

Regional Provident Fund Commissioner

Vs

Shillong City Bus Syndicate and another

Civil Appeal No. 3140 (NCM) of 1980

(K. Ramaswamy, K. Venkataswami JJ)

27.03.1996

### JUDGEMENT

K. RAMASWAMY, J.:-

1. This appeal by certificate granted by the High Court of Gauhati arises from its judgment dated September 19, 1979, in Civil Rule No. 82/73. The respondent-Shillong City Bus Syndicate filed the writ petition questioning the memo issued by the appellant on October 26, 1972, under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, the 'Act') alleging non-payment of employees' Provident Fund Contribution for period from January to September 1972. The principal contention raised by the respondent was that the operation of the transport service was within Khasi Hills District defined in paragraph 1 of Sixth Schedule to the Constitution as autonomous District by operation of proviso to sub-paragraph (2) of paragraph 20. Although, it has been stated that no part of the area comprised within the municipality of Shillong shall be deemed to be within the Khasi Hills District for certain purposes mentioned there in, since their base is to ply their buses beyond Shillong Municipality, the Act is not applicable to the autonomous District of Khasi Hills. The notice, therefore, is without authority of law and jurisdiction. The matter was referred to a larger Bench of five learned Judges. By judgment and order dated September 19, 1979, per majority of four learned Judges, though for different reasons, the Court had held that the Act does not apply to the Khasi Hills autonomous District; the dissenting learned Judge had held that the Act would apply. Accordingly, writ was issued. It was held that the Act being not in force in that area the notice was without jurisdiction. Thus, this appeal by special leave.

2. Shri P.A. Chowdhary, learned senior counsel for the appellant, contended that the Fifth and Sixth Schedules to the Constitution have been incorporated to protect the autonomy of the tribals and to evolve a separate scheme for the administration of tribal areas covered thereunder. The District or Regional Councils have been constituted therein with a view to vest in them the legislative power on specified subjects allotted in relevant paragraphs of the Schedules with a power of taxation and setting up of administration and system of justice to maintain administration and welfare services in respect of the subjects enumerated in the respective paragraphs. Article 245 of the Constitution empowers the Parliament and the Legislatures of the States, subject to the provisions of the Constitution, to make laws for the whole or any part of the territory of India. The Act was made to implement welfare schemes to provide medical facilities and health care to the workmen of the industries or establishments covered or notified under the Act. On constitution of the autonomous District or Regional Council, by operation of Paragraph 12-1 (b) in relation to State of Assam and paragraph 12-A (b) in relation to Meghalaya, all the Acts of Parliament shall apply to the notified autonomous District, unless the Governor or the President, as the case may be, by notification

directs that the particular Act of Parliament shall not apply to an autonomous District or an autonomous Region or a part thereof in the respective States or shall apply to such District or Region or any part thereof subject to such exceptions or modifications as may be specified in that behalf in the notification. Autonomous District Council was constituted w.e.f. June 27, 1952, proprio vigore, the Act stands applicable to the Khasi Hills autonomous District. The notice issued by the appellant calling upon the respondents to contribute the arrears of the amount to the fund is valid in law. Shri D.P. Mukherjee, learned counsel for the respondents, contended that the Constitution intended to protect the autonomy of the administration, operation of law and administration of justice in the autonomous District or Region suited to their environment to the exclusion of any law made by the Parliament or the State Legislature unless the Governor or the President, as the case may be, by a public notification, makes the Act applicable with or without such modifications or exceptions in relation to the autonomous District or Regions as may be specified in the notification. The Act was not made applicable by the President in relation to Khasi Hills autonomous District by a public notification.

3. The object of the Schedule is to preserve the autonomy of the tribals and groups of tribals in the autonomous District by automatic application of Acts of Parliament or State Legislature. The Constitution, therefore, envisaged, with a non obstante clause engrafted in paragraphs 5 and 6 respectively, to preserve the autonomy of the tribals. By operation of the non obstante clause, the provisions in the Schedules would operate exclusively in that area. By necessary implication, the operation of Acts of Parliament or State Legislatures as covered under the Schedule, did not automatically apply. The view of the majority of the learned Judges, therefore, is correct in law.

4. With a view to appreciate the contention and its effect on the decision on the autonomy of the District or the Region notified under the Schedules, it is necessary to look into the Constitution and the scheme envisaged in the Schedules. Due to historical reasons of the tribals or groups of tribals residing in far-flung areas specified in the Fifth or Sixth Schedules, the Constitution evolved separate scheme for the administration of the tribal areas in southeastern Region of Assam, Meghalaya, Mizoram, Tripura, Nagaland and Arunachal Pradesh. The Sixth Schedule contemplates constitution of autonomous District Councils or Regional Councils in Assam, Meghalaya, Mizoram and Tripura. Nagaland and Arunachal Pradesh stood excluded from the purview of the Sixth Schedule. The District and Regional Councils are vested with legislative authority on specified subjects and allotted fields of legislative power on taxation and they are given power to set up and administer their system of justice and maintain administration and welfare services in respect of the subjects enumerated in paragraph 3 of the Schedule, in particular in respect of land, revenue, forest, education, public health, etc. Paragraph 2, relates to constitution of District and Regional Councils. Paragraph 3 gives legislative powers to the District Councils and Regional Councils to make laws for autonomous District or Region in respect of areas within the District Council except those which are within the authority of Regional Council, if any. Within the District Council or Regional Council shall have power to make laws with respect of clauses (a) to (j) enumerated therein. The laws made thereunder shall be submitted to the Governor and they shall have no effect until the Governor gives assent to it, preceding the South-eastern Areas (Organisation) Act, 1971, which came into effect w.e.f. June 21, 1972. Similarly, Assam Organisation (Meghalaya) Act, 1969, w.e.f. April 2, 1970, the Constitution (Sixth Amendment) Act (67 of 1968) in relation to Tripura incorporating paragraph 12-AA and paragraph 12-B in relation to State of Mizoram. Original paragraph 12 was applicable to the State of Assam. Under paragraph 4, the Regional Councils or the District Councils have been empowered with the authority within the respective areas to constitute Courts, village Councils for the administration of justice, including power of the Court of appeal in respect of the matters specified therein. The High Court also has been given jurisdiction over such case. The respective

Councils have power, with the previous approval of the Governor, to make regulations concerning the subjects enumerated in paragraph 4. The Governor has been empowered to authorise District or Regional Councils to apply C.P.C. or Cr.P.C. for the trial of suits or cases arising out of any law enforced in the respective Regions being a law specified in that behalf by the Governor. Equally, the Governor has power to withdraw or modify such powers conferred on respective Councils. Paragraph 6 deals with the power of the District Council to establish primary schools, etc. Paragraph 7 relates to the District or Regional funds.

5. We are concerned here with the interplay of paragraphs 12, 12-A and 19. In relation to State of Assam, paragraph 12 envisages that notwithstanding anything in the Constitution, the enactment of the State Legislature in respect of any of the matters specified in paragraph 3 as matters with respect to which a District or Regional Council and the Act of the State Legislature prohibiting or restricting consumption of any non-distilled alcoholic liquor, shall not apply to those areas unless the District Council notifies their application with or without exception or modification as it thinks fit. So far as Acts of Parliament are concerned, paragraph 12 (1) (b) provides that the Governor may by public notification, direct that any Act of Parliament or of the Legislature of the State of Assam to which the provisions of paragraph 12 (1) (a) do not apply, shall not apply to an autonomous District or autonomous Region in that State. Equally, he is empowered to direct, by a public notification, that they shall apply to such District or Region or any part thereof with such exceptions or modifications as may be specified by him in the notification.

6. After the formation of State of Meghalaya, by operation of paragraph 12-A (a) with a non obstante clause engrafted therein, that if any provision of a law made by District or Regional Council in the State of Meghalaya, with respect to any matter specified in sub-paragraph (1) of paragraph 3 of the Sixth Schedule or if any provision or any regulation made in paragraph 8 or paragraph 10, is repugnant to any of the provisions of a law made by the Meghalaya State Legislature with respect to that matter, then the law or regulation made by the District Council or Regional Council whether made before or after the law made by the Meghalaya State Legislature, shall, to the extent of repugnancy, be void and the law made by the legislature of Meghalaya State shall prevail.

7. Clause (b) of paragraph 12-A provides that the President may with respect to any Act of Parliament, by notification, direct that it shall not apply to any autonomous District or Region in the State of Meghalaya, or shall apply subject to such exceptions or modifications as may be specified therein.

8. Paragraph 19 is a transitory provision pending constitution of the District or Regional Council in the State. Therein, the Act of Parliament or of the State Legislature shall not apply to any such area unless the Governor by public notification, so directs and makes it applicable with such exceptions or modifications as he may specify in the public notification. Equally, the Governor has the power to make regulations or power to repeal or amend any Act of parliament or of State Legislature or any existing law which for the time being is applicable to such area. He has got power also to make such direction with retrospective effect. They shall be submitted forth-with to the President and until they are assented to by the President, they shall have no effect, as envisaged in paragraph 19(3).

9. It would, thus be seen that the operation of paragraph 19 is transitory pending constitution of the autonomous District Councils. Therefore, till the Council is so constituted and until the Governor, by a public notification makes an Act of Parliament applicable to the area proprio vigore, it has no application. He is also empowered by a public notification, to make an Act of Parliament applicable

with such modifications or exceptions as he may specify. As soon as the District or Regional Council is constituted, the power under paragraph 19 ceases to operate and as a corollary paragraph 12 begins to operate in relation to autonomous District Council or Regional Council in the State of Assam and paragraph 12-A begins to operate in respect of the District or Regional Council in the State of Meghalaya. By operation of paragraph 12 (1) (b) or paragraph 12-A (b), the governor or the President, as the case may be, by notification, may direct that with respect to the area over which the Regional or District Council respectively has jurisdiction, any Act of Parliament shall not apply to such autonomous District or Region or shall apply with such modifications or exceptions, as may be specified in the notification.

10. The question arises: as to whether the Act applies to Khasi Hills autonomous District after the Council to the said District was constituted on June 27, 1952? Bahrul Islam, C.J. (as he then was) has held that the District or Regional Council, as the case may be, does not have power to make laws under paragraph 3 in respect of the Provident Fund provided by the Parliament under the Act. On the constitution of the District Council, the Governor ceases to have power under paragraph 12 and loses power to administer the autonomous District given under paragraph 19. By operation of paragraph 12 (1) (b), the Governor by notification may direct that the Act of Parliament or of the legislature of the State of Assam shall not apply to an autonomous District or Region or shall apply with such exceptions or modifications as may be specified by him in the notification. When the Act was enforced, the Governor had transitory power under paragraph 19, but he did not, by public notification make the Act applicable to the Khasi Hills autonomous district. The Act was not published in that region. Therefore, the Act was not applicable. K. N. Saikia, J. (as he then was) in his dissenting judgment has held that after the constitution of autonomous Khasi Hills, paragraph 12-B comes into operation. Since the President, by notification, had not excluded the application of the Act to the said District, the Act had become applicable. Pathak and Lahiri, JJ. traced the legislative practice prevailing prior to and during the period the Government of India Act, 1935 was in force and after the Constitution following the legislative practice in that respect and held that unless its application was extended to that area, the Act did not apply to that District. Hansaria J. (as he then was), in a separate but concurrent judgment joined the majority and held that by operation of paragraph 19(1) (b), since the Governor had not made the Act applicable to the area it did not apply to the region. Paragraphs 12 and 19 are to be interpreted harmoniously so that no part of the provisions is rendered otiose or nugatory. The learned Judge further held that if he were to hold that paragraph 12 had come into operation, the Act of parliament which was enacted even when paragraph 19 was in operation the Act would have come into force automatically and he would have in a way made the provisions of paragraph 19 otiose which is not permissible under the law.

11. There are two more aspects of the matter. The first is that paragraph 19(1) itself states that the provisions contained in it would apply to the administration of the areas within such District, instead of the foregoing provisions of the Schedule, that is to say, paragraphs 1 to 18, which include paragraph 12. So, there is no escape from the conclusion that during the transitional period, paragraph 19 would exclude paragraph 12 which operates. So, what follows from paragraph 19 has to be given effect to. There is nothing in paragraph 12 to show that the Constitution-makers wanted to do away with the effect which has been produced by paragraph 19.

12. Dr. Ambedkar, during the debates in the Constituent Assembly stated in unequivocal terms that "the other binding force is this that the laws made by Parliament and the laws made by the Legislature of Assam will automatically apply to these Regional Councils and to the District Councils. Unless the Governor thinks that they ought not to apply in other words, the burden is upon the Governor to show why the law which is made by the Legislature of Assam or by the

Parliament, should not apply. Generally, the laws made by the Legislature and the laws made by the Parliament will also be applicable to these areas" (vide Constituent Assembly debates (Vol.9) at page 1026).

13. Tracing the legislative history of the Schedule, in "The Fifth and Sixth Schedules of the Constitution of India" in his "the Anundoram Barooah Law Lectures - Second Series", M. Hidayatullah, C.J. has stated at page 53 that "The Sixth Schedule is a very elaborate piece of legislation and it had undergone many changes since it was first enacted..... The constitutional amendments political in nature, the Acts of Parliament effect reorganisation and the Presidential orders either remove difficulties or are promulgated in the performance of duties laid on the President by the Sixth Schedule itself". Paragraph 12(1) (b) lays down that any Act of Parliament or of the Legislature of the State of Assam not covered by special provisions will be applied with such exceptions and modifications as the Governor may specify in the notification.

14. B. L. Hansaria, J. in his "Sixth Schedule to the Constitution of India- a Study" (1983 Edition) published by M/s. Ashoka Publishing House Gauhati has stated at page 45 thus :-

"In so far as the Acts or (sic) Parliament are concerned, the provisions in respect of tribal areas broadly speaking is that the Governor, in case of Tribal areas in Assam, and the President in respect of the two other tribal areas, may notify that the Act shall not apply to an autonomous district or region, or shall apply subject to such exceptions or modifications as may be specified. A question arises whether an Act of Parliament would apply proprio vigore if there be no notification prohibiting its application".

15. Dealing with paragraph 12-B, the learned author has further stated thus:-

"12(2) lays down that any Act of Parliament or of the Legislature of the State of Assam not covered by special provisions will be applied or not applied or applied with such exceptions and modifications as he may specify in his notification (Governor's notification)".

16. It would, thus, be clear that, on constitution of the District or Regional Council, paragraph 19 ceases to operate and power of the Governor becomes conterminus and ceases to exist. Simultaneously, the power of the District or Regional Council becomes operational to make laws on subjects covered in paragraph 3 of the Sixth Schedule, Proprio vigore, paragraph 12-A comes into force. By operation of paragraph 12-A(b), the President has been empowered to direct by a notification that any Act of Parliament should not be made applicable or made applicable with such modifications and exceptions, as may be specified in the said notification. In other words, until such notification is published by the President, all Acts of Parliament which are not occupied by the provisions contained in paragraph 3 shall proprio vigore become operative in the area of the autonomous Regions or Districts in the State of Meghalaya.

17. The majority of the learned Judges appeared to be under the impression that during transitory period until the District or Regional Council is constituted, the Governor's power under paragraph 19 operates the field. By operation of paragraph 19(1) (b), since the Governor did not notify, by a public notification, that the Act would be applicable to the autonomous Khasi Hills District, it did not come into operation. Equally, after the District Council was constituted the Act did not become automatically operative. That appears to be the basis on which the learned Judges decided the issue,

though for different reasons. With due respect, the learned Judges did not angulate the problem from proper perspective. As soon as the District Council was constituted under paragraph 2, paragraph 12-A came into operation with effect from June 27, 1952. The Acts of Parliament made under Article 245 has territorial or extra-territorial operation by virtue of notification published in the Gazette of India after the President gave his assent. Baharul Islam, C.J. (as he then was ) has held that publication of the Act in the region is a pre-condition for the Act to come into operation. It is seen that the Act was already published in the Gazette of India and it came into force w.e.f. March 4, 1952 throughout the territory of India except in the State of Jammu & Kashmir. by operation of sub-section (2) of Section I of the Act. The law made by the Parliament, becomes operational, subject to the provisions of the Constitution for the whole or any part of the territory of India. No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. Therefore, as soon as the Governor ceases to have power under paragraph 19, the Act became operative in the area or region over which Khasi Hills District Council had assumed power under paragraph 12-A(a). Soon thereafter, paragraph 19 ceased to operate. Proprio vigore, the Act of Parliament came into operation for the area of Khasi Hills District until the President, by notification, exclude its application to that area or made it applicable with such modifications and exceptions as may be specified in a notification published in this behalf in the Gazette of India. Admittedly, no such notification was published by the President. Resultantly, the Act came into operation throughout the country except the State of Jammu and Kashmir. But earlier, by operation of paragraph 19(I) (b) of the Sixth Schedule, due to a non obstante clause engrafted therein, its application stood excluded since no notification was issued by the Governor making the same applicable under paragraph 19 (I) (b) to the autonomous District which ceased to be operative from June 26, 1952.

18. It is true that the autonomous nature of the administration was sought to be preserved by the Constitution as envisaged in Sixth Schedule giving power to the District or Regional Council to make laws in respect of the matters enumerated in paragraph 3. With passage of time the tribals or groups gradually must assimilate in the main stream of national life. Every endeavour - social, educational and economic empowerment should be made to bring them into the mainstream of national life. The contribution to the fund under the Act is not one of the subjects enumerated in paragraph 3. Therefore, the Act is not an occupied field assigned to the autonomous District council. It is well-settled law that right to health to a worker is fundamental right. The Act seeks to provide succour to preserve that right to health to the tribal workers in the region. In this case, we are not concerned with the question of repugnancy. Therefore, Baharul Islam, C.J. and Saikia, J. rightly have pointed out that the Act was applicable to that area but learned Chief Justice was in error in holding that there should be separate publication of the Act in that region. For the reasons mentioned hereinbefore, the need to make separate publication is redundant. By operation of Section 1 (2) of the Act had already come into operation on March 4, 1952. The operation of paragraph 12-A (b) was not at all considered by majority members of the Bench. The reasoning of Hansaria J. also is not, with due respect, correct. As pointed out earlier, paragraph 12-B becomes operational on the constitution of the District Council. Consequently, the Governor ceases to have power under paragraph 19(1) (b) Resultantly, there is no inconsistency or incongruity in their operation

19. We, therefore, hold that the Act is applicable to the area of the Khasi Hills Autonomous District and the notice issued under section 7B of the act is applicable to the respondent. The respondent is bound to comply with same.

20. The appeal is accordingly allowed. The order of the Majority stands set aside. The minority

view stands upheld. Consequently, writ petition stands demised but, in the circumstances, without costs.

C.A.No. 1282 of 1990

21. In view of the decision rendered above and the reasons therefore, this civil appeal is also allowed. No costs.

Appeals allowed.