HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.262 OF 2016

Sri Bidhu Bhushan Deb,
S/O Late Amulya Deb,
Village & P.O. Aparaskar, Halahali, Kamalpur,
District-Dhalai, Tripura.

----Petitioner(s)

Versus

1. The State of Tripura,
Represented by its Chief Secretary,
Government of Tripura,
P.O. Kunjaban, P.S. New Capital Complex,
District-West Tripura.

2. The Secretary to the
Governor of Tripura,
Governor House,
P.O. Agartala, P.S. New Capital Complex,
District-West Tripura.

3. Tripura Tribal Areas Autonomous District Council,
Represented by its Chief Executive Officer,
TTAADC, Head Office,
P.O. & P.S. Khumlung, District-West Tripura.

4. The State Public Information Officer,
Directorate of Panchayat,
Government of Tripura,
Chawmanu R.D. Block,
P.S. & P.O. Kamalpur,
District-Dhalai.

5. The Secretary,
Ministry of Law and Justice,
Government of India,
Shastri Bhawan,
P.O. & P.S. Central Secretariat, New Delhi-110 001.

6. The Union of India,
Represented by its Secretary to the
Ministry of Home Affairs,
Government of India,
North Block, Cabinet Secretariat,
Raisinna Hill, New Delhi-110 001.

----Respondent(s)

For petitioner(s)	:	Mr. Arijit Bhowmik, Advocate
For respondent(s)	:	Mr. A.K. Bhowmik, Advocate General Mr. D. Sharma, Addl. G.A.
Date of hearing & delivery of Judgment & Order	:	**20.01.2020**
Whether fit for reporting	:	**YES**

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE ARINDAM LODH

J U D G M E N T & O R D E R (O R A L)

(Akil Kureshi, CJ)

Petitioner has challenged the *vires* of Section 2(h) of Tripura Tribal Areas Autonomous District Council Act, 1979(hereinafter to be referred to as the said Act). Petitioner has further prayed for a direction to exclude Aparaskar Revenue Village from the purview of Tribal Areas under Section 2(h) of the said Act.

2. Brief facts are as under:

3. Petitioner is resident of the said village. The petitioner is aggrieved by inclusion of the said village in the First Schedule to the said Act and consequential inclusion of the village in the Tribal areas as defined under Section 2(h) of the said Act. The case of the petitioner is that Tribal population in the said village is way below fifty percent of the total population. Inclusion of the village in the First Schedule to the Act was thus wrongly made. To the extent of inclusion of the village in the said Schedule and by virtue of which the village would be included within the tribal area in terms of Section 2(h) of the Act, the petitioner has challenged the *vires* of the said statutory provision.

4. Learned counsel for the petitioner submitted that from the inquires made by the petitioner under the Right to Information Act(RTI Act for short) it has come on record that the Tribal

population in the said village is about thirty eight percent of the total population and that the main criteria for including of village in the tribal area is that the tribal population is a minimum of fifty percent of the total population. He appointed out that after enactment of the said Act in the year 1979, the Constitution of India has been amended by the Forty-ninth Amendment Act, 1984 under which the areas specified under the First Schedule to the said Act have been included as Tribal areas for the purpose of constitutional provisions concerning administration of Scheduled Areas and Scheduled Tribes.

5. On the other hand learned Advocate General opposed the petition contending that the State Legislature had after due deliberations included the said village within the tribal area. Such action is not open to challenge on the ground of being *ultra vires* the Constitution. He drew our attention to the replies filed by the respondents in which the exercise undertaken before identifying the areas for being included in the list of Tribal areas have been explained.

6. At the outset we must recall that in the present petition the petitioner has challenged the statutory provision enacted by the State Legislature. Principally two grounds available for such a challenge therefore would be that the provision is opposed to any other fundamental rights or any other provision of the Constitution or that the same is beyond the legislative competence of the legislature.

7. In case of ***State of Madhya Pradesh v. Rakesh Kohli & Anr.*** reported in ***(2012) 6 SCC 312*** it was observed as under:-

> **"17.** This Court has repeatedly stated that legislative enactment can be struck down by court only on two grounds, namely (*i*) that the appropriate legislature does not have the competence to make the law, and (*ii*) that it does not (*sic*) take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. In *McDowell and Co.* [(1996) 3 SCC 709] while dealing with the challenge to an enactment based on Article 14, this Court stated in para 43 of the Report as follows: (SCC pp. 737-38)
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> > "*43*. … A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (*1*) lack of legislative competence, and (*2*) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. … if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by sub-clauses (*a*) to (*g*) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. *No enactment can be struck down by just saying that it is arbitrary or unreasonable*. Some or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom."
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> (emphasis supplied)**"**

8. We are conscious that recently the Supreme Court in case of ***Shayara Bano vs. Union of India*** reported in ***(2017) 9 SCC 1,*** has expanded the scope for such challenge adding the third ground namely that the legislation is manifestly arbitrary.

9. In case of ***State of Jammu & Kashmir v. Triloki Nath Khosa*** reported in ***AIR 1974 SC 1***, the five-Judge Bench of the Supreme Court held and observed that in order to establish that the protection of equal opportunity clause has been denied, it is not enough for the petitioners to say that they have been treated differently from others. Discrimination is the essence of classification. It is for the petitioners to plead and show that the classification was unreasonable and there is no rational nexus with its purported object.

10. With this background we may revert to the legislation under challenge. The said Act was enacted to provide for establishment of an Autonomous District Council for tribal areas in the State of Tripura for the purpose of self-governance by the tribals in such areas. With these objects in mind the said Act was enacted. Section 2 of the said Act contained definitions, clause (h) of Section 2 defines the term "Tribal Areas" as to mean the areas comprised in the First Schedule appended to the Act.

11. Chapter II of the Act pertains to constitution of the Autonomous District Council. Chapter III pertains to powers and functions of the District Council. Chapter IV pertains to administration of justice and contains provisions which vest certain judicial and *quasi* judicial powers in the District Council. Chapter V pertains to finance of District Council and vesting of property. The Act thus makes important provisions for governing the District Council by providing autonomy to the local population.

12. Part X of the Constitution pertains to the Scheduled and Tribal areas. Article 244 contained in the said Part pertains to administration of Scheduled areas and Tribal areas. By Forty-Ninth Amendment Act, 1984 Article 244 was amended as to include the State of Tripura in clause 2 which provides that the provisions of the said Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam, Meghalaya(Tripura added by virtue of the said amendment) and Mizoram. Corresponding amendments were made in the Sixth Schedule where the reference to Tripura Tribal Area District would be constituted 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. Through incorporation by reference thus the definition of the Tribal Area as contained in the said Act has been brought into the Constitution by virtue of the said amendment. We are not concerned with the full force of the constitutional provisions in this respect. We are only concerned with a short question of inclusion of the said village within First Schedule to the said Act as being a tribal area. The grievance of the petitioner in this respect, with a limited scope in a challenge to a statute framed by the State Legislation, cannot be entertained. The fact that the village in question contains tribal population which is less than fifty percent, cannot be the ground for annulling the legislation. It is for the State Legislative Assembly to undertake proper exercise and to earmark areas which would be included within the Schedule specifying the tribal areas. The Court cannot examine the wisdom of the legislative assembly in including or

excluding a certain area from the said definition. In any case the respondents have cited proper reasons for inclusion of the said village within the First Schedule. In an affidavit dated 2nd May, 2017 filed by one Sri Rajat Kumar Debbarma, Deputy Secretary to the Government of Tripura, entire procedure undertaken by the legislative assembly is explained in detail. It is pointed out that because of peculiar circumstances of the State and the suffering of the tribal population on account of certain extraordinary circumstances, in order to protect the tribal population against the onslaught on their livelihood, lands, jobs, etc. and also to protect their cultural and social heritage the said Act was envisaged which would provide local self-governance to the tribal population of the local areas. Initially two-member commission was constituted to inquire and suggest how and in what manner and whether delimitation of tribal areas is required. The report of the commission was accepted by the Government after minor modifications. The exercise for including the different areas was on the basis of Census figures of the year 1971. A review was undertaken in the year 1994 for which two-member commission was constituted by the Government which would identify the villages having majority of Schedule Tribe population for inclusion in the First Schedule and to exclude areas which did not have majority Schedule Tribe population. The commission was however instructed to see that the compactness of Autonomous District Council is maintained while making such recommendations. The report submitted by the commission was approved by the Government, necessary changes were made.

13. It can thus be seen that it was after detailed exercise and mature consideration the State Assembly had framed the said law and notified the tribal areas in the First Schedule. Level of tribal population cannot be the sole criteria though it may be a predominant one. As correctly pointed out by the respondents in the said affidavit compactness of the Autonomous District Council would also be a relevant consideration. In short, we do not find that the State Legislature or for that matter the inclusion of the area within the First Schedule to the Act suffers from any infirmity so as to be declared as *ultra vires* of the Constitution. In the result, petition is dismissed. Nothing stated in this order would prevent the petitioner from approaching the Government with representation.

(ARINDAM LODH, J) **(AKIL KURESHI, CJ)**

HIGH COURT OF TRIPURA
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