

IN THE HIGH COURT OF MEGHALAYA AT SHILLONG

:ORDER:

WP (C) NO.55 of 2017

Shri Pyrshang Biam : Petitioner

- Versus -

The State of Meghalaya and Others : Respondents

Date of Order : 29.03.2017

PRESENT

HON'BLE SHRI JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE

HON'BLE SHRI JUSTICE VED PRAKASH VAISH

Shri N Syngkon, for the petitioner

Shri H Kharmih, for the respondent No.1

Shri HS Thangkhiew, Sr. Adv. with Shri P Nongbri, for the
respondents No.1 and 3

AFR BY THE COURT: (Per Hon'ble the Chief Justice) (Oral)

By way of this writ petition, the petitioner, said to be the Secretary of Dorbar Elaka Raliang, West Jaintia Hills District, seeks to question the validity of sub-section (2) of Section 3 of the Jaintia Hills Autonomous District (Establishment of Elaka and Village and Election, Appointment, Powers, Functions and Jurisdiction of Dolloi/Sirdar and Waheh Shnong) Act, 2015 [hereinafter referred to as 'the Act of 2015' or 'the Act']; and further seeks to question the resolution of Executive Committee of the Jaintia Hills Autonomous District Council [hereinafter referred to as 'JHADC' or 'the District Council'] for creating a new Elaka to be known as "Elaka Sumer" within its jurisdiction.

The petitioner has stated the grievance against carving of a new Elaka out of Elaka Raliang by JHADC in terms of Section 3(2)(a) of

the Act of 2015 with the averments that Elaka Raliang is one of the Elakas within the jurisdiction of JHADC and is comprising of six Raij namely, (i) Raij Raliang (ii) Raij Lapne (iii) Raij longlang (iv) Raij Niawkmai (v) Raij Khonshnong and (vi) Raij Pala. According to the petitioner, except Raij Pala, all other Raij have common religious rituals and any act like carving a new Elaka out of Elaka Raliang would be violative of his Fundamental Rights guaranteed under the Constitution of India.

The provisions contained in sub-section (2) of Section 3 of the Act of 2015 have been questioned as being ultra vires the Constitution of India to the extent creation of a new Elaka has been permitted therein. It is submitted that Paragraph 3 of the Sixth Schedule to the Constitution of India does not invest the District Council with any power to make laws for the purpose of creating a new Elaka and hence, such provisions, as contained in sub-section (2) of Section 3 of the Act of 2015, are required to be struck down as being unconstitutional. It is also submitted that Dorbar Elaka Raliang has strongly opposed the decision of the Executive Committee of JHADC to create a new Elaka and has adopted a resolution to that effect on 13.03.2017, but the respondents were proposing to seek the approval of the District Council in Session of their decision to create the said new Elaka known as Sumer Elaka; and such an effort on the part of the respondents deserves to be declared as illegal and invalid.

Learned counsel for the petitioner has made elaborate reference to the provisions contained in Paragraph 3 of the Sixth Schedule to the Constitution of India and has strenuously argued that the powers with the District Council to make laws nowhere permit

making of any law for creation of a new Elaka and the provisions of Section 3(2) of the Act of 2015, specifically designed to invest the Executive Committee of JHADC with the power to create a new Elaka with the approval of the District Council in Session, remains beyond legislative competence of the District Council.

Having taken note of the contentions urged on behalf of the petitioner and having examined the Act of 2015 with its preamble and with reference to Paragraph 3 of the Sixth Schedule to the Constitution of India, we have posed a query to the learned counsel for the petitioner if the provisions as contained in sub-section (1) of Section 3 of the Act of 2015 or any other provision of the said Act were the matter of any dispute or question? The learned counsel for the petitioner frankly responded with the submissions that the petitioner is not questioning sub-section (1) of Section 3 of the Act of 2015 or any other provision of this enactment and his only grievance is with respect to sub-section (2) of Section 3 thereof, for the reason that a law has been made for the purpose of creating a new Elaka, though such a power is not vested in the District Council.

Learned counsel for the respondent JHADC has countered the submissions made on behalf of the petitioner with reference to clause (f) of Paragraph 3 of the Sixth Schedule to the Constitution of India and has contended that the JHADC has the power to make laws in relation to any matter relating to village administration and that includes settlement and re-settlement of administrative units like Elakas. Therefore, according to the learned counsel, the provisions contained in sub-section (2) of Section 3 of the Act of 2015 are within the legislative competence of JHADC and do not suffer from any unconstitutionality. Learned counsel has also contended that new

Elaka has been carved out of Elaka Raliang with reference to the demands of the residents of the area concerned and for proper administrative setups; and such a decision, taken in administrative exigencies, has no effect whatsoever on the religious ceremonies/rituals, which shall remain unaffected and could be performed without any doubt, hindrance or obstruction.

Having given thoughtful consideration to the rival submissions with reference to the law applicable, we are clearly of the view that this writ petition carries no substance whatsoever and deserves to be dismissed at its threshold.

For a proper appreciation of the submissions made and the issues raised, appropriate it shall be to take note of the relevant provisions having bearing on the matter.

Paragraph 3 of the Sixth Schedule to the Constitution of India, giving powers to the District Council and Regional Councils to make laws, reads as under :-

“3. Powers of the District Councils and Regional Councils to make laws – (1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to –

(a) The allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town.

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes [by the Government of the State concerned] in accordance with the law for the time being in force authorising such acquisition;

(b) The management of any forest not being a reserved forest;

(c) The use of any canal or water-course for the purpose of agriculture;

(d) The regulation of the practice of jhum or other forms of shifting cultivation;

- (e) *The establishment of village or town committees or councils and their powers;*
- (f) *Any other matter relating to village or town administration, including village or town police and public health sanitation;*
- (g) *The appointment of succession of Chiefs or Headmen;*
- (h) *The inheritance of property;*
- (i) *marriage and divorce;*
- (j) *social customs*

(2) *In this paragraph, a “reserved forest” means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.*

(3) *All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.”*

The Act of 2015, which was passed by JHADC in the Budget Session held during the month of March 2015 and was rectified and approved in the emergent Special Council Sessions held on 03.06.2015 and further on 21.12.2015, ultimately received the assent of the Governor of Meghalaya on 23.12.2015 and came to be published in the Gazette of Meghalaya Extraordinary on the same day i.e. 23.12.2015. The preamble of the Act spells out the reasons for its enactment as also the powers under which the same has been enacted; and reads as under:-

“Preamble:-

Whereas the Elakas are the existing traditional provinces of tribal administration of the indigenous tribes of Jaintia Hills in the State of Meghalaya and whereas the Dorbar Shnong within such Elakas are traditional units of Village administration of the indigenous tribes of these hills from time immemorial.

AND

Whereas the Dolloi/Sirdar is the traditional customary chief and principal functionary and head of the Elaka and the Waheh Shnong is the principal functionary and head of the Village within the Elaka and the elections and appointments to the office of the Dolloi/Sirdar and Waheh Shnong are being made from time to time by the respective Elakas and the respective Dorbar Shnong under the care and supervision of the District Council.

AND

Whereas it is expedient to make provisions for the establishment of Elaka and Village and the regulation of powers, functions and jurisdiction of these functionaries including their elections and appointments as the Dolloi/Sirdar and Waheh Shnong as the case may be in the administration of the Jaintia Hills Autonomous

District as envisaged in the Sixth Schedule to the Constitution of India.

Now, the District Council of the Jaintia Hills Autonomous District in exercise of the powers conferred upon it to make law under Clauses (e) for the establishment of Village or Town Committees and their powers, (f) matters relating to Village or Town administration, (g) the appointment or succession of Chiefs or Headmen and (j) Social Customs of Sub paragraph (1) of Paragraph 3 of the Sixth Schedule to the Constitution of India and other powers enabling it on that behalf hereby make the following Act for the assent of the Governor in their application to the Jaintia Hills Autonomous District in the manner hereinafter appearing.”

The Act makes several provisions for establishment of Elaka and Village and for regulation of powers and jurisdiction of the functionaries including their elections and appointments as Dolloi/Sirdar and Waheh Shnong. Section 3 of the Act makes the provision for establishment of Elakas and their territories and reads as under :-

“3(1) Establishment of Elaka and their territories :

(a) *The existing Elakas as specified in Appendix-I of this Act constitute the Elakas within the Jaintia Hills Autonomous District.*

(b) *The Executive Committee shall from the date of enforcement of this Act, issue a public notification in the gazette of Meghalaya relating to the area and boundaries of each Elaka specified in Appendix-I. Such notification shall also include the names of the villages comprising in each and every Elaka.*

(c) *Any boundary dispute of the Elaka shall be referred to and decided by the Executive Committee and the decision of the Executive Committee shall be final.*

(d) *No Civil Court shall have jurisdiction to try any suit or case relating to boundary disputes between Elakas.*

(2)(a) *The Executive Committee with the approval of the District Council in Session shall have the power to create a new Elaka by including or excluding any village or villages from the existing Elaka specified in Appendix-I.*

(b) *The Executive Committee shall, for creation of new Elaka ascertain the wish of the majority of the people residing in those villages of the need for having or creating new Elaka to bring the administration closer to the people.*

(c) *The Executive Committee shall issue a public notification in the gazette of Meghalaya the creation of a new Elaka with its area, boundaries and the names of the villages comprising in such Elaka.*

Provided that the name of such newly created Elaka shall accordingly be inserted in the schedule of Elaka in Appendix-I.

(d) *The Executive Committee shall have the power to make rules for the mode and method of election relating to electorate, candidature, tenure of office and other related matters therewith.*

Provided that the rules framed by the Executive Committee shall not contravene or in contrary to the provisions of this Act as regard to the powers and functions of the Dolloi/Sirdar.

Provided further that the Rules framed by the Executive Committee shall come into force only after due approval of the District Council in its Session.

(e) The Executive Committee shall have the power to appoint an Acting Dolloi/Sirdar of the newly created Elaka and thereafter to conduct an election to the office of the Dolloi/Sirdar within a period of six months from the date of notification of the creation of such Elaka.”

The other provisions in the Act of 2015, as regards election and term of office of Dolloi/Sirdar and co-related aspects need not be dilated upon in this order. It is, however, noticed that as per Appendix-I to this Act, nineteen different Elakas have been specified, which include Elaka Raliang at serial No.13. Further, in Appendix-II thereof, a schedule of eligible clans has been given and six different clans have been specified in relation to Elaka Raliang. It is also clear that the respondent JHADC has recognised the position of Dolloi/Sirdar as the traditional customary chief, and principal functionary, and head of the village within the Elaka.

The scheme of the Act of 2015 makes it clear that it has been enacted for the purpose of making adequate provisions for establishment of Elaka and Village and then, for elections/appointment of Dolloi/Sirdar and Waheh Shnong and for their powers, functions and jurisdiction. The Act of 2015, read as a whole, leaves nothing to doubt that the same has been enacted to provide for all the matters indicated in its long title i.e., “Establishment of Elaka and Village and Election, Appointment, Powers, Functions and Jurisdiction of Dolloi/Sirdar and Waheh Shnong.” Put in a nutshell, the enactment is essentially for the purpose of regulating the administration of the areas under the jurisdiction of the District Council.

As regards the question of legislative competence of JHADC, noticeable it is that in the scheme of Sixth Schedule to the Constitution of India, several aspects of governance in the specified tribal areas are entrusted to the District Councils and Regional Councils. The powers of such Councils to make laws are specified in Paragraph 3 of the Sixth Schedule (as reproduced hereinabove). A bare look at clauses (e), (f), (g) and (j) of Paragraph 3 makes it clear that, amongst other powers, the District Council is having the power to make laws on the matters pertaining to establishment of village or town committees and their powers; other matters relating to village or town administration including village or town police, public health and sanitation; appointment or succession of chiefs or headmen; and social customs respectively. Thus, there remains no scope for any doubt or debate that the District Council has the power to make laws on the matters relating to the establishment of village or town committees or councils and generally, with respect to all the matters relating to village or town administration including police, public health and sanitation.

As stated in its preamble, the Act of 2015 has been made with reference to the aforesaid powers of the District Council, as conferred by clauses (e), (f), (g) and (j) of Paragraph 3 of the Sixth Schedule to the Constitution of India, As noticed, there is no challenge to the power of JHADC to enact the law like the Act of 2015. The principal provisions contained in sub-section (1) of Section 3 of the Act have not been questioned by the petitioner, and in our view, rightly so because the District Council has the power to enact the laws in relation to the matters pertaining to village administration.

Now, when the matter relates to administration of any area of human settlement, be it a village or be it a town, the provisions could be made, and are rather inevitable to be made, for appropriate division of the areas in administrative units with specification of their boundaries. These aspects have been duly taken note of and provided for in sub-section (1) of Section 3 of the Act of 2015 against which, there is no quarrel and there cannot be any. Once it is found that the District Council like JHADC has the power to establish the Elakas and to define their territories, it follows rather as concomitant that it has power to redefine the territories or to create new Elakas or even to merge any Elakas or resettle them, as may be required by the administrative exigencies. Sub-section (2) of Section 3 of the Act of 2015, which specifies such affiliated powers, therefore, falls squarely within the legislative competence of JHADC.

Moreover, it remains trite that a power to do something essential for the proper and effectual performance of the work which the statute has in contemplation may be implied; and an express grant of statutory powers carries with it, by necessary implication, the authority to use all such reasonable means to make such grant effective. As observed by the Hon'ble Supreme Court in the case of *Sakiri Vasu v. State of Uttar Pradesh and others: (2008) 2 SCC 409*, when a power is given to an authority to do something, it includes such incidental or implied powers which would ensure the proper doing of that particular thing. The Hon'ble Supreme Court has observed, inter alia, as under:-

“18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention,

every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his Statutory Construction (3rd Edn.,p.267):

“.....If these details could not be inserted by implication, the drafting of legislation would be an interminable process and the legislative intent would likely be defeated by a most insignificant omission.”

20. In ascertaining a necessary implication, the court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

21. An express grant of statutory powers carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Thus, in ITO v. M.K.Mohammad Kunhi this Court held that the Income Tax Appellate Tribunal has implied powers to grant stay, although no such power has been expressly granted to it by the Income Tax Act.”

In relation to the present case, when the District Council has the power to deal with the matters relating to village administration, such a power necessarily includes the power to provide for establishment, and re-establishment, of administrative units by whatever name called; and, the power to establish an Elaka and to define the territories by a District Council innately carries with it the power to establish new Elakas and to re-define the territories of the Elakas. Thus, in the present matter, the provision for establishment of Elakas in sub-section (1) of Section 3 of the Act of 2015 inherently carries with it the provision for establishment of new Elakas, and to re-define the territories of the Elakas. Sub-section (2) of Section 3 of the Act of 2015, which only makes explicit what is otherwise implicit in the scheme of the provisions made for the purpose of establishment of Elakas and defining their territories, therefore, remains unexceptionable. In other words, the power to establish an Elaka necessarily implies a power to establish a new Elaka; and sub-

section (2) of Section 3 of the Act merely specifies such an implied power while laying down procedural requirements for exercise thereof.

Suffice it would be to sum up that we are unable to find any infirmity or invalidity in the provisions contained in sub-section (2) of Section 3 of the Act of 2015.

The other suggestion about infringement of Fundamental Rights by establishment of new Elaka has only been noted to be rejected. From the averments taken in the petition itself, it is noticed that a new Elaka has been created for the purpose of proper administration. It is difficult to find as to how setting up of a particular administrative unit within the jurisdiction of JHADC, by carving out a new Elaka from the territories of existing Elaka, could have any adverse effect on the religious practices, rituals or customs of the inhabitants? These suggestions, having no basis, could only be, and are, rejected.

For what has been discussed hereinabove, we find no substance in this petition. Consequently, the petition stands dismissed.

JUDGE

CHIEF JUSTICE

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