

SUPREME COURT OF INDIA

J.Thansiama

Vs.

State of Mizoram & Ors.

C.A.No.3536 of 2008

(Ranjan Gogoi and N.V.Ramana,JJ.,)

08.091.20165

JUDGMENT

Ranjan Gogoi,J.,

1. The Gauhati High Court by the impugned judgment and order dated 01.08.2005 has held the Limitation Act, 1963 to be applicable to the State of Mizoram. Consequential to the said conclusion of the High Court, the suit filed by the appellant for declaration of title etc. was dismissed as being time barred. This was in reversal of the decree passed by the learned Trial Court on merits after holding that the Limitation Act, 1963 would not be applicable to bar the suit of the appellant-plaintiff.

2. The High Court in a very exhaustive and illuminating judgment has traced the history of the creation of the present day State of Mizoram. Equally, the laborious arguments advanced by the learned counsel for the parties have thrown further light into the evolution of the present day State. However, we do not consider it necessary to burden this order by referring to the said details except to record what would be strictly required for the purposes of the present adjudication, namely, that the present day State of Mizoram was earlier known as Lushai Hills District and formed part of the original undivided State of Assam. The said district was included in the list of tribal areas of the State of Assam under Part-A of the table appended to Para 20 of the Sixth Schedule to the Constitution. Thereafter, Lushai Hills District was renamed as Mizo District by the Lushai Hills District (Change of Name) Act, 1954. A consequential change in Para 20 of the Sixth Schedule to the Constitution was also made.

3. Para 20 of the Sixth Schedule as it was at the point of time relevant to the case [on 14.3.1966 or prior to the changes brought in by North-Eastern Areas (Reorganisation) Act, 1971] read as follows :

“Tribal Areas 20. (1) The areas specified in Parts A and B of the table below shall be the tribal areas within the State of Assam.

(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong but, including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Myllem :

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1), paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8, and clause (d) of sub-paragraph

(2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the district.

(2a) The Mizo District shall comprise the areas which at the commencement of this Constitution was known as the Lushai Hills District...

(3) Any reference in the table below to any district (other than the United Khasi-Jaintia Hills District and the Mizo District) or administrative area shall be construed as a reference to that district or area at the commencement of this Constitution : Provided that the tribal areas specified in Part B of the table below shall not include any such areas in the plains as may, with the previous approval of the President, be notified by the Governor of Assam in that behalf.

TABLE

PART A

1. The United Khasi-Jaintia Hills District.
2. The Garo Hills District.
3. The Mizo District.
4. *****
5. The North Cachar Hills
6. The Mikir Hills.

PART B

'k'k'k'k'k'k 'k'k'k'k'k'k ***** 'k'k'k'k'k'k *****

4. The Governor of Assam issued Notification bearing No. TAD/GA/12/64 dated 14.3.1966 whereby the operation of the Limitation Act 1963 was excluded from the tribal areas of Assam as specified in the Sixth Schedule of the Constitution, the details of which have been extracted above. The Notification dated 14.3.1966 is in the following terms :

“In exercise of the powers conferred by clause (b) of the sub-paragraph (1) and sub-paragraph (2) of paragraph 12 of the Sixth Schedule to the Constitution of India, the Governor of Assam is pleased to direct that the Limitation Act, 1963, (No. 36 of 1963) shall not apply to the Tribal Areas of Assam specified in Part A of the table appended to paragraph 20 of the Sixth Schedule to the Constitution of India, with effect from the 1st of January, 1964.”

5. It will be necessary to take note of the fact that as on the date of the said Notification Mizo District was included in the tribal areas of Assam.

6. The next relevant fact that will have to be taken note of is the enactment of the North-Eastern Areas (Reorganisation) Act, 1971 [hereinafter referred to as ‘the Reorganisation Act’] which provided for the establishment of the States of Manipur, Tripura, Meghalaya and the Union Territories of Mizoram and Arunachal Pradesh by reorganising the original State of Assam. Section 6 contained in Part II of the Reorganisation Act provided for the formation of the Union Territory of Mizoram from the effective date i.e. 21.1.1972, comprising the territories of the Mizo District of the original State of Assam. Section 71 of the Reorganisation Act stipulated that the Sixth Schedule to the Constitution shall stand amended as provided in the Eighth Schedule to the Reorganisation Act. In the Eighth Schedule to the Reorganisation Act, Para 20 dealing with tribal areas was amended and divided into three parts. Of relevance would be Part III which specified the tribal areas of the Union Territory of Mizoram as “the Mizo District”. Para 12B to the Sixth Schedule was also introduced and the said provision dealt with application of the Acts of Parliament and other Acts to the autonomous districts of Mizoram. Under Para 12B the President was authorized to direct that any Act of Parliament shall not apply or apply with modification to an autonomous district or region in the Union Territory of Mizoram. Para 12B was further amended by the Government of Union Territories (Amendment) Act, 1971 as it became so necessary upon the Constitution of the Legislative Assembly of the Union Territory of Mizoram. However, it is not necessary for us to specifically notice the details in this regard so far as the present case is concerned. Section 77 of the Reorganisation Act provided that notwithstanding the establishment of the newly constituted States and Union Territories any law which was applicable to a territory prior to the constitution of the State or Union Territory will continue to apply in the newly established State or a Union Territory. Section 79 of the Reorganisation Act provided that to facilitate the application of any law in relation to any State or Union Territory formed under the provisions of Part II of the Reorganisation Act the appropriate Government may, before the expiration of two years from the appointed date, make such adaptations or modifications of the law as may be necessary or expedient. Once such adaptation or modification is made the law shall have effect subject to such adaptations and modifications until the same is altered or repealed by the competent legislature or the competent authority.

7. It will also require to be noticed that with effect from 29.4.1972 Part III of Para 20 of the Sixth Schedule was further amended and “the Mizo District” ceased to be a part of the tribal areas of the Union Territory of Mizoram and the Chakma, Lakher and Pawi districts came to be included in Part III as the tribal areas of the Union Territory of Mizoram. There were some further changes in the aforesaid tribal areas with which we would not be strictly concerned in the present case.

8. To make the narration of facts complete, the provisions of the State of Mizoram Act, 1986 may be referred to for the purposes of bringing on record the fact of creation of the State of Mizoram by the aforesaid Act with effect from 20.02.1987. There were certain parallel changes in the provisions of the Sixth Schedule including Para 12B and Para 20 thereof upon creation of the State of Mizoram. However, as the said facts, again, are not strictly relevant to the present case, a detailed notice thereof would not be necessary.

9. What, however, would require a pointed notice is that the Notification dated 14.03.1966 issued by the Governor of Assam excluding the operation of the Limitation Act from the tribal areas of the State of Assam ceased to be applicable to the Mizo District once the areas therein no long formed a part of the tribal areas of Assam and, instead, became a part of the tribal areas of the Union Territory of Mizoram with effect from 21.1.1972. The further developments (historical, geographical and constitutional), namely, the exclusion/omission of the Mizo district even from the tribal areas of the Union Territory of Mizoram; the dissolution of the Mizo District Council and the addition of Pawai, Lakher and Chakma Districts to part III of Para 20 of the Sixth Schedule as the tribal areas of the Union Territory of Mizoram, of which all developments had occurred subsequent to the creation of the Union Territory of Mizoram, would further fortify the above position. The aforesaid facts would demonstrate that the Notification dated 14.03.1966 *ex facie* would not apply to the areas within the erstwhile Mizo District of the State of Assam once the said areas ceased to be so and came to comprise the Union Territory of Mizoram with effect from 21.1.1972 by virtue of Section 6 of the Reorganisation Act.

10. Indeed it is correct that the Gauhati High Court in *The State of Meghalaya vs. U. William Mynsona* has held that in view of the notification dated 14.3.1966, the Limitation Act 1963 will not apply to the State of Meghalaya. The reasoning of the High Court in the said case has been pressed into service for our acceptance in the present case also on account of the parity of the facts of the two cases. Having gone through the said judgment we are unable to accept the reasoning contained therein. However, we say no more as the correctness of view expressed in the *State of Meghalaya vs. U. William Mynsong* (supra) is not under challenge before us; neither is the question involved therein, namely, the application of the Limitation Act, 1963 to the State of Meghalaya the issue arising in the present case.

11. In *Regional Provident Fund Commissioner vs. Shillong City Bus Syndicate & Ors*¹. the question of applicability of Acts of Parliament to Khasi Hills autonomous District in the light of the provisions of the Sixth Schedule had received an elaborate consideration of this Court. In the said case, the provisions of the Employees’ Provident Funds and Miscellaneous

Provisions Act, 1952 were held to be inapplicable to the tribal areas/District Council areas of Khasi Hills by the High Court. The High Court seems to have proceeded on the basis that after constitution of the tribal areas of State of Meghalaya by the North-Eastern Areas (Reorganisation) Act, 1971, no notification was published by the Governor under Para 19 of the Sixth Schedule making the aforesaid Act applicable to the Khasi Hills District. The said Act, therefore, did not come into operation and, consequently, after the constitution of the District Council, the Act did not become operative and effective on its own.

12. Dealing with the aforesaid view of the High Court, it was pointed out that the provisions of Para 19 of the Sixth Schedule are transitional and with the constitution of the District Council, Para 19 ceased to operate. Therefore, the application of laws were to be governed by the provisions of Para 12A (as applicable to the State of Meghalaya) of the Sixth Schedule which required the exclusion or application with modifications of any Act of Parliament to be made by notification issued by the President. To arrive at the above conclusion in the matter, references have been made to the Constituent Assembly Debates and to a celebrated work on the subject, reference to which are to be found in Para 12 and 14 of the report which may be usefully extracted below:-

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 Parliament, should not apply. Generally, the laws made by the Legislature and the laws made by Parliament will also be applicable to these areas”.

14. B.L. Hansaria, J. in his Sixth Schedule to the Constitution of India — a Study (1983 Edn.) published by M/s Ashok Publishing House, Gauhati has stated at p. 45 thus:

“Insofar 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.”

13. The eventual conclusion of this Court are to be found in Para 16 which is quoted below with the clarification that Para 12A referred to therein pertains to the autonomous Districts or Regional Councils in the State of Meghalaya whereas in the instant case the relevant

provisions of the Sixth Schedule would be Paragraph 12B as initially applicable to the Union Territory of Mizoram and thereafter to the State of Mizoram.

"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 coterminous 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(£>), 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."

(underlining is ours)

14. We also do not find any substance in the arguments advanced on behalf of the appellant that the Notification dated 14.3.1966 would continue to be applicable to the Union Territory and the successor State of Mizoram by virtue of Section 24 of the General Clauses Act. We do not see how the said provisions of the General Clauses Act can have any application to the present case.

15. Consequently, we dismiss the present appeal and affirm the view taken by the High Court.