

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND
ARUNACHAL PRADESH)

AIZAWL BENCH

W.P(C) No. 65 of 2020

Petitioners

1. Sh. Onish Moy Chakma
S/o Sonadhan Chakma
R/o Kamalanagar-I
Lawngtlai, Mizoram
2. Sh. Buddha Lila Chakma
S/o Badrasen Chakma (L)
R/o Kamalanagar-IV
Lawngtlai, Mizoram
3. Sh. Shanti Jiban Chakma
S/o Ranga Chandra Chakma,
R/o Kamalanagar-IV
Lawngtlai, Mizoram
4. Sh. Ajay Kumar Chakma,
S/o Arjun Chakma
R/o Kamalanagar-IV
Lawngtlai, Mizoram
5. Sh. Anil Kanti Chakma
S/o Mukta Nanda Chakma
R/o Kamalanagar, Bajeisora
Lawngtlai, Mizoram
6. Sh. Sanjeev Chakma
S/o Shanta Kumar Chakma
R/o Kamalanagar-IV
Lawngtlai, Mizoram

7. Smt. Kusum Lota Chakma
 D/o Rattan Moni Chakma
 R/o Kamalanagar-III
 Lawngtlai, Mizoram

By Advocates:-

Mr. A.K. Rokhum,
 Mr. Samuel L. Pachuau

-Versus-

Respondents

1. The State of Mizoram, represented by
 the Chief Secretary to the Govt. of Mizoram, Aizawl
2. The Secretary to the Govt. of Mizoram
 Parliamentary and District Council Affairs Department, Aizawl, Mizoram
3. The Secretary to the Govt. of Mizoram
 Law and Judicial Department, Aizawl, Mizoram
4. The Secretary to His Excellency the Governor of Mizoram, Raj Bhavan,
 Aizawl, Mizoram
5. The Chairman,
 Chakma Autonomous District Council, Kamalanagar, Chawngte
 Lawngtlai District, Mizoram
6. The Chief Executive Member,
 Chakma Autonomous District Council through the Executive Secretary, CADC
 Lawngtlai District, Mizoram.

By Advocates:-

Mrs. H. Lalmalsawmi, Govt. Advocate

Mr. Lalchhanliana Khiangte
 Mr. Vanlalfela
 Ms. Vanlalmuanpuii
 Ms. C. Lalpekhui
 Ms. Vanlalsawmi

BEFORE

HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO
HON'BLE MR. JUSTICE NELSON SAILO

DATE OF HEARING : 15.03.2021

DATE OF JUDGMENT : 26.03.2021

JUDGMENT & ORDER (CAV)

(S. Serto, J)

Heard Mr. A.K. Rokhum, learned counsel for the petitioners and also heard Mr. Lalchhanliana Khiangte, learned counsel appearing for the respondent Nos. 5 to 10 and Mrs. H. Lalmalsawmi, learned Government Advocate appearing for the State respondents.

[2.] On 20.04.2018, election to the 10th Chakma Autonomous District Council was held. When the result was declared on 24.04.2018, the Indian National Congress (INC) won 7 seats, Bharatya Janata Party (BJP) 5 Seats and Mizo National Front (MNF) 8 seats. The INC and BJP formed a joint legislative party and formed the Government or the Executive Committee of the Chakma Autonomous District Council (the Government of Autonomous District Council).

However, on 29.10.2018 all the elected members of the INC in a meeting resolved to withdraw their support following the advice of the then Chief Minister of Mizoram and the President of Mizoram Pradesh Congress Committee. After their withdrawal, out of the 7 members of INC 4 members formed a front namely, the Mizoram Chakma National Front and joined hands with the MNF which had 8 members and formed a new Executive Committee of the Chakma Autonomous District Council (the Government of Autonomous District Council). After the formation of the new Executive Council the remaining 3 members of the INC who are the petitioner Nos. 1, 2 & 4 in this writ petition submitted their resignation letters to the party and merged with the BJP. Following the above events, the Chairman of the Chakma Autonomous District Council (the respondent No.5), issued show cause notice to the 3(three) writ petitioners No. 1, 2 & 4 asking them to show cause as to why they should not be disqualified from their membership to the Chakma Autonomous District Council under Rule 12 sub-rule (5)(a) of the Chakma Autonomous District Council (Constitution, Conduct of Business, Etc.) Rules, 2002 (hereafter referred to as the Rules of 2002), on the ground of their resignation from their original party i.e. the INC who sponsored their candidature in the 10th General Election to the Chakma Autonomous District Council. Being aggrieved by the show cause notice issued to them and also being apprehensive that they may be disqualified from their membership to the Chakma Autonomous District Council, the petitioners are before this Court challenging the show cause notice and at the same time

challenging the provisions of sub-rule (5) & (6) of Rule 12 of the Rules of 2002 on the ground that they are repugnant to and *ultra vires* the provisions of the Sixth Schedule of the Constitution of India.

[3.] It has been submitted by Mr. Rokhum that sub-rule (5) & (6) of Rule 12 of the Rules of 2002 are repugnant to the provisions of Sub-Para (6-A) of Para 2 of the Sixth Schedule of Constitution of India because these sub rules provide for disqualification of members of the Council even before the term provided for in the Sixth Schedule expires. The learned counsel also submitted that the disqualification provisions have been added into the Rules of 2002 without the District Council having the legislative competency to do so and therefore, they are *ultra vires* the Sixth Schedule of the Constitution. Elaborating his submission, the learned counsel submits that under sub para (6-A) of para-2 of Sixth Schedule of the Constitution, it is provided that elected members of the District Council shall hold Office for a term of 5(five) years from the date appointed for the first meeting of the Council after the General Election to the Council, unless the District Council is sooner dissolved. Therefore, the provision of sub-rule (5) & (6) of Rule 12 of the Rules of 2002 which provides for removal or disqualification of any elected member of a District Council is repugnant to the former.

[4.] The learned counsel also submitted that the legislative powers of the District Council as given under the sub-para (7) read with sub para (6) of para 2 of the Sixth Schedule of the Constitution does not extend to making of rules

which provides for removal or disqualification of a member on grounds given in sub-rule (5) of Rule 12 of Rules of 2002. Therefore, the provisions of this sub rule and that of sub-rule (6) of the same Rules are *ultra vires* to the provisions of the Sixth Schedule and therefore they are liable to be set aside and quashed and in consequence thereto, the show cause notice issued to the petitioners too would also have to be quashed and set aside.

[5.] In support of his submissions, Mr. Rokhum relies upon the following authorities :-

(i) Judgment dated 22.07.2008 of this High Court passed in W.P(C) No. 78(SH) of 2008 (Hispreacheringson Shylla Vs. Khasi Hills Autonomous District Council and Ors.) and

(ii) District Council of United Khasi and Jaintia Hills & Ors. Vs. Sitimon Sawian & Ors. (1971) 3 SCC 708.

[6.] Mr. L. Khiangte, learned counsel for the respondents Nos. 5 to 10 on the other hand submitted that the petitioners were served with the show cause notice because they resigned from the primary membership of the party who sponsored their candidature for the election to the 10th Chakma Autonomous District Council General Election which amounts to violation of the Sub-rule 5(a) of Rule 12 of the Rules of 2002. He submits that the Rules of 2002 was framed by the Chakma Autonomous District Council with the approval of the Governor of

Mizoram under the powers conferred by sub-Paragraph (7) of paragraph 2 of the Sixth Schedule of the Constitution of India. Therefore, the Rules in no way is repugnant to the provisions of sub-para (6-A) of Para 2 of the Sixth Schedule of the Constitution of India and it is not *ultra vires* of the Sixth Schedule.

[7.] After having submitted as such, Mr. Kiangte took us to the provision of sub-para (7) of para 2 of the Sixth Schedule and further submitted that this provision of Sixth Schedule confers rule making power to the District or Regional Council formed under Sixth Schedule of the Constitution with the approval of the Governor on any or all of the subjects mentioned at sub-para (b), (d), (e), (f) & (g) of sub Para (6) of Para 2 of the same Schedule. As such, it is clear that the Council has the power to make rules for disqualification of its members and hence, the provisions of Rule 12 of the Rules of 2002 particularly, sub-Rule (5) & (6) are in no way repugnant and *ultra vires* to the Sixth Schedule of the Constitution.

[8.] Mr. Kiangte further submitted that in this writ petition, the petitioners are challenging only the sub-rule (5) & (6) of Rule 12 of the Rules of 2002 whereas the Rule 12 deals with the whole subject matter of disqualification of membership of the District Council. Therefore, they could not have challenged only the Sub-rule (5) & (6) of the Rules. Lastly, the learned counsel submitted that the writ petition is premature since no action has been taken by the

Chairman towards the disqualification of the petitioners from their membership to the District Council.

[9.] The offending Rules under challenge are sub-Rule (5) (a) & (b) and sub-rule (6) of Rule 12 under Chapter-III of the Rules of 2002. The same are reproduced here below alongwith Rule 13:-

“12. Disqualification for membership.

5) A sitting member of the District Council shall be disqualified if,

(a) he has voluntarily given up the political party which sponsored him as a candidate on the date of his nomination and joined any other political party after his election or his nomination as a member.

Provided that a member shall not be disqualified even if he has left the party which sponsor him, as a result of a split which consists of not less than 1/3 of the elected members of such party in the District Council.

b) having been elected to the District Council as an independent candidate, has later joined any political party.

6) All decisions regarding disqualification of members as mentioned in clauses (a) & (b) of sub-rule (5) above shall be made by the Chairman and his decision shall be final and binding on the member and the Political Party concerned.

13. Removal or reduction of the period of disqualification.

1) The Governor may, for reasons to be recorded, remove any disqualification under the chapter except under clause (h) of sub-rule (1) of Rule 12 and sub-rule (5) of Rule 12.

2) If any question arises as to whether a member of the district Council has become subject of any of the disqualifications mentioned in rule 12, the question shall be referred through the Secretary to the Government, by the Chairman, and if it relates to the Chairman, then by

the Deputy Chairman, for decision to the Governor whose decision shall be final.

3) Before giving any decision on any such issue, the Governor may also take advice of the Advocate General of Mizoram.”

[10.] What one can understand from the reading of sub-para (5) (a) & (b) and sub-para (6) of Rule 12 of the Rules of 2002 is that if a sitting member of the District Council has voluntarily given up the political party which sponsored his candidature or nominated him as member after his election or his nomination as a member of the District Council, he can be disqualified by the Chairman of the Council and that decision of the Chairman is final and binding on that member and the political party concerned. Secondly, a sitting member of the District Council elected as an independent candidate also can be disqualified by the Chairman of the Council in the same manner as stated above, if he or she joined any political party after having been elected. Thirdly, a disqualification under the Rule 12 can be removed by the Governor by recording reasons but disqualification under (h) of Rule 12 (1) and sub-rule (5) of the same, the Governor has no power to do so. However, if any question arises as to whether a member of the District Council has become subject to any of the disqualifications mentioned in Rule 12, the same should be referred to the Governor by the Chairman of the Council through the Secretary to the Government of Mizoram and the decision taken by the Governor would be final. Lastly, before taking such decision on the issue the Governor may take the advice of the Advocate General of Mizoram.

[11.] Under **Para-2 (6–A) of the Sixth Schedule of the Constitution**, the terms of the elected members of the District Council is provided and the same reads as follows;

“(6-A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor:

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate:

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces.”

[12.] On a plain reading the provisions of sub para (6-A) of the para 2 as abstracted above, what can be understood is that the elected and nominated members of the District Council shall hold Office for a term of 5 years from the date appointed for the first meeting of the Council after the general elections to the Council is held, unless the District Council is sooner dissolved before the completion of the terms of 5 years in paragraph 16 of the same Schedule. However, the period of 5 years may be extended by the Governor for the period not exceeding 1 year at a time if during that period there happens to be a Proclamation of Emergency in operation or if there exist a circumstance for which

the Governor is of the opinion that holding election is impractical. It appears from these provisions of the Constitution which gave birth to the District Council including the Chakma Autonomous District Council is that the terms of the elected and nominated members of the Council is 5 years and it cannot be shorten unless the Council is dissolved under paragraph-16 of the same Schedule. The reasons for disqualifying elected members and nominated members of the District Council as given in sub-para (5) (a) & (b) of the Rules of 2002 does not figure at all in the above stated provision of the Constitution. Therefore, the term of the elected and nominated members cannot be shorten by any means or for any other reason than that are given in the sub-para (6-A) of para 2 of the Sixth Schedule.

[13.] In sub-Para (7) of para-2 of the Sixth Schedule, the District Council or the Regional Council is empowered to make rules with the approval of the Governor with regards to matters specified in sub-paragraph (6) of the same para i.e. para 2. The sub-para (7) is abstracted below for ready perusal:-

“Sub-para (7) The District or the Regional Council may after its first constitution make rules 2 [with the approval of the Governor] with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules [with like approval] regulating—

(a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and

(b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be:

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council.”

[14.] Likewise, Sub-paragraph (6) of para 2 reads as follows;

“(6). The Governor shall 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, and such rules shall provide for-

(a) the composition of the District Councils and Regional council and the allocation of seats therein;

(b) the delimitation of territorial constituencies for the purpose of elections to those councils;

(C) the qualifications for voting at such elections and the preparation of electoral roll therefor;

(d) the qualifications for being elected at such elections as members of such councils;

(e) the term of office of members of Regional Councils;

(f) any other matter relating to or connected with elections or nominations to such councils;

(g) the procedure and the conduct of business including the power to act notwithstanding any vacancy in the District and Regional councils.

(h) the appointment of officers and staff of the District and Regional Councils.”

[15.] At para 3 of the Sixth Schedule, the District Councils or Regional Councils are empowered to make laws in respect of certain subjects. The content of the said paragraph reads as follows;

“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 1 [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 and sanitation;

(g) the appointment or succession of Chiefs or Headmen;

(h) the inheritance of property;

2 [(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.”

[16.] The District Councils or Regional Councils established under the Sixth Schedule are empowered to make rules with the approval of the Governor of the State but the rule making power is limited to the subjects mentioned in para 3 of the Sixth Schedule as abstracted above. On a careful reading of the above provisions of the Sixth Schedule of the Constitution one would find that no such rule making power regarding disqualification of the elected and nominated members of the Council as provided in sub-rule (5) & (6) of Rule 12 of the Rules of 2002 has been given to the District Council. In fact even by giving broad or widest meaning to the three provisions of the Sixth Schedule which gave rule making power to District Councils, it is not possible to conclude that such law making power has been given to the District Council. At the cost of repetition, but for the sake of clarity it is once again stated that the subject for which rule making power is given to the District Councils under the provisions of Sixth Schedule does not cover the subject given in the sub-rule (5) & (6) of Rule 12 of the Rules of 2002.

[17.] The sub paras (b), (d), (e), (f) & (g) of sub-para (6) of para 2 of the Sixth Schedule which are referred to by Mr. Khiangte to show that by these provisions the District Council is empowered to make rules in matters relating to disqualification as provided for in sub-rule (5) & (6) of Rule 12 of the Rules of 2002 in our considered opinion is not correct. On careful reading of the sub-para

(6) of para 2 of the Sixth Schedule what one finds is that it is the Governor who is empowered to make rules for the first time Constituted District Councils and the Regional Councils in consultation with the existing tribal Councils or other representative of tribal organizations within the autonomous districts or regions concerned, concerning the subjects given at (a) to (h) of the sub-para. However, sub-para (7) of para 2 of the Sixth Schedule empowers the District Councils after they come into existence, to make rules on any matter or matters specified in sub-para (6) including the rules which would regulate the formation of subordinate local Councils or Boards and their procedures and the conduct of their business and in all matters related to transaction of business pertaining to the administration of the district or region, as the case may be. But there is nothing in these provisions of the Sixth Schedule which indicates that the District Council can frame rules for disqualifying members of the Council on the ground of resignation to the political party which sponsored their candidature for election to the Council or which nominated them as member or members of the Council.

[18.] Further, in paragraph 3 of the Sixth Schedule also one can see that the rule making power given to the District Council is limited to agricultural lands, management of forest, use of canal or water course, for regulation of jhum cultivation, establishment of village or town committee or council, village or town administration, appointment or succession of Chiefs or Headmen, inheritance of property, marriage or divorce and social customs.

[19.] In the case of *Hispreacheringson Shylla* (supra), the Constitutional validity of the provisions of Khasi Hills Autonomous District Council (Prevention of Defection) Act, 2003 (Act of 2003) and the Rules made thereunder disqualifying the writ petitioner in that case was put to question in the writ petition. Section 3 of the Act of 2003 provided for disqualification of members on ground of defection. According to the provision, any member irrespective of his political affiliation could be disqualified from being Member of the House, if he or she has voluntarily given up, resigned, renounced, relinquished or otherwise acted against the Whip of a political party to which he is a Member during such period amongst others. This Court upon appreciating the provisions of sub-paragraph (6-A) of paragraph 2 of the 6th Schedule to the Constitution of India observed that it was obvious from the said provision that an elected Member of the Council has the right to hold the office for the tenure of 5 (five) years with effect from the date appointed for the first Meeting of the Council after the general elections to the Council unless the Council is sooner dissolved under paragraph 16. This Court further observed that by reading paragraph 2 (6-A) and paragraph 16 of the 6th Schedule in juxtaposition, it is amply clear that the tenure of an elected Member of the Council is 5 (five) years from the date appointed for the first meeting of the Council, after the General Election to the Council unless the tenure is cut short by the dissolution of the Council in accordance with the provision of paragraph 16(1). However, in the case of a nominated Member, he holds office during the pleasure of the Governor and the tenure of 5 (five) years

prescribed for an elected Member will not apply in the case of a nominated Member. This Court by further appreciating the provisions contained in paragraph 2(6) and 2(7) of the 6th Schedule held that under sub-paragraph 6 sub-clause(e), the District Council has the power to make rules on the term of office of Members of Regional Councils. Therefore, it can be said that under sub-clause (e), the District Council has the competence to make rules for prescribing the term of office of Members and the Regional Council, which will necessarily include the power to extend or curtail the tenure already prescribed by it. But under paragraph 2(6), there is no corresponding power to make rules in respect of the term of office for elected members of the District Council. Therefore, it was held that District Council did not have legislative power under sub-paragraph (7) of paragraph 2 read with sub-paragraph (6) of paragraph 2 to enact the impugned legislation on disqualification of Members of the District Councils, as was enacted under the Act of 2003. Therefore, the same was found to be repugnant to, inconsistent with and ultra vires paragraph 2(6-A) of the 6th Schedule of the Constitution which prescribed that the elected members of the District Council shall hold office for a term of 5 years unless the District Council is sooner dissolved under paragraph 16. We respectfully agree and concur with the said decision and at the same time we also find that the same is squarely applicable to the present case under consideration. It may be gainful to reproduce the relevant paragraphs of the said Judgment i.e. paragraph 12 to 15 for ready perusal:-

“ 12. It can, therefore, now be taken to be the law that bodies such as District Councils constituted under the Sixth Schedule do not enjoy plenary power of legislation and that in construing the provisions conferring power upon the District Councils to legislate, the words use in paragraph 3(1) should not be broadly interpreted but must be confined strictly within the limits prescribed by the plain language used, and the doctrine of wide construction is plainly not applicable. The District Councils are the creatures of the Sixth Schedule, and cannot destroy their creator. The term "social customs" employed in paragraph 3(1)(j) can only mean general rules and practices that have become generally adopted through unvarying habit and common use or practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws (see *Black's Law Dictionary*, 7th Edn.). These are the plain meaning of the term "social custom", and have nothing to do whatsoever with political defection. Under the guise of making rule on social customs, the District Council cannot overreach itself and enact a law preventing or penalizing defection by members of the Council, howsoever immoral and unprincipled chameleon-like such conduct may be. In our judgment, the plain language of paragraph 3 (1) (j) does not admit of any ambiguity nor can it permit us to stretch the same so as to include within its ambit the power to make law for prevention or punishing a member of the Council for defecting from one political party to another party. On the other hand, it is our firm view that the direct and inevitable consequence of enacting the impugned Act is practically amending a constitutional provision like paragraph 2 (6-A) of the Sixth Schedule, which prescribes the tenure of an elected member of the Council to be five years; this incidentally or accidentally, if not deliberately, trenches on the legislative power expressly reserved for the Parliament, and is plainly impermissible. The constitutional position as it stands now is that an elected member of the District Council has the right to remain in office for

a period of five years unless the District Council is sooner dissolved in accordance with the procedure laid down in paragraph 16.

13. Paragraph 21 of the Sixth Schedule deals with amendment of the Schedule, which is in the following terms:

'21. Amendment of the Schedule.- (1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended , any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended. (2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to an amendment of this Constitution for the purposes of Article 368.'

14. Paragraph 21 extracted above plainly indicates that it is the Parliament, and Parliament alone, which has the legislative power to amend by way of addition or variation or repeal the provisions of the Sixth Schedule. If the tenure of the elected Members of the Council is sought to be curtailed by disqualification or otherwise, that can be done only by the Parliament by amending the provision of paragraph 2(6-A) by taking recourse to paragraph 21. In other words, the constitutional right of elected Members of the Council to remain in office for five years, unless dissolved earlier in accordance with paragraph 16, cannot be abridged or curtailed by the impugned Act enacted by District Council. What cannot be done directly cannot be done indirectly. In the view that we have taken, we hold that the impugned Act and the rules made thereunder are ultra vires the Constitution, illegal and inoperative, and are liable to be struck down. Consequently, the impugned order dated 18.4.2008 (Annexure-6) and the proceedings initiated against the petitioner in connection therewith by invoking the impugned Act and the rules made thereunder are equally unsustainable, and are, therefore, liable to be quashed.

15. The off-shoot of the foregoing discussion is that this writ petition succeeds. The Khasi Hills Autonomous District Council (Prevention of Defection) Act, 2003 and the Khasi Hills Autonomous District Council (Prevention of Defection) Rules, 2005 are hereby declared invalid and null and void and are, accordingly, struck down. As a natural corollary to that, the order dated 18.4.2008 issued by the Chairman, Khasi Hills Autonomous District Council under Section 3 of the impugned Act disqualifying the petitioner from the membership of the Council also stands quashed. Consequently, the Chairman of the Council, namely, the respondents No. 2, is directed to reinstate the petitioner to the office of Member of the District Council with all the rights, privileges and facilities enjoyed by him heretofore within fifteen days of the receipt of this judgment and shall also pay his back wages within a period of one month next thereafter. However, on the peculiar facts and circumstances of the case, we pass no order as to costs."

[20.] In the case of ***District Council of United Khasi & Jaintia Hills & Ors.*** (supra), the validity of Section 3 of the United Khasi & Jaintia Hills District (Transfer of Land) Act (No. IV of 1953) (impugned Act for short) passed by the United Khasi-Jaintia Hills District Council (District Council for short) was put to challenge before this Court and this Court struck down the said provision by holding the same was beyond the competence of the District Council and that it also offended Article 14 of the Constitution of India. The decision of this Court was put to challenge before the Apex Court and the Apex Court upon appreciating the provisions contained in paragraph 3(1) (a) of the 6th Schedule to the Constitution of India and also the preamble and Section 3 of the Impugned Act held that the addition of the word "*transfer*" to the words "*allotment*,"

occupation or use of land....." used in paragraph 3(1) (a) of the 6th Schedule is indicative of an intent to enlarge the scope of the object and purpose of enacting the Impugned Act beyond the limits of the power conferred by the Constitution. In Section 3 of the impugned Act, the Apex Court found a complete different phraseology being employed for prohibiting various kinds of transfers in express terms. Therefore, the same left no doubt about the great importance being attached by the District Council to the addition of the word "transfer" in the preamble. No convincing explanation was offered for the departure from the language used in the Constitution from which alone the District Council draws its power to make laws. Under the circumstance, the Apex Court upheld the decision of this Court and dismissed the appeal. The relevant portion of the Apex Court's decision i.e., paragraph Nos. 14 to 18 is reproduced below for ready perusal;

" 14. It therefore seems to us to be quite clear that the framers of the Constitution wanted to confine the power of the District Councils to make laws under para 3(1)(a) to the distribution or setting apart, of the land mentioned therein only for the purposes of occupation or use as expressly stated therein, without intending to extend that power to the transfer of land. This construction is not only in accord with the real sense discernible from the plain meaning of the language used in this Clause, but it also serves more effectively to carry out the manifest purpose, policy and scheme underlying the provisions of the Constitution, namely, protection of the hill people in the North-Eastern Hills Districts against exploitation by the more sophisticated outsiders from the plains, than the construction which would extend the District Councils' power of making

laws to the transfer of land. The report of the Sub-Committee referred to earlier clearly supports this construction. The passages from the report to which our attention has been drawn do not show that power to make laws for transfer of land was recommended to be vested in the District Councils. On the other hand, the recommendations contained in the report were restricted to the power to control only use and occupation of the land and it was this limited power which was recommended to be vested in the District Councils. This would be clear from the following passage in the report:

‘Accepting this then as a fundamental feature of the administration of the hills, we recommend that the Hill Districts should have powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. The only limitation we would place upon this is to provide that the local Councils should not require payment for the occupation of vacant land by the Provincial Government for public purposes or prevent the acquisition of private land, also required for public purposes, on payment of compensation.

15. The argument that in construing the provisions conferring power to legislate the words should be interpreted broadly and no narrow or pedantic interpretation should be placed upon them is, in our opinion, inapplicable to the case in hand. The power of legislation conferred on bodies like the District Councils, which concerns us, must be confined strictly within the limits prescribed by the plain language used and the doctrine of wide construction visions conferring plenary nature of legislative power on the Parliament or State Legislatures in which case the appellant's argument may be more appropriately accepted. We consider it proper at this stage to refer to para 12 of the Sixth Schedule which provides:

12. Application of Acts of Parliament and of the Legislature of the State to autonomous districts and autonomous regions.-(1) Notwithstanding anything in this Constitution-

(a) no Act of the Legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws and no Act of the Legislature of the State prohibiting or restricting the consumption of any non distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State to which the provisions of Clause (a) of this sub-paragraph do not apply shall not apply to any autonomous district or an autonomous region, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

16. It is clear from this provision, read with para 3(1) (a) already reproduced, that the District Councils unlike the Parliament and the State Legislatures are not intended to be clothed with plenary power of legislation. Their power to make laws is expressly limited by the provisions of the Sixth Schedule which has created them and they can do nothing

beyond the limits which circumscribe their power. It is beyond the domain of the courts to enlarge constructively their power to make laws.

17. The proviso to para 3(1) (a) merely serves to ensure that no law made by the Regional and District Councils with respect to allotment, occupation or use or setting apart, of land, as mentioned in that Clause, shall have the effect of preventing compulsory acquisition of land for public purposes, by the Government of Assam in accordance with the law in force authorising such acquisition. This proviso by no means enlarges the scope of the power conferred on the Regional and District Councils by Clause (a) and indeed it has not been so claimed by the learned Attorney General. A proviso may undoubtedly be sometimes inserted to allay fears considered by some to be unfounded. But the question must ultimately come back to the point whether or not power to make laws conferred by Clause (a) includes the power to do so with respect to transfer of land and this must turn upon the exact language and its primary meaning. The simple words used in Clause (a) are incapable of bearing the construction suggested by the learned Attorney-General and the provision found in the proviso does not in any way alter the operative effect of this Clause.

18. The preamble of the impugned Act no doubt does speak of the necessity to make provisions with respect to "transfer, allotment, occupation or use of land for any purpose likely to promote the interests of the inhabitants thereof" but the subject of transfer is clearly beyond the scope of the law-making power conferred on the District Council by the Constitution and to that extent, therefore, the impugned Act which means Section 3 thereof is void being beyond the jurisdiction of the District Council."

[21.] After having given our due consideration on the facts and circumstances of the case in its entirety, we are of the considered view that the Chakma

Autonomous District Council has exceeded its rule making power as given under para 2 (6), 2 (7) and 3 of the Sixth Schedule of the Constitution of India.

[22.] In view of the above opinion we have formed, there is no escape from the conclusion that the provisions contained in sub-rule (5) & (6) of Rule 12 of the Rules of 2002 are repugnant and *ultra vires* the provisions of sub-para (6), (6-A) & (7) of para 2 of the Sixth Schedule of the Constitution of India. In consequence thereof, sub-rule (5) & (6) of Rule 12 of the Rules of 2002 are hereby struck down and the show cause notice dated 22.10.2019 (Annexure-2) issued by the Chairman of the Chakma Autonomous District Council to the petitioner Nos. 1, 2 and 4 is hereby quashed and set aside.

[23.] With the above observations, orders and directions, the writ petition is allowed and disposed. The interim order passed earlier stands merged with this order. No cost.

JUDGE

JUDGE

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