

PETITIONER:
STATE OF ASSAM

Vs.

RESPONDENT:
KA BRHYIEN KURKALANG & ORS.

DATE OF JUDGMENT 23/11/1971

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
SIKRI, S.M. (CJ)
DUA, I.D.
MITTER, G.K.

CITATION:
1972 AIR 223 1972 SCR (2) 381
1972 SCC (1) 148
CITATOR INFO :
R 1972 SC1193 (10)

ACT:
Constitution of India, 1950, Sch. VI, para 19--Scope of-
Regulation by Governor before District Council for
autonomous district was constituted--Whether Regulation
effective thereafter.
United Khasi Jaintia Hills District (Application of Laws)
Regulation 5, 1952, s. 2(2)-Notification extending Act in
Schedule to Regulation to autonomous district-Issued under
Regulation after District Council was constituted-Effect.

HEADNOTE:

The administration of tribal areas in the State of Assam is governed, by virtue of Arts. 244 and 275 of the Constitution by the provisions contained in Schedule VI of the Constitution. Paragraph 19 of the VI Schedule contains transitional provisions, under which the administration of autonomous districts of the tribal areas specified in Part A of the Table to the Schedule is vested in the Governor of the State until a District Council was constituted for the autonomous district. Under cl. 1(b) of the paragraph the Governor may make Regulations for the peace and good government of any area and any Regulation so made may repeal or amend any Act of Parliament or of the State Legislature or any existing law which is for the time being applicable to such area. The power conferred on the Governor is thus a legislative power without any limitations even in regard to matters in respect of which he can promulgate a Regulation. The only limitation is the requirement of the Presidential assent for the Regulation to have effect. [509 A-B, C-D; 510 G-H; 511 A-D]

For the autonomous district of the United Khasi Jaintia Hills a District Council was constituted in June 1952. But before that date, the Governor promulgated the United Khasi Jaintia Hills District (Applications of Laws) Regulation of 1952 for which the Presidential assent was obtained in May 1952. The laws made applicable are set out in the 'schedule to the Regulation. Section 2(2) of the Regulation empowered the Governor to direct by notification in the official

gazette that any of the laws set out in the schedule to the Regulation shall extend to and have effect in so much area of the United Khasi-Jaintia Hills District or part thereof, and for that purpose, different areas and different dates may be specified for different laws. [508 A, C; 511 G; 513 D-E]

On September 8, 1961, the Governor by notification extended thereby the Eastern Bengal and Assam Excise Act, 1910, which was one of the laws in the schedule to the Regulation, to the United Khasi Jaintia Hills District. The authority under the Act refused renewal of a permit authorising the respondents to distil liquor. The respondents thereupon challenged the validity of the regulation as well as the notification issued thereunder and the High Court held that once a District Council was set up the Governor could not exercise power under para 19, that any Regulation made thereunder could remain effective until that period only, and that therefore, the notification issued in September 1961 extending the Excise Act had no effect.

Allowing the appeal to this Court,
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HELD : (1) The Regulation was a competent legislation made in pursuance of the power conferred by para 19(1)(b) of the VI Schedule to the Constitution and under that power the Governor could not only make Regulations in the form of substantive laws but also could apply existing statutes. The words 'until a District Council is so constituted for an autonomous district' in the paragraph only place a limit to the period until which the power is exercisable and not any limitation on the extent of the power or the period during which a Regulation made by the Governor would be in force once it is validly made. Like any other piece of legislation, the Regulation continues to operate and remain effective until it is either annulled or repealed under some legislative power. [512 A-D; 513 B-C]

Ram Kirpal v. Bihar, [1970] 3 S.C.R. 233, followed.

J. K. GaS Plant Manufacturing Co. Ltd. v. King Emperor [1947] F.C.R. 141, referred to.

(2) The effect of the Regulation was that the competent legislative authority, namely the Governor, selected certain laws enumerated in the schedule for their being applied to the district; and it left it to the Governor to decide on what date or dates and to which part or parts of the District any one or more of them should be extended and brought into force. The Regulation, therefore, was a conditional legislation [513 E-F, G-H]

(3) Assuming, however, that it was delegated legislation there is no question of the delegation being excessive nor is it correct to say that the power so delegated lapsed with the lapse of the legislative authority of the Governor under para 19(1)(b). The power of the Governor to legislate ended when the District Council was constituted; but the power conferred by the Regulation on the Governor to bring into force the laws set out in the schedule continued and would continue so long as the Regulation remained on the statute book. [513 H. 514 A-B]

Therefore, the notification dated September 8, 1961, extending the Excise Act, though issued after the power under para 19(1)(b) had ceased, was valid since the Regulation itself continued to operate and the power to issue such a notification did not lapse. [514 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1162 to 1173 of 1969.

Appeal from the judgment and order dated February 9, 1965 of the Assam and Nagaland High Court in Civil Rules Nos. 206 to 215, 234 and 235 of 1963.

S. V. Gupte and Naunit Lal, for the appellants (in all the appeals).

The respondent did not appear.

The Judgment of the Court was delivered by

Shelat, J. These appeals, under certificate arise out of the writ petitions filed by the respondents in the High Court of Assam and Nagaland, challenging the validity of the United

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Khasi-Jaintia Hills Districts (Application of Laws) Regulation, V of 1952 promulgated by the Governor of Assam under paragraph 19(1)(b) of the Sixth Schedule to the Constitution, the notification, dated September 8, 1961, issued thereunder extending thereby the Eastern Bengal and Assam Excise Act, 1910 to the United Khasi-Jaintia Hills District, and the order of the Deputy Commissioner refusing renewal of a permit authorising the respondents to distil liquor from millet on the ground that there could not be a renewal of the original permit as that permit was issued by one who had no authority to issue it. The High Court allowed the writ petitions on the ground that the Governor had issued the said Regulation under the provision of paragraph 19 (1) (b) which are transitional, that is, until a District Council for the area was constituted, which was done in June 1952, that once such a council was set up, he could not exercise the power under paragraph 19, that any regulation made thereunder could remain effective until that period only, and that therefore, the notification issued in September 1961 extending the Excise Act had no effect. Consequently, there was, according to the High Court, no Excise Act validly in force in the said District under which the respondents could be prevented from distilling liquor. The appeals, thus, raise the question of interpretation of paragraph 19(1) (b) and the scope and extent of the power of the Governor thereunder.

Prior to August 15, 1947, the areas originally known as Khasi States were ruled by Chiefs with certain limited powers under special relations with the British Government as the paramount power. The paramountly having lapsed on the passing of the Indian Independence Act, 1947, those chiefs acceded to the Dominion of India under Instruments of Accession under which the existing administrative arrangements were continued. Later on, the Khasi States were merged in the State of Assam as specified in the First Schedule to the Constitution, and such of the powers which the Chiefs possessed till then came to an end. However, under Arts. 244 and 275 read with the Sixth Schedule, certain special provisions were made regarding the governance of these areas despite their forming part of the State of Assam. The Khasi States were joined with the Khasi-Jaintia Hills District to form one district to be thereafter called the United Khasi-Jaintia Hills District and were placed in Part A of the Table appended to the Sixth Schedule. We are not concerned with the subsequent constitutional developments in regard to these areas as the notification challenged by the respondents extending the Excise Act, 1910 to them was issued in 1961, and the order of refusal by the Deputy Commissioner to permit the respondents to distil liquor was passed on the extension of that Act by that notification.

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As aforesaid. the administration of the tribal areas in the State of Assam is governed, by virtue of Arts. 244 and 275 of the Constitution, by the provisions contained in the Sixth Schedule. A perusal of Art. 244(2) and the Sixth Schedule shows that though the areas included in Part A of the Table form part of the State of Assam and, therefore, within the executive authority of that State and the legislative competence of both Parliament and the State Legislative extend over these areas under Arts. 245 and 246, a special administrative set-up for the tribal people, residing in these areas, has been set up with a view to establish a limited autonomy in view of the special characteristics of the hills people.

The scheme of the Sixth Schedule is that paragraphs 1 to 17 apply to areas mentioned in Part A of the Table and paragraph 18 applies to areas mentioned in Part B of the Table. Paragraph 19 contains transitional provisions applicable until District Councils, envisaged by paragraphs 2 and 3, are constituted. Paragraphs 20, 20A and 21 lay down provisions with regard to the definition of tribal areas, rules as to interpretation and the amendment of the Schedule.

Paragraph 1 provides that the tribal areas in Part A of the Table shall be an autonomous district: Paragraph 2 provides for the constitution of the District and Regional Councils, the election of their members and the term of office of such members. Paragraph 3 lays down the law making powers of the council, both District and Regional. These powers are in respect of matters set out in items (a) to (j). Part 4 to II make provision with regard to matters such as the administration of justice in autonomous districts and regions, establishment of primary schools, dispensaries, markets, cattle pounds etc., District and Regional Funds, assessment and collection of land revenue, imposition of certain taxes, issuance of licences and leases for prospecting for or extraction of minerals, regulation and control of money-lending and trading by non-tribals, and lastly, the publication of laws, rules and regulations made under the Schedule.

Paragraph 12(1) (a) provides that notwithstanding anything in the Constitution, no Act of the Assam State Legislature in respect of the matters specified in paragraph 3 with respect to which a District Council or a Regional Council may make laws, and no such Act 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 notifications so directs. The District Council in so directing with respect to any such Act can also direct that the Act shall have effect subject to such exceptions or modifications as it 2-L643Sup.CI/ 72

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thinks fit. Sub-cl. (b) of cl. (1) provides that the Governor may direct that any Act of Parliament or of Assam Legislature, to which the provisions of sub-cl. (a) do not apply, shall not apply to an autonomous district or region, or shall apply to such district or region or any part thereof subject to such exceptions and modifications as he may specify. Under cl. (2), a direction given under sub-cl. (a) by the District or Regional Council or under sub-cl. (b) by the Governor can have retrospective effect.

From the language of this paragraph it is clear :

1. that Parliament and the State Legislature have competence to make laws with

respect to the respective matters assigned to them under the Seventh Schedule under Arts. 245 and 246,

2. that the expressions "Act of the Legislature of the State" and "Act of Parliament" suggest that the laws referred to in this paragraph are post-constitutio

n laws-,

3. that an Act of the State Legislature, if it is in respect of any of the matters over which under paragraph 3 a District Council or a Regional Council has the power to make laws, or if it is one which prohibits or restricts consumption of non-distilled alcoholic liquor, cannot apply to any area in Part A of the Table unless the District or Regional Council, as the case may be, so directs;

4. in matters other than those specified in paragraph 3 and to which sub-cl. (a) cannot apply, the Governor is empowered to direct that any Act of Parliament or of the State Legislature shall not apply or shall apply with such exceptions or modifications and to such district or region or any part thereof as he may direct.

The object underlying paragraph 12 is to save the legislative powers of the District and Regional Council conferred under paragraph 3 and to safeguard the special characteristics of the people living in the autonomous districts and regions.

Paragraph 19 as its marginal note indicates, contains transitional provisions. Its cl. (1) first directs the Governor to take steps as soon as possible after the commencement of the Constitution for the setting up of District Councils for the autonomous areas specified in Part A of the Table. It next provides that until that is done, the administration of such districts shall vest in the Governor, and that such administration shall be carried on in accordance with the provisions thereafter set out "instead of the foregoing provisions of this Schedule", that is to say, paragraphs

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1 to 18. Thus, paragraph 12 does not operate until District Councils for the autonomous districts under paragraph 2 have been constituted. Paragraph 19 next confers on the Governor two distinct powers, namely,

(a) no Act of Parliament or of the State Legislature shall apply to any such area unless the Governor so directs. or, that such Act shall apply to the area or any specified part thereof subject to such exceptions or modifications as he thinks fit, and

(b) he may make regulations for the peace and good government of any such area and any regulation so made may repeal or amend any Act of Parliament or of the State Legislature or any existing law which is for the time being applicable to such area.

Cl. (2) provides that a direction made under sub-cl. (a) can be given retrospective effect. Cl. (3) lays down that a regulation made under sub-cl. (b) can have effect only when the President has given his assent.

We need not pause to consider sub-cl. (a) of clause (1) as it does not concern us for the time being. So far as sub-cl. (b) is concerned, the power conferred on the Governor is

manifestly a legislative power and is without any limitations even in regard to matters in respect of which he can promulgate a regulation. The only limitation to that power is the requirement of the Presidential assent without which the regulation would have no effect.

The question then is, whether the Governor was competent to promulgate Ordinance V of 1952, and to issue the impugned notification. dated September 8, 1961 ? The question, in our view, does not present any difficulty felt by the High Court and on account of which it came to the conclusion which it did.

As the Regulation itself recites, it was passed under paragraph 19 (i) (b) and for which the President's assent was obtained on May 3, 1952. Since the District Council was constituted in June 1952 (see T. Cajee v. U. Jormanik Siem) (1), and it was passed in pursuance of the power conferred by sub-cl. (b) of cl. (1) of paragraph 19, no question as to the competence of the Governor can arise as the Constitution itself confers such a power on him. As aforesaid, there are no limitations on that power except in regard to the President's assent. Consequently, the power is as plenary in its content as the power of a legislature.

(1) [1961] 1 S.C.R. 750.

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It is true that the power is to be exercised "until a District Council is so constituted for an autonomous district". But that only places a limit to the period until which it is exercisable, and not any limitation upon the extent of the power or the period during which a regulation made by him would be in force once it is validly made. Further, there is no provision either in paragraph 19 or paragraph 12 suggesting that such a regulation is to remain in force and have effect only until a District Council is constituted. In the absence of any such limitation, there is no warrant for saying that a regulation ceases to have effect once the District Council is constituted. The words "such a District Council is so constituted" have reference to the period during which the legislative power of the Governor is to enure and not to the period upto which the regulation which is made during the 'time that the power enures is to remain in force. Like every other piece of legislation, the regulation continues to operate and remains effective until it is either annulled or repealed under some legislative power.

A similar distinction was made in J. K. Gas Plant Manufacturing Co. Ltd. v. King Emperor(1) between the period of emergency contemplated by an Act which empowered the Governor-General to promulgate an Ordinance setting up Special Tribunal to try certain specified cases and the period during which such an Ordinance would subsist and have validity. It was held that the life of such an Ordinance would not be limited by the period during which it could be issued unless the Ordinance itself imposed such a limitation or other amending or repealing legislation did so. Therefore, the Special Tribunal constituted under such an Ordinance did not cease to exist by reason of the expiration on April 1, 1946 of the period specified in S. 3 of the Act. In Rain Kirpal v. Bihar(2), this Court had the occasion of considering the provisions of the Fifth Schedule to the Constitution, and in particular its paragraph 5(2) which empowers the Governor to "make regulations for the peace and good government of any area in a State which is for the time being a scheduled area" and which power under sub-paragraph (3) includes the power to repeal or amend, while making such a regulation, any Act of Parliament or of a State

Legislature or any existing law which is for the time being applicable to the area in question. Explaining the content and the scope of that power, Ray, J., speaking for the Court observed at page 244 of the report that the power contained in paragraph 5(2) of that Schedule embraced the widest power to legislate for the peace and good government for the area in question which comprised of not only making of laws but also of selecting and applying laws, and that "the

(1) [1947] F.C.R. 141,161-162.

(2) [1970] 3 S.C.R. 233.

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power to apply laws is inherent when there is a power to repeal or amend any Act or any existing law applicable to the area in question".

The language of paragraph 19 (i) (b) is identical with that of paragraph 5(2) of the Fifth Schedule, and therefore, must bear the same construction given to it in Ram Kirpai's case(1). There is, therefore, no difficulty in holding that the questioned regulation was a competent legislation made in pursuance of the power conferred by paragraph 19(1) (b), and that under that power the Governor could not only make regulations in the form of substantive but also could apply existing statutes.

The preamble of the Regulation recites that it was promulgated because it was found expedient to bring certain enactments into force in certain areas of the United Khasi-Jaintia Hills District. Sec. 1 (1) recites the title of the Regulation. Sub-sec. (2) of that section provides that the Regulation shall come into force at once. The laws made applicable are set out in the schedule appended 'lo the Regulation., one of which is the Eastern Bengal and Assam Excise Act, 1910. Sec. 2(2) then empowers the Governor to direct, by notification in the Official Gazette, that any of those laws shall extend to and have effect in so much area of the United Khasi-Jaintia Hills District or part thereof and to that purpose different areas and different dates may be specified for different laws.

The effect of the Regulation was that the competent legislative authority, in this case the Governor, selected certain enumerated in the Schedule for their being applied to the District. It, however, left to the Governor to decide on what date or dates and to which part or parts of the District any one or more of them itself they should be extended and brought into force. The Regulation itself determined which laws were to be applied in the District. The only matter left to the Governor was the time when and the area to which they or any one or more of them should be extended. The Regulation came into force at once and continued to remain in force even after the District Council was set up; so also the power thereunder conferred on the Governor to extend them either to the District as a whole or to any part or parts thereof.

Prima facie, the Regulation was a conditional legislation, the legislative authority, namely, the Governor having by the Regulation itself selected the laws which he wanted to be applied and having left only the time when and the area in which they or any one of them should be brought into force. Assuming, however, that the legislation was a delegated piece of legislation. there is no question of such a delegation being excessive, nor is it correct to say that the power so delegated lapsed with the lapse of the

(1) [1970] 3 S.C.R. 233.

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legislative authority of the Governor under paragraph 19 (1) (b). The power of the Governor to legislate ended when the

District Council was constituted. But the power conferred thereunder on the Governor to bring into force the laws set out in the Schedule continued and would continue so long as the Regulation remained on the statute book. That being the position, the notification, dated September 8, 1961, though issued after the power under paragraph 19 (1) (b) had ceased, was validly made as the power to issue such a notification under the Regulation did not lapse since the Regulation itself continued to operate.

The High Court, therefore, was in error in holding that the notification was incompetent or that for that reason the Excise Act was not in force, and that therefore, the respondents could not be prohibited from distilling liquor without a valid licence under the Act from a proper authority. For the reasons aforesaid, the appeals are allowed, but in the circumstances of the case there will not be any order as to costs.

V.P.S

Appeals allowed.

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