

Tapan Kalita
N.E.T.V. Guwahati

GOVERNMENT OF ASSAM
OFFICE OF THE CHIEF SECRETARY,
ASSAM SECRETARIAT, DISPUR, GUWAHATI-6

ORDER

I have carefully gone through the representation filed by Jerat Ah S.K. and others of village Chakrosila Pt-I and others on 28.01.2013 before me. I have also perused the Writ Petition No WP(C) 5108/2012 filed before the Gauhati High Court by the above residents of the villages of the BTAD mentioned therein for exclusion of their villages from the Bodoland Territorial Areas Districts (BTAD), the main ground being that the concerned villages comprise less than 50% tribal population.

I have carefully gone through the order of the Gauhati High Court dt 08.01.2013 on the above mentioned writ petition. The operative part of the High Court's order states:

"Quote "In view of the broad agreement reached between the parties, 'Writ petitioners are directed to furnish a fresh representation by highlighting their grievances with the support of documents to be relied upon, to the Chief Secretary, Govt of Assam, along with a certified copy of this order within a period of three weeks from today. The Chief Secretary, Govt. of Assam, on receipt of the representation along with the documents, shall consider and dispose of the representation within a period of four months from the date of receipt of representation by issuing a speaking order. The Chief Secretary, Govt. of Assam, shall also be at liberty to authorize any officer to hold an inquiry into the allegations, of the petitioners before the speaking order is issued" Unquote.

The perusal of records shows that Bodoland Territorial Areas District (BTAD) was created by an amendment of Constitution of India, namely, Sixth Schedule Constitution (Amendment) Act 2003 (44 of 2003). In pursuance of Ministry of Law & Justice, Govt. of India, Gazettee Notification No.48 dated 8.9.2003 the 4 new districts viz. Kokrajhar, Udalguri, Baksa and Chirang were notified / reorganized vide Notification No.TAD/BTC/161/2003/6 dated 31st October 2003, Notification No.GAG (B) 137/2002/Pt/117 dated 30th October 2003 and Notification No.GAG (B) 137/2002/Pt/526 dated 14th May 2004 by the State Government of Assam, listing the villages that were to be included in the 4 (four) newly created BTC Districts and excluded from 7 (seven) other districts viz. Dhubri, Barpeta, Bongaigaon, Nalbari, Kamrup, Sonitpur and Darrang.

I have carefully gone through the Paragraph 1(3) clauses (d) & (e) of the Sixth Schedule of the Constitution of India. The Constitution provides that the Governor may, by public notification increase or diminish the area of an Autonomous District, provided that no order shall be made by the Governor under these clauses except after consideration of a report of a Commission appointed under Sub-paragraph (1) of Paragraph 14 of the Sixth Schedule, which states that the Governor may at anytime appoint a Commission to examine and report on any matter specified by him relating to the administration of the

Autonomous District or Autonomous Regions in the State, including matters specified in clauses (c), (d), (e) and (f) of Paragraph 1 of the Schedule.

I have further gone through the Sub-Paragraph (2) of Paragraph 14 of the Constitution of India which states that the report of every such Commission shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action to be taken thereon by the Government of the State. (Sixth Schedule to the Constitution (Amendment) Act, 1995 (42 of 1995)).

As provided in paragraph 1(3) of the Sixth Schedule of the Constitution of India, the Governor, may, by public notification, increase or decrease the area of any autonomous district included in Part-1 on the table-20. BTAD has been included in the part-1 of the paragraph 20. Therefore, the power of Governor to decrease or increase the area of the autonomous district extends to BTAD as well.

From the constitutional provisions as stated above, it is clearly evident that the Chief Secretary of the State has not been assigned any role in the matter pertaining to increasing or decreasing the area of an Autonomous District like BTAD, which is within the exclusive domain of the powers of the Governor of the State as per Paragraph 1(3) clauses (d) & (e) read with Paragraph 14(1) & (2) of the Sixth Schedule of the Constitution.

In view of the above, after careful consideration of the records, petitions, representations, Constitution of India and other documents and after due application of mind and consultation with legal experts, I dispose of the representation by passing the above speaking order with the suggestion to the petitioners to file a fresh petition before the appropriate authority stating their grievances and seeking redressal under the Sixth Schedule of the Constitution of India, if so, advised.

(Naba Kumar Das)

Chief Secretary to the Govt. of Assam

Dated May 23, 2013

Memo. No.

Copy forwarded to:

1. Shri Jerat Aii SK in reference to your representation dated 28.01.2013. A copy of the 6th Schedule of the Constitution of India (Para 1, 20) is enclosed herewith for your guidance.
2. The Registrar general of Hon'ble High Court. This is in reference to the above mentioned Writ Petition No. 5108/2012.

Chief Secretary

SIXTH SCHEDULE
[Articles 244(2) and 275(1)]

Provisions as to the Administration of Tribal Areas in ¹[the States of Assam, Meghalaya, Tripura and Mizoram]

1. Autonomous districts and autonomous regions.- (1) Subject to the provisions of this paragraph, the tribal areas in each item of ²[Parts I, II and IIA] and in Part III] of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) 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.⁴

(3) The Governor may, by public notification,-

(a) include any area in ²[any of the Parts] of the said table,

(b) exclude any area from ²[any of the Parts] of the said table;

(c) create a new autonomous district,

(d) increase the area of any autonomous district,

(e) diminish the area of any autonomous district,

(f) unite two or more autonomous districts or parts thereof so as to form one autonomous district,

³[(f) alter the name of any autonomous district,]

(g) define the boundaries of any autonomous district:

Provided that no order shall be made by the Governor under clauses (c), (d), (e) and (f) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule:

⁶[Provided further that any order made by the Governor under this sub-paragraph may contain such incidental and consequential provisions (including any amendment of paragraph 20 and of any item in any of the Parts of the said table) as appear to the Governor to be necessary for giving effect to the provisions of the order.]

1. Subs. by the State of Mizoram Act, 1986 (34 of 1986) sec. 39, (f) for "the States of Assam, Meghalaya and Tripura and in the Union Territory of Mizoram" (w.e.f. 20-2-1987). Earlier the words "The States of Assam and Meghalaya and in the Union Territory of Mizoram" were substituted by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch., for the word "Assam" (wef 21-1-1972) and the words "Meghalaya and Tripura" were substituted by the Constitution (Forty-ninth Amendment) Act, 1984 Sec. 4(u) for the words "and Meghalaya" (wef 1-4-1985).
2. Subs. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(i) and Eighth Sch., for "Part A" (w.e.f. 21-1-1972)
3. Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4, for "Parts I and II" (w.e.f. 1-4-1985).
4. Paragraph 1 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (41 of 2003), sec. 2(1) (w.e.f. 7-9-2003) so as to insert after sub-paragraph (2) the following proviso; namely:- "Provided that nothing in this sub-paragraph shall apply to the Bodoland Territorial Areas District."
5. Ins. By the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969), sec. 74 and Fourth Sch. (w.e.f. 2-4-1970).
6. Ins. by the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), s. 71(l) and Eighth Sch. (w.e.f. 21-1-1972).

¹[20. Tribal areas.- (1) The areas specified in Parts I, II ²:[IIA] and III, of the table below shall respectively be the tribal areas within the State of Assam, the State of Meghalaya ³[, the State of Tripura] and the [State] of Mizoram.

(2) ⁵[Any reference in Part I, Part II or Part III of the table below] to any district shall be construed as a reference to the territories comprised within the autonomous district of that name existing immediately before the day appointed under clause (b) of section 2 of the North-Eastern Areas (Reorganisation) Act, 1971:

Provided that for the purposes of clauses (c) and (f) of sub-paragraph (1) of paragraph 3, paragraph 4 paragraph 5, paragraph 6, sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8 and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the ⁶[Khasi Hills District].

¹[(3) The reference in Part IIA in the table below to the "Tripura Tribal Areas District" shall be construed as a reference to the territory comprising the tribal areas specified in the First Schedule to the Tripura Tribal Areas Autonomous District Council Act, 1979.]

TABLE

⁸Part I

1. The North Cachar Hills District.

2. ⁹The Karbi Anglong District.]

1. Subs. By the North-Eastern Areas (Reorganisation) Act, 1971 (81 of 1971), sec. 71(i) and Eighth Sch. For paragraphs 20 and 20A (w.e.f. 21-1-1972). Earlier paragraph 20 was amended by the State of Nagaland Act 1962 (27 of 1962), sec. 5 (1-12-1963) and paragraph 20A was inserted by the Assam Reorganisation (Meghalaya) Act, 1969 (55 of 1969) sec. 74 and Eighth Sch. (w.e.f. 2-4-1970).
2. Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, sec.(e)(i)(A)4 (w.e.f. 1-4-1985).
3. Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, sec.(e)(i)(B)4 (w.e.f. 1-4-1985).
4. Subs. By the State of Mizoram Act, 1986 (34 of 1986), sec.39(f), for "Union territory" (w.e.f. 20-2-87)
5. Subs. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 4(ii), for "Any reference in the table below" (w.e.f. 1-4-1985).
6. Subs. by the Government of Meghalaya Notifn. No. DCA 31/72/11, dated the 14th June, 1973, Gazette of Meghalaya, Pt. VA, dated 23-6-1973, p. 200.
7. Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, sec. 4(e)(iii) (w.e.f. 1-4-1985).
8. Paragraph 20 has been amended in its application to the State of Assam by the Sixth Schedule to the Constitution (Amendment) Act, 2003 (41 of 2003), sec.2(1) (w.e.f. 7-9-2003) so as to insert in Part I of the Table, after entry 2, the following, namely:
3. The Bodoland Territorial Areas District."
9. Subs. By the Government of Assam Notification T-A D/R/115/74/47, dtd. 14.10.1976, for "The Mikir Hills District."

Part II

¹[1. Khasi Hills District.

2. Jaintia Hills District.]

3. The Garo Hills District.

²[Part IIA

Tripura Tribal Areas District.]

Part III

³[*****]

⁴[1. The Chakma District.

⁵[2. The Mara District.

3. The Lai District.]

1. Subs. by the Government of Meghalaya Notifn. No. DCA 31/72/11, dated the 14th June, 1973, Gazette of Meghalaya, Pt. VA, dated 23-6-1973, p. 200.
2. Ins. by the Constitution (Forty-ninth Amendment) Act, 1984, s. 4(f) (w.e.f. 1-4-1985).
3. The words "The Mizo District" by the Government of Union Territories (Amendment) Act, 1971 (83 of 1971), s. 13 (w.e.f. 29-4-1972).
4. Ins. by the Mizoram District (Miscellaneous Provisions) Act, 1972, published in the Mizoram Gazette, dated the 5th May,