

CRITICAL ANALYSIS: ADMINISTRATION OF TRIBAL AREAS UNDER SIXTH SCHEDULE OF CONSTITUTION OF INDIA

*-Aayushi Singh and Nitya Jain**

Abstract

The paper attempts to understand the administration of tribal areas in India. In the Constitution of India, Article 244, 244-A, sixth schedule provide the special administration procedure for these areas, which are meant for protection and preservation of the tribal traditional identity and autonomy. Schedules areas are those areas which are treated differently from other areas in a state in the sense that whole of the administrative machinery operating in the state is not extended to these areas and the Central Government has somewhat greater responsibility for these Areas. In this research paper researchers have analyzed these special provisions of administration of schedule areas and compare with the administration of the other part of the country. Researchers also considered the different principles of administrative law i.e. Rule of law, delegated legislation, natural justice, administrative discretion in the administration of schedule areas and attempt to analyze the applicability of these principles in the special administrative conditions of these areas.

I. INTRODUCTION

The administration of tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram are provided under the Sixth Schedule to the Constitution. This involves a separate scheme for the administration by instituting District Councils and Regional Councils. Under this schedule the administration have been vested with the law making powers and the Judicial powers. The governor is empowered to organize or de- organize the autonomous districts which means that he has the power to alter the area of any autonomous district. The Councils are vested with the power to make laws on specified subjects and to constitute court for the administration of justice. Councils are conferred with the power to collect taxes. The schedule specifies that any laws made by the Parliament or the State Legislature do not apply to the autonomous districts and

autonomous regions or apply only after certain modifications or exceptions as required. The schedule specifically ousts the Jurisdiction of any court other than High Court and Supreme Court for any matter decided by the Regional Courts.

II. CONSTITUTIONAL PERSPECTIVE

The constitution provides the special administration to the areas that are tribal areas in the state of Assam, Meghalaya, Tripura and Mizoram. The administration of these areas is governed by the provisions of the Sixth Schedule of the Constitution.¹ Also in the 42nd amendment of the constitution provision for formation of an autonomous state for tribal areas in Assam added in the constitution. After this amendment in the constitution it empowers the parliament to create the local legislature or council of ministers or both for all or any tribal areas that specified in the part I paragraph 20 of Sixth schedule.² In this way the analysis of the sixth schedule required for considering the administration of these tribal areas.

III. PERSPECTIVE 1- POWER, AUTHORITY AND ROLE OF THE DISTRICT COUNCILS AND REGIONAL COUNCILS

- Third paragraph authorises District Councils and Regional Councils to make laws with reference to certain matters specifically mentioned in paragraph (3) which shall become effective only after the assent of the Governor. Paragraph 3-A gives some additional powers to the North Cachar Hills Autonomous Council and Karbi Anglong Autonomous Council in certain additional matters without prejudice to the provisions of paragraph 3.

* Aayushi Singh and Nitya Jain are 5th year students at Institute of Law, Nirma University, Ahmedabad.

¹ **244.** (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than [the States of Assam [, [Meghalaya, Tripura and Mizoram]]].

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in [the States of Assam [, [Meghalaya, Tripura and Mizoram]]].

² **244A.** (1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in [Part I] of the table appended to paragraph 20 of the Sixth Schedule and create therefor— (a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous State, or (b) a Council of Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law.

The list contains some matters specified in list III of the Seventh Schedule for which the assent of the President is required. In case President returns the law for reconsideration with some recommendation, the same shall be reconsidered by the council and be again presented to the President for his assent. Paragraph 3-B gives power to Bodoland Territorial Council to make some additional laws, which shall again require President's assent. It may be noted here that the Bodoland Territorial Council has been given to make laws in maximum matters.³

- Fourth paragraph of the Sixth Schedule provides for the Administration of Justice in autonomous districts and autonomous regions which gives power to Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils to constitute village councils and courts to hear any suit between parties belonging to Scheduled Tribes within such areas. The Council may also appoint any officer required for the administration of justice. Sub-paragraph (2) provides that the court set up by Regional Council shall exercise the powers of a court of appeal in respect of all suits and cases triable by the village council or courts. The Schedule ousts the jurisdiction of any other court except the High Court and The Supreme Court. Sub- Paragraph (4) authorises the District Council and Regional Council with prior approval of the Governor make rules regulating the village councils and courts, the procedure to be followed by them, enforcement of decisions and orders of such Councils and Courts and all other ancillary matters.⁴
- Paragraph (5) confers on Regional Council and District Council the power under Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898 which includes the trial of offences punishable with death, transportation of life, or imprisonment for a term not less than five years under the Indian Penal Code or any other law applicable. The Governor shall have the power to modify or withdraw any of the powers given to the Regional Council and District Council or to courts or officer assigned says sub-paragraph (2). Sub- Paragraph (3) excludes the applicability of Code of Civil Procedure,

³ INDIA CONST. Sch. VI, para 3.

⁴ INDIA CONST. Sch. VI, para 4.

1908 and the Code of Criminal Procedure, 1898 on any of the matters on which the provisions of the paragraph applies.⁵

- Paragraph (8) of the Schedule confers power on the Regional Councils and the District Council to assess and collect land revenue and impose taxes within their autonomous region. The paragraph gives authority to levy and collect on all on any of the taxes mentioned under Sub- paragraph (3). Sub- paragraph 4 confers power of the Regional Councils and the District Councils to make regulations to provide for the levy or collection of taxes and every such regulation shall become effective only after the assent of the Governor.⁶
- Paragraph 11 of the sixth schedule provides the enforceability to the laws made by District councils and Regional councils in Para 3 of this schedule. As per this paragraph the laws, rules and regulation that are made under Para 3 of this schedule shall be published in official gazette only after that the law made by Councils came in force on that particular tribal area.⁷
- Paragraph 12 to 12-B of this schedule define the extension and application of the laws made by parliament and state legislatures with regard to autonomous district and autonomous regions in the state of Assam, Tripura, Meghalaya and Mizoram. According to this provisions no act of the state legislature applicable in these areas on the matter specified in paragraph 3, 3-A, 3-B of this schedule unless district council direct by public notification about the implementation of the law of state legislature in this area with limitations or modifications.⁸

IV. PERSPECTIVE 2: POWER, AUTHORITY AND ROLE OF THE GOVERNOR

- First paragraph to the *Sixth Schedule* provides for the creation of Autonomous Districts in the tribal areas of State of Assam, Meghalaya, Tripura and Mizoram. Furthermore, the paragraph has given the Governor of the State the power to divide area into autonomous region by public notification in case such area is inhabited by different Scheduled Tribes

⁵ INDIA CONST. Sch. VI, para 5.

⁶ INDIA CONST. Sch. VI, para 8.

⁷ INDIA CONST. Sch. VI, para 11.

⁸ INDIA CONST. Sch. VI, para 12- 12B.

keeping Bodoland Territorial Areas Districts as an exception. This power authorizes governor to include/ exclude any area from any of the Parts, create a new Autonomous District, increase or reduce the area of any part of the Autonomous District, unite two or more districts, alter the name of the district and define the boundaries of the autonomous district.⁹

- The Second paragraph to the Sixth Schedule provides for the Constitution of District Councils and Regional Councils, constituting total members of not more than thirty members out of which not more than four shall be nominated by the governor and the other shall be elected through adult suffrage. The paragraph provides different provision for Bodoland Territorial Areas Districts in which the council shall consist of members not more than forty- six out of which the Governor is given with the authority to nominate six members who shall have same rights as other members. Governor is also vested with the power to make rules for the constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organizations. Furthermore the Councils are authorised to make rules with regard to matters specified in sub- paragraph (6) of the Schedule with the approval of the Governor.¹⁰
- Paragraph 12 to 12-B provides the special power to the Governor for direction about the non-implementation of laws of parliament and state legislature in these areas and also direct for application only in the certain part of the districts or also direct the application of such laws with medication or exceptions.¹¹
- Paragraph 14 of the schedule talks about the appointment of commission. As per this provision governor has a power to appoint the commission for inquiry of the autonomous region or district of any matter specified by the governor related to paragraph 1(3) of this schedule or any other general matters with respect to education and medical facilities or for checking that the special or new law requirements and also for checking of the administration of law, rule and regulation that are drafted by the district and regional council of that area. After investigation and inquiring the condition of that area commission prepared a report that has to submitted to the governor and then concerned

⁹ INDIA CONST. Sch. VI, para 1.

¹⁰ INDIA CONST. Sch. VI, para 6.

¹¹ Supra note 8.

minister presented before the state legislature with the explanatory memorandum explaining the action required by the government of the state. In this regard governor also has a power to allocate the business and make a in charge to any one minister for welfare of these areas.¹²

- Paragraph 15 of this schedule defines the annulment of acts and resolutions power of the Governor. As per paragraph 15(1) of this schedule, if any time Governor feels that the laws and regulations made by the councils are endangered for safety of India or affect the public order of the country then he has power to annul or suspend that law or regulation. He also has power to suspend the council and he himself exercises the powers that are vested to the council. Under paragraph 15(1) if governor exercise his power and make rules and regulations that laws together with reason need to present before the state legislature. Without the approval of legislature the laws made by Governor under this Paragraph only enforceable till twelve months but if approved by the legislature then the laws made by the governor continuance to applicable till the cancelled by the Governor themselves.¹³
- Paragraph 16(1) of the schedule provides that (a) Governor on the recommendation of commission dissolve the district and regional councils by public notification and directed for fresh election. (b) In case no election conducted for some reasons then by the prior permission of the state legislature the administration of that area run by the Governor himself or by commission or any other body but this administration hold by these authorities not more than twelve months. In the proviso of the paragraph 16(1) provides that no action Governor take under clause (b) without giving the opportunity of presenting views to the District and Regional councils, paragraph 16(2) give the authority to the Governor in the case where administration of these areas are not as per this schedule then he himself exercised the power of the administration or delegate the power to some appropriate authority.¹⁴

¹² INDIA CONST. Sch. VI, para 14.

¹³ INDIA CONST. Sch. VI, para 15.

¹⁴ INDIA CONST. Sch. VI, para 16.

V. JUDICIAL PRONOUNCEMENT

The sixth schedule provides the powers to Governor and council and they are bound to exercise this power according to authority of law not beyond that. There are some cases mentioned where schedule sixth of the constitution provisions not followed. The analysis of different cases is important for the purpose of understanding the expansions and limitations of powers of the authorities in these areas.

➤ **DR. JAYANTA RONGPI V. STATE OF ASSAM¹⁵**

In the present case court interpreted the Para 16 of the schedule and define a connection and distinction of application of these three subparagraphs of Para 16.

In this case Governor issued a notification for dissolution of Karbi autonomous district and he himself assumed the administration of that area. The writ petitioner contented the decision of the Governor and alleged that notification issued by Governor under Para 16(1) of the Schedule and for that condition precedent is to take recommendation by the commission. On the ground of not fulfilling the condition precedent order passed by Governor not satisfied the legal exercise of his power and leads to be declared as void.

In this case High Court on analysis of the order of Governor found that the notification issued by Governor as accord with Para 16(2) of the schedule instead of Para 16(1). Further court examined the order of Governor and comment on the judicial review power of the court on this regard. Court held that the satisfaction of the Governor is subjective so the power of the court to scrutinize the matter limited to as per Article 356 of the Constitution because the language of this Para identical to language of Article 356 of the Constitution. In the present case court not found any nexus between the grounds referred in issued notifications and objectives of the Para 16(2), on the basis of this ground court struck down the notification. In this case court also examined the different nature and application of Para 16(1) and 16(2) of the schedule and the consequences subsequent to the invocation of the power under these subparagraphs are also different.

¹⁵ 1994(1) GLJ 229.

➤ **D. UPHING MASLAI V. STATE OF ASSAM¹⁶**

In the present case court analyze the dissolution of councils in the extraordinary situation and in case of completion of the term of the Council. Court also analyse the extension of the powers that Governor take after dissolution of the council. High Court in the case held that after completion of the term of the council if Governor assumed power and function of the council then Governor no need to take the advice of the Council of Ministers but the decision in his individual discretion. But in the case of the premature dissolution the advice of Council of Ministers is relevant. Court also held that Governor cannot take the judicial power that defined under Para 4 of the schedule while exercising Para 16(2). The judicial power vested with the courts that are established for performing the judicial functions under Para 4.

➤ **PRAKANTA WARISA V. STATE OF ASSAM¹⁷**

In this case Paragraph 16 and Paragraph 6-A of VI schedule analyzed by the High court and defines the Governor's power with regard to VI schedule area. On 13.6.2001 a notification issued by government of Assam challenged in this petition. In the notification, after completion of the term of the North Coacher Hills Autonomous Council under Para 16(2) of schedule Governor take over powers of the council to himself and ordered for exercised by the deputy commissioner of that area on his behalf. Writ petitioner was a member of the council alleged that till the next election his term continued and the power that taken by the Governor not as per law.

The two issues considered in the case are; (a) Whether the Governor has power to act in exercise of his discretion or not as per the schedule VI of constitution. (b) Whether petitioner has right to continue his office even after completion of the term of the office.

High court while dealing with the first issue refer the D. Uphing Maslai V. State of Assam¹⁸ and held that this order made after the completion of the term of council so no requirement of taking the advice of the council of ministers. In the second issue court held that Governor under Para 16 empowered to extension of the term of the office of the council for period of the one year. And if

¹⁶ 2001(3) GLT 299.

¹⁷ 2001(3) GLT 500.

¹⁸ 2001(3) GLT 299

this provision considered with Para 2(6A) of the schedule the word ‘may’ incorporated in this that shows that the extension of term of the council is in the discretion of the Governor even he feels that holding of election is not practicable then also he is not bound for extension of the term of the council. So on the basis of this petitioner has no right to continues his office after dissolution of the council by the Governor.

➤ **PU MYLLAI HLYCHOO &ORS V. STATE OF MIZORAM¹⁹**

This case is related to determining the power of the Governor with respect to nomination and removal of the member in the district and regional council. In the present case the Mara Autonomous District Council (MADC) constituted under Para 2(1) r/w Para 20 BB of the VI Schedule. In this council Governor nominated 4 members and they hold office on the pleasure of the Governor. The Governor of Mizoram issued a notification on 5.12.2001 and terminated the office of four nominated members. And after that Governor appointed other four members for those offices. By the aggrieved notification of Governor related to the termination of membership and appointment of new members challenged in the writ petition that was filed in Gauhati High Court. High court upheld the validity of the notification and against the decision of the High Court this appeal filed in the court. The issue that has been in question in this appeal is regarding the interpretation of the Para 2(1), Para 2(6A) and Para 20BB of sixth Schedule of the Constitution. The main dispute in the case is about whether and what extend discretion of the Governor exercised in the matter of nominating and removing of the members of the council under this schedule. In this case Supreme Court analyse the notifications and held that with respect to nomination related power of the Governor Para 2(1) of the sixth schedule empowers him so Governor is competent to nominate the four members in MADC. Now further, question that arise in this situation is about the in what circumstances Governor use his discretionary power and on what circumstances Governor bound by the aid and advice of the Council of Ministers. In this regard Court held that as per Para 2(6A) and 20BB Governor bound by aid and advise of the council of ministers in the case of the termination of the four members of council. But as per Para 2(1) the power of nominating the members is discretionary power of the Governor and he is empowered to make his decision independently. So considering this

¹⁹ AIR 2005 SC 1537.

reasoning court found both the notifications termination and nomination as per the procedure of the Sixth Schedule.

VI. ANALYSIS OF PRINCIPLES OF ADMINISTRATION LAW IN THE ADMINISTRATION OF THESE AREAS

RULE OF LAW

“The government officials and the citizens are bound by and abide by the law.”²⁰

Sixth Schedule of the Constitution of India gives immense power to the administration for the proper functioning of the areas. Thus, it becomes an absolute necessity to keep a check on such power. Rule of law ensures that such power is not used in an arbitrary manner. It assures that the administrative body having such powers are bound and abide by the law. This can be successfully concluded after looking at the judicial pronouncements. The cases above mentioned clearly shows that the powers conferred to administration is not absolute and is restricted by the rule of Law. A notification issued by the Governor for dismissal of District Council and took the power on his hand, after analyzing the Sixth Schedule the High Court of Assam found the notification with contravention of law and struck down that notification.²¹

NATURAL JUSTICE

The principle of Natural Justice is primarily based on two rules: The first rule is *Nemo in propria causa judex, esse debet* which means the Rule against bias. This rule states that the authority giving the decision must not be composed of impartial persons, rather they must act in a fair manner without prejudice. The Second rule is *Audi alteram partem* which means the right to be heard, which in simple words means that whenever there is a case in the court then both the parties i.e. the defendants as well as the prosecution must get the right to be heard before the court. In case such chance is not given to any of the parties the order can be challenged merely on the ground of violation of this rule. Thus, the Constitution has ensured through Paragraph 16,

²⁰ Brian Z. Tamanaha, The History and elements of the Rule of Law, Sing. J.L.S., 2012, at 233.

²¹ Supra note 15.

the right to be heard by providing that when Governor dismissed the councils the opportunity to presenting their views must be provide to the District and Regional Councils.

DELEGATION

Delegated Legislation is the law that is made by the executive authority under the powers given to them by the legislature through a primary legislation in order to implement and administer the requirements of that primary legislation. Delegated Legislation is also known as Subordinate Legislation or Subsidiary legislation. Delegated Legislation must be in accordance with the purposes laid down in the Act. Sixth Schedule delegates several law making power to the administration. Under the third paragraph, the District and Regional Councils have been given power to make laws with reference to certain matters specifically mentioned. The fourth paragraph provides for the administration of Justice in autonomous districts and autonomous regions, which gives power to the councils to set up courts for the administration of Justice. But such delegation must be in accordance with the law and if found of any deviation it may get struck down by the Judiciary. So the laws made by these administrative bodies is always under the radar of judicial review and thus is checked at all times.

VII. CONCLUSION

The researches after analyzing the mechanism of working in the Tribal areas with the viewpoint of Constitutional Provisions and Judicial pronouncements have come into the conclusion that although the administration of these tribal areas have been vested with immense power but all these power vested in them are in agreement with the Administrative principles and are formulated in such a way that the power cannot be used in an arbitrary manner. Administration has been vest with powers as important and critical as Law making power and Judicial power but this system is based on the concept of checks and balances in which one authority keep a check over another. These powers have been conferred on them because of the different cultural and situational factors it is best to confer such powers upon them for better administration of these areas.

