EWANLANGKI-E-RYMBAI

v.

JAINTIA HILLS DISTRICT COUNCIL AND ORS.

MARCH 28, 2006

[B.P. SINGH AND ARUN KUMAR, JJ.]

United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959: Section 3(1).

Jaintia Hills Autonomous District Council—Election of Dolloi—In Elaka Jowai—Section 3(1) provided that all elections and appointments of Chiefs and Headmen shall be in accordance with the existing customs prevailing in the Elaka concerned—Constitutional validity of—Christians were excluded from contesting election to the post of Dolloi—High Court upheld the constitutional validity of S. 3(1) holding that there was a custom prevalent for a long time to the effect that the "Chief", namely, the Dolloi, must perform administrative as well as religious duties—Correctness of—Held: The ground for exclusion of Christians is not solely on the ground of religion, but on account of the admitted fact that a Christian cannot perform the religious functions attached to the office of Dolloi—Such duties cannot be bifurcated by appointing one other person to perform the religious functions only—The reason is neither unreasonable nor arbitrary—Hence, by excluding Christians from contesting the post of Dolloi, Articles 14, 15 and 16 are not violated—Constitutional validity of S. 3(1) upheld—Constitution of India, Art. 14, 15 and 16.

The appellant, a Christian by faith, and a member of the Jaintia Scheduled Tribe filed a writ petition before the High Court challenging the constitutional validity of Section 3(1) of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 and also the notice issued by the Jaintia Hills Autonomous District Council declaring the programme for the election of Dolloi in Elaka Jowai. Section 3 of the Act provided that all elections and appointments of Chiefs and Headmen shall be in accordance with the existing customs prevailing in the Elaka concerned. Jowai District was an autonomous District to which the provisions of the Sixth Schedule of the

A Constitution of India applied. The Dolloi performed Administrative as well as religious functions and a Christian could not perform the religious functions which were performed by the Dolloi.

The High Court upheld Section 3 of the Act holding that there was a custom prevalent for a long period which was invariably practiced to the effect B that the "Chief", namely, the Dolloi must perform administrative as well as religious duties. The High Court also held that there was no breach of Articles 14 to 16 of the Constitution of India in the exclusion of Christians from contesting election to the post of Dolloi. Hence the appeals.

C Dismissing the appeals, the Court

HELD: 1. It is the tribal custom of the Elaka that the Dolloi of the Elaka Jowai must perform both the administrative and religious functions of his office. The office of Dolloi with its dual functions, administrative and religious, is a part of the tribal religion and culture, governed by D custom since time immemorial. It logically follows that the Dolloi must be one who is conversant with the indigenous religious practices of the inhabitants of the Elaka. He must be one who should be able to lead the people of the Elaka in the religious ceremonies according to their custom, and must also be competent to perform the rituals, practices, poojas, ceremonies etc. which he is required to perform as a duty attached to his E office. A Christian cannot perform the indigenous religious functions which a Dolloi is required to perform, apart from his administrative functions. By long standing custom, the Dolloi must perform both administrative and religious functions, and such duties cannot be bifurcated by appointing one other to perform the religious functions only. There is no such custom F prevalent in the Elaka. In its long history, such a thing happened only twice, and on both occasions there was a public outcry resulting in dismissal of the Dolloi in one case and his resignation in the other. The custom cannot be said to be discontinued or destroyed by such aberrations. The High Court has also noticed the judicial recognition given to the customary practice in the Khasi and Jaintia Hills that a Dolloi cannot be G a Christian. [509-G; 510-A-E]

Edwingson Bareh v. *State of Assam,* AIR (1966) SC 1220, relied on.

2. By excluding Christians from contesting the post of Dolloi, Articles 14, 15 and 16 are not violated. The exclusion is justified by good reason, since H admittedly the religious duties of a Dolloi of Elaka Jowai cannot be performed

by a Christian. Thus the ground for exclusion of Christians is not solely on the ground of religion, but on accont of the admitted fact that a Christian cannot perform the religious functions attached to the office of Dolloi. The reason cannot be said to be either unreasonable or arbitrary. [510-E, F]

3. Unless it is shown that the exclusion of Christians was only on religious ground, the challenge cannot be sustained. The reasons for the exclusion of Christians are neither arbitrary nor unreasonable. Therefore, Section 3(1) of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 as also the Notification impugned in the writ petitions cannot be struck down on the ground of violation of Articles 14, 15 and 16 of the Constitution of India. [514-G, H; 515-A]

Government of A.P. **v.** *P.B. Vijayakumar,* **[1995] 4 SCC 520,** *Cazula Dasaratha Rama Rao* **v.** *State of A.P.,* **AIR (1961) SC 564,** *Air India* **v.** *Nergesh Meerza,* **[1981] 4 SCC 335,** *Clarence Pais* **v.** *Union of India,* **[2001] 4 SCC 325 and** *R.C. Poudyal* **v.** *Union of India,* **[1994] Supp. 1 SCC 324, relied on.**

John Vallamattom **v.** *Union of India,* **[2003] 6 SCC 611,** *Madhu Kishwar* **v.** *State of Bihar,* **[1996] 5 SCC 125 and** *State of Kerala* **v.** *Chandramohnan,* **[2004] 3 SCC 429, held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9561-9562/ 2003.

From the Final Judgment and Order dated 21.7.2003 of the High Court of Gauhati in W.P. (C) No. 6541-6542/2001.

Avijit Bhattacharjee, Divakar Borah and Ms Debjani Dass Purkayastha for the Appellant.

R.F. Nariman, P.K. Goswami, H.S. Thangkhiew, Upamanyu Hazarika, Satya Mitra, Ms. Sumita Hazarika, Rajiv Mehata and B. Aggarwalla for the Respondents.

The Judgment of the Court was delivered by

B.P. SINGH, J. These appeals by special leave are directed against the common judgment and order of the Gauhati High Court dated 21st July, 2003 in Writ Petition (C) No. 6541 of 2001 [WP (C) No.221(SH)/2002] and Writ

A Petition (C) No. 6542 of 2001 [WP (C) No.222(SH)/2002] whereby the High Court dismissed the writ petitions filed by the appellants herein.

Appellant Ewanlangki-e Rymbai, a Christian by faith is a Member of the Jaintia Scheduled Tribe. The other appellant, namely-Elaka Jowai Secular Movement is represented by its Vice Chairman and Executive Member. In B both the writ petitions the constitutional validity of Section 3 of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 (hereinafter referred to as 'the Act of 1959') has been challenged. The writ petitions also challenged the notice dated August 28, 2001 issued by the Jaintia Hills Autonomous District Council, C Jowai declaring the programme for the election of Dolloi in the Elaka Jowai and also the notice dated September 4, 2001 issued by the Secretary, Executive Committee, Jaintia Hills Autonomous District Council, Jowai.

Section 3 of the Act of 1959 provides that subject to the provisions of the Act and the Rules made thereunder all elections and appointments of D Chiefs and Headmen shall be in accordance with the existing customs prevailing in the Elaka concerned. The notice dated September 4, 2001 announced the programme for the conduct of election for Dolloi in the Elaka Jowai but the notice issued by the Secretary on behalf of the Executive Committee, Jaintia Hills Autonomous District Council, Jowai provided that E only the members of the clans mentioned therein could contest the aforesaid election and thereby the persons belonging to the Christian faith were excluded from contesting the said election. The appellants contend that exclusion of Christians from contesting the election is in violation of Articles 14, 15 and 16 of the Constitution of India since they are excluded only on the ground F of religion. They further contend that Section 3 of the Act of 1959 which provided that the appointment of the Chiefs or Headmen shall be in accordance with the existing customs prevailing in the Elaka concerned, is also bad. It gives legal sanctity to a customs which itself is in breach of Articles 14 to 16 of the Constitution of India. In sum and sub stance the appellants contend that exclusion of Christians from contesting election for the post of Dolloi in G Elaka Jowai is discriminatory and in breach of Articles 14 to 16 of the Constitution of India since their exclusion is merely on the ground of religion.

We may notice at the threshold that Jowai District is an autonomous District to which the provisions of Sixth Schedule of the Constitution of India H apply in view of the provisions of Article 244(2) of the Constitution of India. The brief historical background in which the aforesaid autonomous district

was created may be noticed at this stage :-

On coming into force of the Constitution of India the United Khasi-Jaintia Hills District was formed as one of the Tribal Areas of Assam by merging the Khasi States with the other areas of the Khasi-Jaintia Hills, boundaries whereof were defined by para 20(2) of the Sixth Schedule to the Constitution (hereinafter referred to as 'the Schedule'). Under para 2(4) of the Schedule, the administration of the aforesaid district vested in the District Council which was clothed with administrative and judicial powers. In view of the demand for creation of an autonomous District comprising the Jowai sub-division of the aforesaid District, the Governor of Assam appointed a Commission to look into the matter and make its recommendation. The report of the Commission was placed before the Legislative Assembly which approved the action proposed to be taken pursuant to the report. Consequently on November 23, 1964 a Notification was issued by the Governor of Assam creating a new autonomous District Council for the Jowai Sub-Division by excluding Jowai Sub-division from the United Khasi-Jaintia Hills Autonomous District with effect from December 1, 1964. Thus the Jowai District came into existence as an autonomous District with effect from December 1, 1964.

As earlier noticed Article 244(2) of the Constitution provides that the provision of the Sixth Schedule shall be applied to the administration of the tribal areas in the State of Assam. The tribal areas in Assam are governed not by the relevant provisions of the Constitution which apply to the other Constituent States of the Union of India but by the provisions contained in the Sixth Schedule. These provisions purport to provide for a self-contained code for the governance of the tribal areas forming part of Assam and they deal with all the relevant topics in that behalf. (See : *Edwingson Bareh* v. *The State of Assam and Ors.*, AIR (1966) SC 1220).

Paragraph 1 of the Sixth Schedule provides for the formation of an autonomous district and further provides that if there are different scheduled tribes in an autonomous district, the Governor may by public notification divide the area or areas inhabited by them into autonomous regions. Paragraph 2 provides for the constitution of a District Council for each autonomous district. Similarly for each autonomous region a separate Regional Council is provided. The administration of an autonomous district insofar as it is not vested under the Schedule in any Regional Council within such district, is vested in the District Council for such district. The administration of an autonomous region is vested in the Regional Council for such region. Sub-

A paragraph (6) of paragraph 2 empowers the Governor to make Rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organizations within the autonomous districts or regions concerned. Paragraphs 3 to 17 make provision for the administration of the autonomous Districts and the B Regions. Paragraph 3 in particular provides that 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, shall have power to make laws with respect to the matters enumerated therein which provide *inter alia* "for the appointment or succession of Chiefs or Headmen". The laws made under this paragraph are required to be submitted forthwith to the C Governor and, until assented to by him, shall have no effect.

In exercise of powers conferred upon him by sub-paragraph (6) of paragraph 2, the Governor framed rules called "the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951". The Rules provide, inter alia, for the constitution of an Executive Committee consisting of the D Chief Executive Members as the head and two other members to exercise the executive functions of the District Council.

After the coming into the existence of Jowai District as an autonomous District the Jowai Autonomous District Act, 1967 was enacted. The provisions E of this Act were made applicable to the Jowai Autonomous District and the Rules of 1951, as amended from time to time, were made applicable. The Act, Rules and Regulations framed under the United Khasi-Jaintia Hills District Council as listed in Appendix-I were also made applicable to the Jowai Autonomous District till such time the Jowai Autonomous District Council made its own laws. Appendix-I includes the United Khasi Jaintia Hills F Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 (hereinafter referred to as 'the 1959 Act') which was made applicable to the Jowai District Council.

Section 2 (a), (b) and (g) of the 1959 Act are as follows :-

G "2. Definition. In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say :-

(a) "Chief" means a Sylem, a Lyngdoh, a Dolloi, a Sirdar or a Wahadadar as the case may be, of any Elaka.

H

(b) "Custom" with reference to any Elaka means any rule regarding the appointment of a Chief or Headman for that Elaka which having been continuously and uniformly observed for a long time, has obtained the force of law in that Elaka.

... ...

(g) "Elaka" means any administrative unit in the District specified in Appendixes I, II and III or any other administrative unit to be constituted and declared as such by the Executive Committee."

Section 3 reads as follows :-

"3. *Elections and Appointment of Chiefs and Headmen.* - Subject to the provision of this Act and the Rules made thereunder all elections and appointments of Chiefs or Headmen shall be in accordance with the existing customs prevailing in the Elaka concerned."

All appointments of Chiefs are made subject to the approval of the District Council which may confirm such appointments under terms and conditions which it may by Rules, from time to time, adopt.

Under Appendix III-Jowai has been specified as an Elaka, headed by a Chief who would be a Dolloi. Apart from challenging the constitutional validity of Section 3 of the Act of 1959, appellants also challenge the validity of the notice issued by the Secretary of Executive Committee of Jowai District dated September 4, 2001 which is reproduced below :-

"OFFICE OF THE JAINTIA HILLS AUTONOMOUS DISTRICT COUNCIL, JOWAI

NOTICE

DATED JOWAI, THE 4TH SEPT. 2001

This is Public Notice that the Executive Committee, Jaintia Hills Autonomous District Council, Jowai after thorough investigation and scrutinisation has decided that the following Clans has the right to stand for the election of the Dolloiship in the Elaka Jowsai :

"A' *From the Clan Sookpoh Khatar Wyrnai*

1.	Pasubon	2.	Rngad	3.	Lipon
4.	Nikhla	5.	War	6.	Pakyntein

A

7.	Leinphoh	8.	Singphoh	9.	Niangphoh
10.	Kathphoh	11.	Kynjing	12.	Lakiang
13.	Blein	14.	Lanong	15.	Lywait
16.	Kma	17.	Lytan-Mutyen	18.	Pawet
19.	Nangbah	20.	Siangbood	21.	Syngkon bad
22.	Langodh.				

B

"B" *From the Clan Le-Kyllung*

1.	Rymbai	2.	Najiar	3.	Toi

C

"C" From the Clan Talang-Lato

1.	Lato	2.	Thma	3.	Chynret

The Executive Committee has decided those who can contest for the Dolloiship should be only those who are from the Niam Tynrai Niamtre (Non Christians) who will practice the indigenous religion within the Raij Jowai.

D

Sd/- E.M . Lyngdoh
Secretary, Executive Committee
E Jaintia Hills Autonomous District
Council, Jowai"

It is not disputed before us that Dolloi performs Administrative as well as religious functions and a Christian cannot perform the religious functions which are performed by Dolloi. However, the appellants have impugned Section F 3 of the Act of 1959 and the notifications issued on the following grounds:-

(i) The Notification issued is a law within the meaning of Article 13 (3) (a) of the Constitution of India.

(ii) Being a law preventing a person belonging to a particular religion from contesting election to a public post is violative of Articles G 14, 15 and 16 of the Constitution of India, and therefore, void.

(iii) Section 3 which provides for the Election and Appointment of Dolloi in accordance with custom is void since the customs itself clearly discriminates on the ground of religion. A custom must give way to fundamental right and any custom which offends the H fundamental rights of a citizen must be held to be invalid.

On the other hand learned counsel appearing for the respondents submitted that there is no violation of Articles 14, 15 and 16 of the Constitution of India since reasonable classification is permissible in law and the exclusion of Christians from contesting the election is not only on the ground of religion, but on the ground that they are unable to perform religious functions of the office of Dolloi. It is further submitted that indeed the provisions only serve to conserve the tribal culture which itself is a fundamental right guaranteed under Article 29 of the Constitution of India. In substance, the impugned law and the notifications do not incur the wrath of Articles 14 to 16 of the Constitution, on the contrary, they enjoy the protection of Article 29 of the Constitution of India.

A B C

On a consideration of the material placed before it the High Court came to the conclusion that a custom prevailed in the Elaka Jowai which on account of its long practice and by common consent acquired the status of a governing rule for election and appointment of Dolloi to perform both administrative and religious functions. The fact that the Dolloi in Elaka Jowai is required to perform both administrative and the religious functions as prevalent by custom is not disputed. What was submitted on behalf of the appellants was that 2 persons could be called upon to perform those duties, one performing the administrative duties and the other the religious functions. Only 2 instances were cited when Christians were appointed as Dolloi of Elaka Jowai. In the year 1890 an attempt was made to install a person who had converted himself into Christianity as Dolloi of Elaka Jowai, but he had to face the wrath of the people in performing the religious functions and ultimately had to resign from the post. In the other case the Dolloi had to be removed by issuance of an order of termination. The High Court found that since time immemorial the custom is to appoint one Dolloi who has to perform both administrative as well as religious functions. Moreover under the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 (Act No.11 of 1959) "service land" and "puja land" were given to Dolloi who was appointed as the "Chief". "Service land" which was revenue free land was held and cultivated by the Chief or the Headman in lieu of monetary remuneration for services rendered. "Puja land" was revenue free land held and cultivated by him and the income yielded therefrom utilized by him in meeting expenses connected with the religious performances according to customs of the Elaka. The High Court, therefore, recorded a finding that there was a custom prevalent for a long period which was invariably practiced to the effect that the "Chief", namely the Dolloi must perform administrative

D E F G H

A as well as religious duties. There was no customs to appoint two Dollois-one for the performance of administrative duties and the other for the performance of religious functions. Deviation for a short period on account of existing emergency which needed immediate correction did not derogate from its character as a custom. The High Court concluded thus :-

B

> "On reading Section 3 read with Section 2(j) and 2(k) of the Act, 1959 and on the pleadings of the parties we hold that the Dolloi elected and appointed in Elaka Jowai was required to perform the executive function as well as religious functions which is a custom prevalent in the Elaka. We further hold that there cannot be two
C Dollois one performing the administrative functions and the other performing the religious functions. Under the Act, 1959 there can be only one Dolloi performing both administrative as well as religious functions".

An argument was advanced before the High Court, which was not
D advanced before us, that the notice issued on September 4, 2001 by the Secretary, Executive Committee, of the Jowai Autonomous District Council was without jurisdiction and authority. The High Court negatived the contention and held that the Executive Committee in exercise of its delegated powers can issue such a public notice for appointment by election of Dolloiship
E in Elaka Jowai in the absence of rules, regulations or enactments providing for such election and appointment. Reliance was placed on a judgment of this Court in *Edwingson Bareh* v. *The State of Assam and Ors.*, (supra). However, the High Court held that any law/regulation/rule/notification made or action taken under the Sixth Schedule by the District Council or the Executive Committee formed by the District Council must not in any manner commit
F a breach of any of the fundamental rights guaranteed under Part III of the Constitution of India.

The High Court then proceeded to consider the submission urged before it that the exclusion of Christians from contesting election to the post of Dolloi violated Articles 14, 15 and 16 of the Constitution of India. In doing
G so the High Court also noticed Articles 25 and 26 of the Constitution of India and ultimately concluded that there was no breach of Articles 14, 15 and 16 of the Constitution of India and in fact it protected the rights guaranteed under Articles 25 and 26 of the Constitution of India.

H The appellants in these appeals have challenged the correctness of the

decision of the High Court. A

Shri P.K. Goswami, learned senior counsel appearing on behalf of the District Council (respondents 1 to 3) submitted that the High Court was right in holding that having regard to the facts of the case and the nature of the office of Dolloi, the notice excluding Christians from contesting for the post of Dolloi was fully justified. Dolloi performs administrative as well as religious B functions. Such a custom and such an office existed since time immemorial and acquired the status of well preserved custom. It, therefore, became the duty of the State to ensure the right guaranteed under Article 26 of the Constitution of India. This was not really a case to which Articles 15 and 16 were applicable, but even assuming that to be so, there was no discrimination C since the exclusion of Christians was not only on the ground of religion, but on the ground that they could not perform the religious functions of the office which by custom a Dolloi was required to perform. It is submitted that under Articles 14, 15 and 16 of the Constitution of India reasonable classification was permissible. In particular he drew our attention to Article 26(b) of the Constitution of India and submitted that since the office of D Dolloi involves the performance of both the administrative as well as religious duties, the concerned tribes had a right to manage their own affairs in matter of religion. He relied upon authorities in support of his submission that the right of the tribes to have a Dolloi who could perform administrative as well as religious functions was a right guaranteed under Article 26 of the E Constitution of India.

Mr. R.F. Nariman, learned senior counsel appearing on behalf of respondents 5 and 6 analysed the provisions of Articles 14, 15, 16, 25, 26 and 29 of the Constitution of India and submitted that Article 14 permitted reasonable classification in accordance with well settled principles. Article F 15 was a species of Article 14 inasmuch it prohibited the State from discriminating against any citizen on the ground only of religion, race, caste, sex place of birth or any of them. However, he emphasized the use of the words "on ground only of religion". Thus if a citizen is discriminated against "on ground only of religion", such action may be unconstitutional. That however, is not the case here. The exclusion is on account of the admitted G fact that a Christian cannot perform the religious duties of a Dolloi. Article 16 guarantees equality of opportunity in matters of public employment but clause (5) thereof expressly provides that nothing in the article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or H

A any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination. He submitted that the right guaranteed under Article 25 of the Constitution was subject to other provisions of Part III of the Constitution of India but so far as Article 26 was concerned, it was only subject to public order, morality and health. So far as Article 29 is concerned it is a absolute right guaranteed for the
B conservation of a language, script or culture. He submitted that the rights protected are those guaranteed under Article 26(b) and 29(1) of the Constitution. He, therefore, submitted that election of a tribal head with all concomitants thereof was part of the tribal culture. The Constitution guarantees uniformity in diversity. The cultural rights under Article 29 of the Constitution
C of India are couched in the widest language unlike under Articles 25 and 26, which are subject to certain limitations. Having regard to the nature of duties to be performed by a Dolloi the person elected as Dolloi must be religiously proficient to perform his religious duties. It was really with a view to preserve their culture that a Christian was excluded from contesting the office of Dolloi which involved performance of religious duties, which he could not
D perform. It was a core aspect of the tribal culture that Dolloi must perform administrative functions as well as religious functions which involve performance of religious ceremonies which the High Court has elaborated in great detail. According to him, Articles 14 to 16 were not at all breached and in the ultimate analysis the right guaranteed under Article 29 must prevail
E since it is the mandate of Article 29 that such cultural rights must be preserved. There is force in the submissions advanced on behalf of the respondents.

Article 14 ensures equality before law, which means that only persons who are in like circumstances should be treated equally. To treat equally those who are not equal would itself be violative of Article 14 which embodies
F a rule against arbitrariness. Thus classification is permissible if it satisfies the twin test of its being founded on intelligible differentia, which in turn has a rational nexus with the object sought to be achieved.

Article 15 prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. This,
G however, is subject to the exception carved out by clauses 3 and 4 which permit special provisions to be made in favour of women and children, and for socially and educationally backward classes of citizens i.e. for the Scheduled Castes and Scheduled Tribes. These are exceptions to the rule embodied in clauses (1) and (2) of Article 15.

H

Article 16 also embodies the rule against discrimination, but is limited in its scope than Article 15, since it is confined to office or employment under the State, whereas Article 15 covers the entire range of State activities. Descent and residence are the two additional grounds on which discrimination is not permissible under Article 16. But the rule is again subject to the exceptions carved out by clauses 3 to 5 thereof. Clause 5 is relevant for our purpose, and it provides as under :-

> "(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

Thus Article 14 lays down the rule of equality in the widest term, while Article 15 prohibit discrimination on grounds specified therein but covering the entire range of State activities. Article 16 embodies the same rule but is narrower in its scope since it is confined to State activities relating to office or employment under the State. Both Articles 15 and 16 operate subject to exceptions therein. It has been so laid down by this Court in *Government of A.P.* v. *P.B. Vijayakumar and Anr.*, [1995] 4 SCC 520 and in *Cazula Dasaratha Rama Rao* v. *State of Andhra Pradesh and Ors.*, AIR (1961) SC 564.

Counsel for the appellants submitted that prohibition against contesting for the post of Dolloi on the ground of religion *ex-facie* amounted to discrimination on the ground of religion. On the contrary the respondents contend that the exclusion is not on the ground of religion alone, and therefore, does not invite the wrath of Articles 15 and 16. The exclusion is justified on the ground that those who cannot perform the dual nature of functions of the Dolloi, namely administrative and religious-cannot be eligible for the post. The exclusion, therefore, is neither arbitrary nor irrational. It is axiomatic that one who cannot perform the duties attached to the office must be held to be ineligible to hold the office. His exclusion, therefore, cannot be considered as either unreasonable or arbitrary or discriminatory.

The submission urged on behalf of the respondents must be accepted. We have earlier noticed the findings of the High Court to the effect that it is the tribal custom of the Elaka that the Dolloi of the Elaka Jowai must perform both the administrative and religious functions of his office. The High Court has exhaustively considered the evidence on record and considered

A the various rituals and observances, practices, poojas, ceremonies, customary religious functions which are regarded as integral part of religious customs, and which the Dolloi must perform in the discharge of his duties as the Dolloi. Such rituals, observances, ceremonies etc. are many in number. The material on record leaves no room for doubt that the office of Dolloi with its dual functions, administrative and religious, is a part of the tribal religion and B culture, governed by custom since time immemorial. It logically follows that the Dolloi must be one who is conversant with the indigenous religious practices of the inhabitants of the Elaka. He must be one who should be able to lead the people of the Elaka in the religious ceremonies according to their custom, and must also be competent to perform the rituals, practices, poojas, C ceremonies etc. which he is required to perform as a duty attached to his office. It is not disputed that a Christian cannot perform the indigenous religious functions which a Dolloi is required to perform, apart from his administrative functions. By long standing custom, the Dolloi must perform both administrative and religious functions, and such duties cannot be bifurcated by appointing one other to perform the religious functions only. D There is no such custom prevalent in the Elaka. In its long history, such a thing happened only twice, and on both occasions there was a public outcry resulting in dismissal of the Dolloi in one case and his resignation in the other. The custom cannot be said to be discontinued or destroyed by such aberrations. The High Court has also noticed the judicial recognition given E to the customary practice in the Khasi and Jaintia Hills that a Dolloi cannot be a Christian.

Having regard to all these facts, we are in agreement with the High Court that by excluding Christians from contesting the post of Dolloi, Articles 14, 15 and 16 are not violated. The exclusion is justified by good reason, since F admittedly the religious duties of a Dolloi of Elaka Jowai cannot be performed by a Christian. Thus the ground for exclusion of Christians is not solely the ground of religion, but on account of the admitted fact that a Christian cannot perform the religious functions attached to the office of Dolloi. The reason cannot be said to be either unreasonable or arbitrary.

G Counsel for the appellants relied upon the decision of this Court in *John Vallamattom and Anr.* v. *Union of India,* [2003] 6 SCC 611, wherein this Court considered the challenge to the constitutional validity of Section 118 of the Succession Act, 1925. The aforesaid provision was struck down by this Court on the ground of arbitrariness violating Article 14 of the Constitution. H It found that even the classification of the Christians as a class by themselves

was neither based on any intelligible differentia nor had any nexus with the object sought to be achieved. It was, therefore, held to be discriminatory as also arbitrary. But the challenge based on Article 15 of the Constitution was repelled in the following words :-

> "So far as the second argument of the learned counsel for the petitioner is concerned, it is suffice to say that Article 15 of the Constitution of India may not have any application in the instant case as the discrimination forbidden thereby is only such discrimination as is based, *inter alia*, on the ground that a person belongs to a particular religion. The said right conferred by clause (1) of Article 15 being only on a "citizen", the same is an individual right by way of a guarantee which may not be subjected to discrimination in the matter of rights, privileges and immunities pertaining to him as a citizen. In other words, the right conferred by Article 15 is personal. A statute, which restricts a right of a class of citizens in the matter of testamentary disposition who may belong to a particular religion, would, therefore, not attract the wrath of clause (1) of Article 15 of the Constitution of India."

Mr. Nariman is, therefore, right in distinguishing this case on facts and the nature of legislation challenged and the infirmities found. In fact, as he rightly submits, this decision, if at all, supports the case of the respondents, so far as challenge based on Article 15 is concerned.

The appellants next relied on the decision of this Court in *Madhu Kishwar and Ors.* v. *State of Bihar and Ors.*, [1996] 5 SCC 125. In that case the constitutional validity of Sections 7, 8 and 76 of the Chotanagar Tenancy Act, 1908 was challenged on the ground that the provisions violated Articles 14, 15 and 21 of the Constitution of India. The right to intestate succession of Scheduled Tribe Women was governed by custom. Sections 7 and 8 provided for exclusive right of male succession to the tenancy rights. Section 76 of the Act saved any custom, usage, or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by the provisions of the Act. This Court did not consider it desirable to declare the customs of tribal inhabitants as offending Articles 14, 15 and 21 of the Constitution of India, though each case must be examined when full facts are placed before the Court. This Court however gave some relief to female dependents by declaring that upon the death of the male tenant, they could hold on to the land so long as they remained dependent on it for earning their

A livelihood, for otherwise it would render them destitute. Thus the exclusive right of male succession conceived of in Sections 7 and 8 has to remain in suspended animation so long as the right of livelihood of the female descendants of the male holder remained valid and in vogue. We find no principle laid down in this decision to support the case of the appellants herein, who in effect seek to challenge the validity of a custom recognized B by and given effect to, by law. On the contrary, this Court was of the view that striking down such a law on the touchstone of Article 14 would bring about a chaos in the existing state of law.

We also do not find anything in the decision of this Court in *State of* C *Kerala and Anr.* v. *Chandramohnan,* [2004] 3 SCC 429 to support the case of the appellants. All that was held in that case was that by mere conversion to Christianity one does not cease to be a Scheduled Tribe if despite conversion he continues to follow the tribal traits and customs. No such question arose in this case.

D None of the decisions cited by the appellants supports the challenge to Section 3 of the Act of 1959 and the Notifications impugned in the writ petitions on the ground of violation of Articles 14, 15 and 16 of the Constitution. On the other hand counsel for the respondents relied upon decisions in support of their contention, that the exclusion of Christians from contesting the election to the post of Dolloi in Jowai Elaka is not only on the E ground of religion and, therefore, their exclusion cannot be challenged on the ground of violating Articles 15 and 16 of the Constitution of India. It was also contended that historical reasons may as well support the classification, provided it is rational and bears a nexus with the object sought to be achieved. It was submitted that what was sought to be protected was indeed the tribal F culture of the people inhabiting the autonomous District of Jowai. Their tribal sentiments and religious values have been sought to be protected and given due respect having regard to social and economic considerations of the tribals inhabiting in the autonomous District. Thus they contend that the exclusion is not based only on the ground of religion and consequently there is no discrimination within the meaning of Articles 15 and 16 of the Constitution G of India. In this connection they have relied upon a decision of this Court in *Air India* v. *Nergesh Meerza and Ors.,* [1981] 4 SCC 335 wherein this Court observed :-

> "Even otherwise, what Articles 15(1) and 16(2) prohibits is that discrimination should not be made only and only on the ground of

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sex. These articles of the Constitution do not prohibit the State from making discrimination on the ground of sex coupled with other considerations. On this point, the matter is no longer *res integra* but is covered by several authorities of this Court." A

In *Clarence Pais and Ors.* v. *Union of India,* [2001] 4 SCC 325 the challenge to Section 213 and 57 of the Succession Act, 1925 was considered and repelled. No doubt this Court held that the basis of the challenge, namely that Section 213(1) of the Act was applicable only to Christians and not to any other religion, was not correct. However, the Court made pertinent observations in the following words :- B

"We have shown above that it is applicable to Parsis after the amendment of the Act in 1962 and to Hindus who reside within the territories which on 1.9.1870 were subject to the Lt. Governor of Bengal or to areas covered by original jurisdiction of the High Courts of Bombay and Madras and to all wills made outside those territories and limits so far as they relate to immovable property situate within those territories and limits. If that is so, it cannot be said that the section is exclusively applicable only to Christians and, therefore, it is discriminatory. The whole foundation of the case is thus lost. The differences are not based on any religion but for historical reasons that in the British Empire in India, probate was required to prove the right of a legatee or an executor but not in Part "B" or "C" States. That position has continued even after the Constitution has come into force. Historical reasons may justify differential treatment of separate geographical regions provided it bears a reasonable and just relation to the matter in respect of which differential treatment is accorded. Uniformity in law has to be achieved, but that is a long drawn process. Undoubtedly, the States and Union should be alive to this problem. Only on the basis that some differences arise in one or the other States in regard to testamentary succession, the law does not become discriminatory so as to be invalid. Such differences are bound to arise in a federal set up." C D E F

In *R.C. Poudyal* v. *Union of India and Ors.,* [1994] Supp. 1 SCC 324 reservation of one seat for the Sangha in the Sikkim Assembly was challenged. In the reply it was urged that though Sangha was essentially a religious institution of the Buddhists, it however, occupied a unique position in the political, social and cultural life of the Sikkimese Society and the one seat reserved for it cannot, therefore, be said to be based on considerations 'only' of religion. This Court repelled the contention that reservation of one seat in G H

A favour of the Sangha is one purely based on religious considerations and, therefore, violative of Articles 15(1) and 325 of the Constitution of India and offended its secular principles. This Court held :-

> "The Sangha, the Buddha and the Dharma are the three fundamental postulates and symbols of Buddhism. In that sense they are religious
B institutions. However, the literature on the history of development of the political institutions of Sikkim adverted to earlier tend to show that the Sangha had played an important role in the political and social life of the Sikkimese people. It had made its own contribution to the Sikkimese culture and political development. There is material
C to sustain the conclusion that the 'Sangha' had for long associated itself closely with the political developments of Sikkim and was inter-woven with the social and political life of its people. In view of this historical association, the provisions in the matter of reservation of a seat for the Sangha recognises the social and political role of the institution more than its purely religious identity. In the historical
D setting of Sikkim and its social and political evolution the provision has to be construed really as not invoking the impermissible idea of a separate electorate either. Indeed, the provision bears comparison to Art. 333 providing for representation for the Anglo-Indian community. So far as the provision for the Sangha is concerned, it is to be looked
E at as enabling a nomination but the choice of the nominee being left to the 'Sangha' itself. We are conscious that a separate electorate for a religious denomination would be obnoxious to the fundamental principles of our secular Constitution. If a provision is made purely on the basis of religious considerations for election of a member of that religious group on the basis of a separate electorate, that would,
F indeed, be wholly unconstitutional. But in the case of Sangha, it is not merely a religious institution. It has been historically a political and social institution in Sikkim and the provisions in regard to the seat reserved admit of being construed as a nomination and the Sangha itself being assigned the task of and enabled to indicate the choice of
G its nominee. The provision can be sustained on this construction. Contention (g) is answered accordingly."

These decisions do justify the stand of the respondents that unless it is shown that the exclusion of Christians was only on religious ground, the challenge cannot be sustained. In the instant case, we have noticed the
H reasons why such an exclusion was made and we have also held that the reasons therefor are neither arbitrary nor unreasonable. We, therefore, conclude

agreeing with the High Court that Section 3(1) of the Act of 1959 as also the Notifications impugned in the writ petitions cannot be struck down on the ground of violation of Articles 14, 15 and 16 of the Constitution of India. A

We may notice that the High Court has held that the spiritual fraternity represented by classes belonging to Niam Tynrai Niamtre (Non-christian) who practice the indigenous religion within the Raij Jowai is a socio cultural religious organization of Jaintia people who follow Niam Tynrai Niamtre faith. They are governed by common customary laws of their own in the matters of administration as well in following religious faith. These classes within the Raij Jowai being followers of Niam Tynrai Niamtre are certainly a religious denomination within the meaning of Article 26 of the Constitution of India. B C

Before us also, Mr. Goswami, learned counsel appearing for the respondents urged submissions based on Articles 25 and 26 of the Constitution of India. Mr. Nariman, however, laid emphasis on Article 29 of the Constitution of India and submitted that the effort was really to conserve the culture of the tribal population in the autonomous District and, therefore, protected by Article 29 of the Constitution of India. These are matters which may require consideration in an appropriate case. So far as the instant case is concerned, having found that the challenge to the impugned provisions and Notifications was not sustainable on the ground of violation of Articles 14, 15 and 16 of the Constitution of India, it is not necessary for us to deal with other issues which the respondents have urged on the basis of Articles 25, 26 and 29 of the Constitution of India in support of their stand. D E

In the result these appeals fail and are dismissed. F

V.S.S. Appeals dismissed.