not only that due to poverty, seeking for jobs, for daily earnings huge number of people influx to the State of Tripura, which caused a severe misery to the tribal community once who were the majority in Tripura. After a long struggle, by the amendment of the Constitution and to protect the tribal population from various onslaughts on their livelihood, land, jobs etc. and to protect the cultural and social heritage of the Tribal community and to provide Local Self-Government for the tribal people in the State of Tripura under the Sixth Schedule of the Constitution of India, the Tripura Tribal Areas Autonomous District Council (for short TTAADC) has been constituted. Prior to that under the Seventh Schedule of the Constitution of India Anr. autonomous council was also constituted. But it is a historical truth that even within the areas of TTAADC, non-tribals reside. Out of 30(thirty) seats of TTAADC 21 (twenty one) seats have been reserved for Scheduled Tribes and 2(two) to be nominated by the Governor of the State and rest 7(seven) are unreserved.

It was further stated that the Government of Tripura decided to increase the number of reserved seats from existing 21(twenty one) to 25(twenty five) and that accordingly a proposal to this effect has been sent to the TTAADC for amending their Rules.

The Tripura Tribal Areas Autonomous District Council Act, 1979" and Section 5 of the said Act provide that the said District Council shall consist of 28(twenty eight) members out of whom three-fourths shall be reserved for Scheduled Tribes. The draft bill of the said Act under Seventh Schedule was examined by a Select Committee of the Tripura Legislative Assembly and after having the recommendation of the said Committee, the said Act was passed by the State Legislature which received the assent of the President of India on July 20, 1979.

According to Section 6 of the said Act, while making delimitation of the constituencies, the areas where majority of the population belong to Scheduled Tribe communities have been reserved for Scheduled Tribes.

It is further stated that State Government made persuasion with the Government of India for constitutional amendment for application of the Sixth Schedule to the Tribal Areas of the State of Tripura.

The aforesaid Respondents state that the State Government framed "Tripura Tribal Areas Autonomous District Council (Constitution & Election) Rules, 1985 and Rule 6 of the said Rules provides that the said Council shall consist of 28(twenty eight) members of whom 3 (three-fourths) shall be reserved for Scheduled Tribes, and provision is also there that the Governor may, in addition, nominate two persons/members.

After the 49th amendment to the Constitution of India the Tripura Tribal Areas Autonomous District Council (Repeal) Act, 1985 was passed. Before passing the State Government invited suggestion from the different political parties and on

receipt of their suggestion/opinion the same was examined. The State Council of Ministers passed the TTAADC (Constitution & Election) Rules, 1985 on May 7, 1985.

It is further stated that the constituencies in which seats are reserved for Scheduled Tribes have got largest Scheduled Tribes population in proportion to the total population of the areas in District Council.

7. The Union of India, the Respondent No. 11 filed an affidavit-in-opposition on February 13, 1995 and contested the allegations made by the Petitioner.

8. The Respondent No. 3 through Executive Officer, Administration, Tripura Tribal Areas Autonomous District Council filed an application supported by affidavit seeking time for 3 (three) months to enable for filing counter affidavit. But it appears from the record, no counter affidavit has been filed by the said Respondent No. 3.

9. We have heard Mr. B.K. Das, learned senior Advocate appearing with Mr. P.K. Mushari, learned Advocate for the Petitioner. We have also heard Mr. N.M. Lahiri, learned Advocate General of Mizoram and Meghalaya, Mr. S.N. Bhuyan, learned Advocate General, Assam and Nagaland, Mr. A. Chakraborty, learned Advocate General, Tripura, Mr. K.N. Choudhury, Central Government Standing Counsel, Government, of India.

10. Mr. Das, learned Senior Counsel appearing for the Petitioner submitted that undesirable activities etc. are occurring in the State of Tripura perhaps due to exploitation on the tribals by the non-tribals, Mr. Das further submits that the right and interest of the tribal must be protected otherwise with the passage of time their existence will be at stake and to provide constitution of District Council by elected tribal members only without any elected non tribal members for meaningful tribal governance in the tribal areas of the State of Tripura, Mr. Das has referred to various passages from Constituent Assembly Debates. Official Reports to substantiate the base of the Petitioner made out in the Writ petition. Mr. Das, learned senior counsel appearing for the Petitioner referred to a case in *Edwingson Bareh Vs. State of Assam and Others*, . We have considered the submission of Mr. Das, learned senior counsel for the decision cited by him.

11. Mr. N.M. Lahiri, learned Advocate General of Meghalaya has placed reliance on the case *R.C. Poudyal and Others Vs. Union of India and others*, . Mr. Lahiri submitted that Rule 6 of the Tripura Tribal Areas Autonomous District Council (Constitution of Election Rules), 1985 is not violative of provision under Paragraph 2 (6) of the Sixth Schedule to the Constitution of India. Following the case of *R.C. Poudyal v. Union of India (Supra)* Mr. Lahiri submitted that the Article 371(F) of the Constitution of India started with "Nonobsante clause" like "Notwithstanding anything in this Constitution" which made special provision for the State of Sikkim and therefore, even reservation policy for one seat for "Sangha" a religious institution for Sikkim in the Legislative Assembly of the State of Sikkim was held (per majority) in the historical back ground of social

and political role played by the Sangha was held to be valid. The question of reservation of all the seats for tribals may arise if special provisions are made in the Constitution itself for protection of the Tribal community of the State of Tripura as made in ease of Sikkim by inserting Article 371F in the Constitution for the State of Sikkim but in the absence of such special provisions, the provision for representation of non tribals in TTAADC cannot be held to be violative of any provision of the Constitution or illegal.

12. Mr. A Chakraborty, learned Advocate General of Tripura has also argued for representation of non-tribals in TTAADC and he emphatically asserted that striking down Rule 6 of Tripura Tribal Areas Autonomous District Council (Constitution of Election Rules) 1985 is not violative of provision of paragraph 2(6) of the Sixth Schedule to the Constitution of India. We have also heard Mr. K.N. Choudhury, learned Central Government Standing Counsel.

13. Vide notification dated April 26, 1995 the number of reserved seats in the Tripura Tribal Areas Autonomous District Council has been increased to 25 (twenty five) from 21 (twenty one) by amending the Tripura Tribal Areas Autonomous District Council (Constitution, Election and Conduct of Business) Rules, 1985. The notification is quoted below:

TRIPURA GAZETTE Published by Authority EXTRAORDINARY ISSUE

Agartala, Wednesday, April 26. 1995 A.D. Vaishak 6, 1917 SB.

PART I - Orders and Notifications by the Government of Tripura, the High Court, Government Treasury Etc.

Tripura Tribal Areas Autonomous District Council,

Office of the Chief Executive Officer Khumulwng, Radhapur (West)

No. F.U(12)/ADC/LAW/95 Dated, Khumulwng, the 18th April, 1995,

NOTIFICATION

The following rules which have been approved by the Governor vide Tribal Welfare Department letter No. F.393/F. 17 (107)/TW/ADC/94, dated the Agartala, 13.4.95, are published in Tripura Gazette for general information as required under paragraph 11 of the Sixth Schedule to the Constitution of India.

The Tripura Tribal Areas Autonomous District Council

(Constitution, Election and Conduct of Business)

(Thirteenth Amendment) Rules, 1995.

In exercise of the powers conferred by Sub-Paragraph (7) of paragraph 2 of the Sixth Schedule to the Constitution of India the Tripura Tribal Areas Autonomous District Council, with the approval of the Governor of Tripura hereby makes the following rules further to amend the Tripura Tribal Areas Autonomous District

Council (Constitution, Election and Conduct of Business) Rules 1985 namely:

Short title and commencement. 1. (1) These rules may be called the Tripura Tribal Areas

Autonomous District Council (Constitution, Election and Conduct of Business) (Thirteenth Amendment) Rules, 1993.

(2) It shall come into force at once.

Amendment of Rule 2. (a) In the first proviso of the Rule 6 of the Tripura Tribal Areas Autonomous District Council (Constitution, Election and Conduct of Business) Rules, 1985, the words "three fourths of the membership" shall be substituted by the figure and words "25 (twenty five) seats."

B.K. Goswami Principal Officer (Law), T.T.A.A.D.C.

14. The Government of Tripura vide Notification No. F. 17(118)/TW/ADC/95 dated 20th May, 1995 issued a Notification in exercise of the powers conferred by Rule 9 of Tripura Tribal Areas Autonomous District Council (Constitution, Election and Conduct of Business) Rules, 1985 stating that the Governor, upon consideration of the scheme of delimitation submitted by the officer appointed under Rule 7 of the said rules, passed order in respect of territorial limits of the 28 (twenty eight) single member constituencies into which the Autonomous District shall be delimited for the purpose of election of members to the Tripura Tribal Areas Autonomous District Council, Relevant extract of the aforesaid Notification is quoted below.

GOVERNMENT OF TRIPURA TRIBAL WELFARE DEPARTMENT

No. F. 17(118)/TW/ADC/95 DATED, AGARTALA, THE 20TH MAY, 1995.

NOTIFICATION

In exercise of the powers conferred by Rule 9 of the Tripura Tribal Areas Autonomous District Council (Constitution, Election and Conduct of Business) Rules, 1985, the Governor, upon consideration of the scheme of delimitation submitted by the officer appointed under Rule 7 of the said rules, is pleased to pass following order in respect of territorial limits of the 28 (twenty eight) single member constituencies into which the Autonomous District shall be delimited for the purpose of election of members to the Tripura Tribal Areas Autonomous District Council.

ORDER

Whereas in pursuance of Rule 8 of the Tripura Tribal Areas Autonomous District Council (Constitution, Election and Conduct of Business) Rules 1985 the delimitation officer had published the scheme for delimitation of constituencies for election to the Tripura Tribal Areas Autonomous District Council in draft vide Not Delimitation/1/Elec/95 dated 28th April, 1995 and in accordance with the provisions of the aforesaid Rules invited objections or suggestions, if any, in

regard to the scheme of delimitation so published from any person or institutions or any other interested party.

Whereas the said scheme for delimitation of constituencies of Tripura Tribal Areas Autonomous District were published in Tripura Gazette on 28th April, 1995

And whereas all the objections and suggestions received in relation to the said scheme within the stipulated period from 28th April 1995 to 8th May, 1995 were considered by the delimitation officer for preparation of final report and the officer submitted his report with certain modification on the draft scheme vide No. Delimitation/1/Elec/95/272-273 dated 15th May, 1995.

Now, therefore, in exercise of power conferred by Rule 9 of the Tripura Tribal Areas Autonomous District Council Constitution, Election and conduct of Business) Rules, 1985, the Governor is pleased to order as follows.

1. The order shall be known as the delimitation of constituencies of Tripura Tribal Areas Autonomous District Order, 1995.

2. Number of Constituency ; Name of Constituency ; Number and Name of Constituency reserved for ST distinguished by the bracket and letter (ST) and the extent of the constituency are shown in the following Schedule.

1 2 3 4 5

28-SILACHARI- SABROOM Baishnabpur Dakshin Entire Revenue Mouza.

MANBANKUL(ST) Bijoypur.

Baishnabpur Entire Revenue Mouza.

Ailyamara Entire Revenue Mouza.

Purba Ludhua Entire Revenue Mouza.

Paschim Entire Revenue Mouza.

Ludhua

Dakshin Sabroom Entire Revenue Mouza.

Sabroom Chatake--hari Enure Revenue Mouza.

AMARPUR Nutanbazar Ichachari Entire Revenue Mouza.

Patchari Entire Revenue Mouza.

Sd/- (R.C.M. Reddy) JOINT SECRETARY TO THE GOVERNMENT OF TRIPURA.

15. The Notification dated June 28, 1995 issued by the Government of Tripura would reveal that the existing Tripura Tribal Areas Autonomous District Council of which Respondents No. 4 to 10 were elected in general seats has expired, its duration and the Notification has been issued to hold a general election for the purpose of constituting a new Council to Tripura Tribal Areas Autonomous District Council on July 18, 1995, which was subsequently deferred to the last week of July, 1995.

16. The Notification dated July 31, 1995 would show that 24(twenty four) were elected out of which 21 (twenty one) members have been elected from seats reserved for the Scheduled Tribes and 3 (three) persons have been elected against unreserved seats or general seats. The said Notification reads as follows:

Registered No. N.E. 930 TRIPURA GAZETTE Published by Authority
EXTRAORDINARY ISSUE

Agartala, Monday, July 31, 1995 A.D. Sravan 9, 1917 S.E.

PART - IA - Orders and Notifications of the Government of India. Statutory Notification of the Election Commission, of India and other Election Notifications published for general Information Orders and Notifications which have originally been published in the Gazette of India are only re-published.

OFFICE OF THE ELECTION COMMISSIONER FOR DISTRICT COUNCIL TRIPURA

Dated, Agartala, the 31st July, 1995.

NOTIFICATION

No. F. 2(22) ADC/EC/95-WHEREAS in pursuance of the notification No. F. 4(143)/TW/ADC/90 issued by the Governor of Tripura on the 28th June, 1995 under Sub-rule (2) of Rule 14 of the Tripura Tribal Areas Autonomous District Council (Constitution, Election and Conduct of Business) Rules, 1985, a General Election has been held in all the Constituencies [other than four constituencies namely 14-Bodbjangnagar - Wakkinagar (ST) - Mandainagar - Pulinpur (ST). 17-Pekuarjala-Janmajovnagar (ST) and 25-Nutanbazar-Malbassa (ST)] of the Autonomous District Court of the State of Tripura:

AND WHEREAS the results of the election in all those constituencies in the. said General Election have been declared by the Returning officers concerned:

NOW, THEREFORE, in pursuance of Sub-rule (1) of Rule 106 of the Tripura Tribal Areas Autonomous District Council (Constitution, Election and Conduct of

Business), Rules, 1985, I, the Election Commissioner for District Council hereby notify the names of the members elected for those constituencies as shown below:

Sl. No. & Name of Constituency Name of elected member

1 2

1. Damchara-Jampui (ST) Rajendra Reang.
2. Machmara (U.R.) Nripen Chowdhury.
3. Dasda Kanchanpur (U.R) Lalit Debnath.
4. Karamchara (ST) Biman Dewan.
5. Chhawmanu (ST) Gajendra Tripura.
6. Manu-Chailengta(U.R) Ranjit Das.
7. Demchhara-Kachuhhara(ST) Sabitri Debbarma.
8. Ganganagar-Gandachhara(ST) Nagadi Reang.
9. Halahali-Asharambari(ST) Shukadeb Deb Barma.
10. Kulai-Champabour(ST) Sandhiya Rani Debbarma.
11. Maharaniipur-Teliamura (ST) Bidhan Deb Barma.
12. Ramchandraghat(ST) Ranjit Deb Banna.
13. Simna-Tamakari(ST) Gobind Deb Barma.
15. Jirania(ST) Radha Charan Deb Barma.
18. Takarjala-Jampaijala(ST) Lalit Deb Barma.
19. Amtali-Golaghati(ST) Kunja Deb Banna.
20. Killa-Bagma(ST) Saralpada Jamatia.
21. Maharani-Challegong(ST) Kala Chand Jamatia.
22. Kathalia-Mirja-Rajapur(ST) Chandi Charan Tripura
23. Ampinagar(ST) Alindra Deb Barma.
24. Raimavalley(ST) Dhirendra Tripura.
26. Birchandranagar-Kalashi(ST) Durbajoy Reang.
27. Purba Maharipur-Bhuratili(ST) Chand Charan Tripura
28. Silchari Manu Bankual(ST) Mogsajai Mog.

SD/- Sukumar, N. Oommen, Election Commissioner for District Council, Tripura

17. The Petitioner has not challenged the delimitation of constituencies made under Order dated May 20, 1995. Therefore, all his contentions against delimitation are no longer available. The unreserved seats or general seats have been reduced from 7 (seven) to 3(three) vide Notification dated April 18, 1995 and, therefore, the Petitioner's contentions for declaring the election of Respondent Nos. 4 to 10 are also no longer available particularly in view of the facts that Respondents No. 4 to 10 are no longer members of the new TTAADC.

18. The points raised by the Petitioner with regard to interpretation of Para 2(1) of Sixth Schedule of the Constitution of India, in our view, are no more res integra. Paragraph 2(1) and 2(6) of the Sixth Schedule of the Constitution are as follows:

2. Constitution of District Councils and Regional Councils.

(1) There shall be a District Council for each autonomous District consisting of not more than thirty members of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.

2(C) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal councils and other representative tribal organisation within the autonomous districts or regions concerned, and such Rules shall provide for-

(a) the composition of District Councils and Regional Councils and the allocation of seats therein.

19. A bare perusal of the aforesaid provisions reveals that para 2(6) empowers the Governor to make rules for the first constitution of District Councils and Regional Councils in consultation with existing tribal councils or other organisations as also for prescribing the qualification for being elected at such elections as members of such councils. Therefore, it is clear that the Governor has the power to decide in his wisdom as to whether the elected members may be restricted to tribals only or non-tribals may also be included, provided the election is on the basis of adult suffrage which means that both tribals and non-tribal residents are entitled to vote in such elections. There is no bar for a non-tribal to be a member of the District Council. However, a person shall not be qualified to be a member of District Council unless he is entitled to be a voter and a non-tribal cannot be a voter unless he is a permanent resident, of the Autonomous District. A non-tribal can seek election to the Autonomous District under the provisions of Rule 6 of the Tripura Tribal Areas Autonomous District Council (Constitution and Election) Rules, 1985.

20. We are of the view that the contentions of the Petitioner are based on misconstruction and misinterpretation of the provisions of the Sixth Schedule and do not reflect correct interpretation of the provisions of the Sixth Schedule. Rule 6 of the Tripura Tribal Areas Autonomous District Council (Constitution and

Election) Rules, 1985 is not ultra vires and violative of Para 2(1) of the Sixth Schedule, because Rule 6 is within the rule making powers of the Governor under Para 2(6) of the Sixth Schedule. Thus there is a clear provision enabling the framing of the Rules. Thus para 2(1) of the Sixth Schedule does not provide for elected Tribal Representatives only, Para 2(1) provides for election on the basis of adult suffrage which means that both tribals and non-tribals are entitled to vote. Farther, to (sic) the interests of the tribals, para 2(1) provides for nominated persons upto four in the District Council.

We are of the view that the spirit of the Constitution of India and the democratic principle demand that an autonomous body elected through adult suffrage should also represent all section of people.

21. In the result, the writ petition is devoid of any merit and the writ petition has also become infructuous. Looking into the entire facts and circumstances, the parties are left to bear their respective cost.