

THE KHASI STATES AND SHILLONG MUNICIPALITY:

On the day, the Constitution of India came into force; Khasi States became a part of the State of Assam. Prior to this, there were some agreements relating to accession of the Khasi States with the Indian Union to which reference shall be made later. Before this is done, a bird's eye view at the history of these States may not be out of place.

Khasis, perhaps, represent one of the earliest waves of migration to India's northeast corner. Historians are not being able to say with authority how early and from where the migration took place. Some trace it even to the days of Mahabharata; but authentic account is lacking and it is because of this that Major P.R. Girdon has regarded the question relating to the origin of the Khasis as a 'very vexed' one. After referring to various opinions about the place from where the Khasis are said to have migrated, Major Girdon was of the view that the Khasis are an offshoot of the Mon people and must have moved into Assam from east, meaning Burma, and not from west or north.

The documented history of the Khasis till the advent of the British consists almost entirely of references to Khasi kings and kingdoms in the 'Buranjis' of Ahom Kings, annals of Koch King Naranarayana and some reference in the chronicles of the Kings of Tippera. The earliest named dynasty is perhaps that of Malyngiang Syiems, who were regarded as supernatural beings and God-kinds. Some historians would place these kings around 1200 A.D., while others would not agree with this. With the beginning of historical references to Khasi principalities, the Rajas of Jaintia and Khairam (Khyrim) figure almost prominently and almost exclusively. Chilarai, the valiant general of Koch king Naranarayana, had defeated the king of Jaintia around 1564.

The first contact between the Ahoms and the kingdom of Jaintia dates from the beginning of the 17th century, which was during the reign of Ahom king Pratap Singha (1603-41). A bond of friendship was established with the Ahoms by Jasa Manik, Jaintia king by offering two Jaintia princesses to the Ahom king in marriage. This friendship lasted for some time only, as after new rulers came to throne of both sides, hostility started which were to end after the Mughals were defeated by the Ahoms and forced to leave Gauhati in "1662 A.D. Skirmishes, however, followed thereafter also.

The British came very close geographically to the Khasi hills after they had become master of the district of Sylhet by virtue of grant of Diwani of Bengal to the East India Company in 1765- Sylhet being a part of Bengal Suba then. But it was Burmese invasion of Cachar in 1824 which made the British to take active interest in the Khasi States, as the British got the information that the Burmese would come to Assam through Jaintia Hills. After a detachment of Burmese Army appeared on the Jaintia frontier, its king was prevailed to enter into a formal treaty which was concluded on 10th March, 1824; and David Scot, who was then the Agent of the Governor General made arrangement for the passage of his troops through the Jaintia Hills to Gauhati.

The Khasi Hills at this time were divided into a number of petty States headed over by Syiems and Lyngdohs, who were chosen by popular election following a matriarchal method. The more powerful chiefs among the States were referred to as Rajas after the style of the other native Indian States. The Raja of Jaintia occupied a position of pre-eminence both from the consideration of the extent of his possession and the strategic situation of his State. The Raja of Khyrim was the next important chief. Originally Myllem State was also a part of Khyrim, which got separated later following a dispute over succession to the Syiemships.

Girdon has called the Khasi States then existing as a limited monarchy because the powers of the Syiems were much circumscribed. The Syiem presided over a Durbar upon which the Myntris sat and which was the real repository of powers since its approval for any act of political importance was compulsory. The general rule of succession was that the Syiemship devolved on the son of the eldest uterine sister in order of seniority. This is in contrast to inheritance to real property which devolves on youngest daughter of the deceased. Though Syiemship was thus limited to the family of the Syiem in most of the cases, the confirmation of a new Syiem was controlled by elected bodies, the constitution of which varied from State to State.

At the time of the assumption of the general administration of the Khasi Hills by the British, they recognised 25 petty States and classified them into four categories- 15 of which were presided over by Syiems, 1 Confederacy of Shelia under the elected officer styled as Wahadadar, 5 under Sirdars and 4 under Lvngdohs. These 25 States with a total population of 1,80,000 (of whom 1,53,000 were Khasis) with varied size from Khyrim having 31,327 inhabitants to Nonglewai with a population of 169, continued to exist till they were merged in the State of Assam on the day Constitution of India came into force.

Scot had to think of an alternative route across Khasi Hills to Assam, as the route through Jaintia Hills ceased to be available due to reoccupation of the territory around Raha by the Burmese. Scot had envisaged plans also for developing the hills for establishing sanatoria and military establishments. For having a route through Khasi Hills, an agreement was signed at Gauhati on 30th November 1826, between Scot and Tirot Singh. Despite this agreement, long years of dispute accompanied by attack and counter attack followed; and it was only in 1833 that Tirot Singh, who is a legendary figure in the Khasi Hills, surrendered. After Tirot Singh had fallen, one Syiem after another gave up resistance.

In 1859, the British Government decided to confer Sanads on the Chiefs after executing agreements of good conduct with them. The form of the agreement was modified in 1875, in which year it was decided to confer Sanads only without having any agreement. A decision was also made that all Sanads to Syiems were to be issued under the signature of the Lt. Governor, while those given to Sirdars etc. (called Parwanas) would bear the signature of the Deputy Commissioner of the Khasi and Jaintia Hills. The form of Sanad which was finally adopted in 1877 even stipulated that in the event of misconduct on the part of Sanad holder, they will render themselves liable to dismissal from the Sirdarship or Lyngdohship.

The affect of granting Sanads and Parwanas was that the British Government appropriated to itself the right of ratification of the election of Khasi chiefs and their continuance was made conditional on their good behaviour etc. The chiefs were also placed under the control of the Deputy Commissioner. The independence of the chiefs became a matter of history only.

The above state of affairs continued almost unaltered till the enactment of Government of India Act, 1935. The following extract from the imperial Gazette of India, Volume I (Reprint)' sums up the position it then existed:

"Their (Khasi States) independence was recognized; Government abstained from imposing any taxation upon their subjects, and their territories were held to be beyond the borders of British India.

The Jaintia Hills lapsed to the British India in 1835, when the Raja was deprived of the Jaintia Parganaas in the District of Sylhet on account of complicity in the murder of three British subjects.

The Jaintia Hills, with Shillong, and 34 villages in the Khasi Hills, are British territory. The rest of the Khasi Hills is included in the twenty-five petty Native States, which have treaties or agreements with the British Government. These States vary in size from Khyrim, with a population of 31,327, to Nonglewai with a population of 169. Nine of these States had a population of less than 1,000 persons in 1901.

The High Court at Calcutta has no jurisdiction in the hills, except over European subjects. The Code of Civil and Criminal Procedure are not in force, and the Deputy Commissioner exercises powers of life and death, subject to confirmation by the Lieutenant Governor. Petty criminal and civil cases, in which the natives of the District are concerned are tried by village authorities. Serious offences and civil suits in which foreigners are concerned are tried by the Deputy Commissioner and his Assistants. There is, no the whole, very little serious crime in the District but savage murders are occasionally committed.

Land revenue is assessed only on building sites and on flat rice land in the Jaintia Hills, which pays Rs. 14 per acre. The principal source of revenue in British territories is a tax of Rs. 2 on each house." Under the Government of India Act, 1935, the function of the Crown in its relation with Indian States was exercisable by the Governor-General as Crown Representative. The Governor-General was further authorised under section 123 of the Act to direct the Governor of a Province to discharge as his agent such functions in relation to "Tribal Areas" as were specified by him.

Before 5th August 1947, the relation of the Crown Representative with the Khasi States was conducted through the Governor of Assam. In practice, the administration of the Hill State was in great measure assimilated to that of the Province of Assam partly by the application of the British Indian Laws under the Foreign Jurisdiction Order-in-Council and partly by administrative measures adopted with the concurrence of the Khasi Chiefs. The agreement executed by Sviem of Myllem dated 7-9-1926 shows how some Acts were extended to the non-British portion of Shillong with the concurrence of the Sviem of Myllem.

Mention may be made at this stage about some misconception which had prevailed at one point of time about the mode or machinery to apply the laws in these States which were in force in British India. The Scheduled District Act, 1874 was enacted for applying laws in the area termed as 'Scheduled District'. It was felt for some time; really upto 1911 as mentioned by Sir Keith Cantlie's that the Scheduled District Act also applied to the Khasi States. But this view was not to prevail for long, and on the error being discovered that Khasi States were not parts of British India, the machinery provided by the India (Foreign Jurisdiction) Order-in-Council, 1902 came to be used, instead of the Scheduled District Act, to introduce laws in these States. This order is said to have undergone amendments in 1905, 1908 and 1937. This machinery continued to be used till independence where after Foreign Jurisdiction Act, 1947 (earlier known as Extra Provincial Jurisdiction Act, 1947 till 1953) came to be enacted for this purpose. By Notification NO.335-I.B. dated 3-11-48, the power to make orders under the Foreign Jurisdiction Act, 1947 in respect of the Khasi States including the Shillong Administered areas was delegated to the Governor of Assam.

The Khasi States attempted as early in 1933 to form a federation; and recognition to such a federation was accorded in 1934. But the aims of federation remained unrealized; and even the recognition granted was withdrawn. It was again in 1946 that the Khasi Chiefs formed an organisation called the 'Federation of the Khasi States' with the objective of preserving their rights, the laws and customs of the Khasi people and their traditional institutions.

With the independence of India, the sovereignty of the Crown over the India States lapsed, and with it all treaties and agreements in force on the date of the passing of the Indian Independence Act, 1947 between the Crown and the rulers of Indian States; and so also between the Crown and any persons having authority in the tribal areas as provided in section 7(1) of the Indian Independence Act, 1947. The effect was that Sanads, grants or treaties recognised or entered into with the Crown or on its behalf ceased to have any effect or operation. At about this period, the States in anticipation of the impending political changes were anxious to come to an understanding with the Dominion of India; and entered into different types of agreements with the Dominion of India.

The Khasi Hills States which were formed into a Federation, both individually and collectively, acceded to the Dominion of India subject to the provisions of an agreement. The Instrument of Accession empowered the Dominion Legislature to make laws for the Khasi States in respect of any matter. The Agreement", which formed part of the Instrument of Accession, provided, inter alia, for unified legislation on subject of common interests to Assam and the Khasi Hills States; but administrative powers relating to excise, forest, land and water were to remain, subject to certain conditions, with the States. The position of these States on the eve of the Constitution has been summarized in the 'White Paper on Indian States' published by Ministry of States, Government of India.

While merging these areas with the Province of Assam, it was considered desirable to preserve some of the tribal traditions and customs of the Khasi States with the result that though the Khasi States were included in the Sixth Schedule along with other tribal areas of Assam, large measure of local autonomy was conceded to the District Councils in the tribal areas. With the coming into force of the Constitution the Khasi Hills States along with the adjoining tribal districts known as Jaintia Hills District' were constituted into a separate autonomous district known as 'United Khasi Jaintia Hills District.'

The result of the merger of the Khasi States with the State of Assam was that the Chiefs lost whatever ruling or administrative powers they had over the territories under them; and the governance of the Khasi States came to be carried on according to the provisions of the Sixth Schedule, which has made the District Council an administrative as well as a legislative body for the area under it. It was held by the

Supreme Court in T.Cajee" that the District Councils have power, by virtue of the administration being vested in them, to appoint officers to carry on the administration, so also to remove them. However Subba Rao, J. (in the concurring opinion) had raised a doubt whether the District Council or the Executive Committee of the District Council could have taken any action removing U. Jormanik from the office of Syiem in its administrative capacity without having made a law envisaged by paragraph 3 (1)(g) of the Schedule. However, Subba Rao, J. did not pursue this matter further because such a law, in fact, was enacted on 16th October, 1959, which is known as the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, which clearly stated that all appointments of Chiefs shall be subject to the approval of the District Council. The Act also gave power to the Executive Committee to remove or suspend a Chief from office.

The Khasi States have thus traveled a long distance from the days of British Raj. They have now merged themselves completely with the surrounding territories and have become a part and parcel of the main stream of national life. The institution of Syiemship, Sirdarship etc, which have been retained (though completely under the control of the District Councils) nonetheless reminds of the independence these Elakas had once enjoyed.

Normal Shillong and Shillong Administered Area In 1864, the head quarters of Khasi Hills was shifted from Cherrapunjee to Shilong. However, before this the British Government took steps to acquire territorial rights over lands at Shillong from the Chiefs of Myllem and Khyrim and an agreement to this effect was executed before J.C. Haughton, Governor-General's agent for North East Frontier by Mile Shingh and Raja Raban Singh on 5th December, 1863. The text of the agreement was as below:—

"I, Melay Singh (Mile Singh), having, on behalf of myself and my Mantress, and others concerned, ceded the Raj rights and title in the land at Shillong known as the Shillong lands, the Raj lands south of the Oom Scorpe (Umshyrpi). Known as the Kurkongong Nongseh land, the land near Youdoe, known as Shillong Labang land, hereby renounce all right and title thereto, resigning the same to His Majesty the Queen of England with the trees, water and all things thereon or therein, and hereby acknowledge to have received in full satisfaction therefore, the sum of 2,000/- (Two thousand) from Lieutenant Colonel Haughton, Governor -General's Agent, North East Frontier" 17 Haughton added the following line to the agreement:

"Rajah Rabon hereby acknowledges to have ceded all right on part of himself and his people."

After the constitution of Assam into Chief Commissionership in February 1874, the Assam Secretariat was shifted to Shillong, which became the capital of the new Province on 20th March 1874. With the selection of Shillong as the capital, need for extension was felt. The Government decided to have areas of Mawkhar and Laban which were situated beyond British territory to be included within the jurisdiction of the Shillong Station, as Shillong had become by 1878 under the provisions of the Bengal Municipal Act, 1876. An agreement with Hain Manik, Syiem of Myllem was executed for the aforesaid purpose on 15th November, 1878. This agreement has retained its importance till today and is therefore noted below:

"I, Hain Manik, Siem of Myllem understanding that it is required by the Chief Commissioner of Assam that the villages of Mawkhar (Mawkhar) to the northward and Laban to the south westward of, and adjacent to, the station of Shillong, and within my territory, should be subjected to sanitary and municipal regulations, do hereby agree that the said village of Mawkhar (Mawkhar) and Laban shall be included within the Municipality of Shillong; and I agree to pay on account of such villages and on account of the residents thereof, all rates and taxes which may be provided for to be paid under the bye laws, or which may, from time to time, be fixed by the Commissioners of such Municipality, and to do every and all things required by such Commissioners.

Provided that my proprietary and manorial rights and my authority as Siem, within such villages, otherwise than necessary to be waived for the purpose of such Municipality, shall not be interfered with, I further agree that, for the purpose of this agreement, the limits of the same villages shall be deemed to include the whole of the land at present occupied as such villages shall enlarge and extend and such limits

may be fixed, varied or extended as the Commissioners for the Municipality may from time to time find to be expedient. It was not until 1910 that Shillong attained full fledged status of a Municipality under the Bengal Municipal Act, 1884. Thereafter, Syiem of Myllem agreed to the extension of this Act to some other areas under him, to wit, Malki, Laitumkhrach, Jhalupara and Mawprem. This agreement executed on 9th August, 1913 was in following terms:

"I hereby agree to the extension of the Bengal Municipal Act, III B.C. of 1884 to the village of Malki, Laitumkhrach, Jhalupara and Mawprem to the rivers Umshirpi and Umkhrach provided that my proprietary and manorial rights and my authority as Siem with Myntries within such villages, otherwise than necessary to be waived for the purpose of such Municipality, shall not be interfered with, and provided that the Municipality will not give permission to anyone to build houses on new sites without my previous consent.

Sd/-Ron Singh
Siem of Myllem
9th August, 1913"

In course of time, the Syiem of Myllem had conceded jurisdiction to the British Government over some other territories also for the purpose of municipal administration (vide Notification No.44-1 dated 16th January, 1934). From this Notification it also appears that the villages named therein became a part of Shillong (Administered Area) Municipality. Notification Nos. 164-1B and 165-1B both dated 18-8-1937 had defined 'Shillong Administered Area' to mean "all areas outside British India in which the Municipal Board of Shillong or the Cantonment Authority of Shillong for the time being exercised jurisdiction."

Mention may be made about heated debates in the Constituent Assembly relating to the position Shillong should occupy i.e. whether it should form part of autonomous district, and if so, whether fully or partially. As per the Draft Constitution, the entire town of Shillong was not to be regarded as tribal area, but when the matter came to be argued before the Assembly, Dr. Ambedkar himself moved an amendment whose effect was to include that part of the Municipality of Shillong which belonged to the State of Myllem as a tribal area, though this was also to be excluded for purposes mentioned in the proviso to sub-para (2) of para 20. This had been done because it was felt that so far as municipal administration was concerned, the right should be with the provincial Government; but as regard tribal rights and laws like marriage, inheritance etc. it should be amalgamated with tribal areas.

In the Shillong town two distinct areas came in existence:

1. The British area of the town, popularly known as the 'Normal Shillong'; and
- 2: The 'Shillong Administered Area' which formed part of the Khasi State of Myllem but was comprised in the Shillong Municipality or Cantonment.

District Council of East Khasi Hills District does not exercise any power or jurisdiction over normal Shillong by virtue of clause (2) of para 20 of the Sixth Schedule which excluded "any areas for the time being comprised within the cantonment and municipality of Shillong" from the tribal areas. The normal Shillong is comprised of European Ward, Police Bazar and Jail Road falling in Ward Nos. 8 to 11 of Shillong Municipality.

Shillong Administered Area comprised of that part of Shillong Municipality which belong to the Syiem of Myllem, who handed over these areas to be included in the Shillong Municipality for the purpose of municipal administration. These areas are Laitmukhrach, Malki, Mawkhar, Jaïaw, Mawprem, Kenches Trace, Laban and Lumparing falling in ward Nos. 1 to 7 and 12 to 27 of Shillong Municipality. This area though comprised in the Municipality of Shillong for the purposes of municipal administration, still for purposes other than those which are mentioned in the proviso of clause (2) of paragraph 20, these areas were governed by the laws and rules made by the District Council as per the provisions of the Sixth Schedule. The Shillong Administered Area thus have a dual personality. One for purposes of clauses (2) and (f) of sub paragraph (1) of paragraph 3, paragraph 4, paragraph 5 paragraph 6 sub paragraph (2) clause (a) (b) and (d) sub paragraph (2) and sub paragraph 4 of the paragraph 8 and clause (d) of sub paragraph (2)

of paragraph 10, they do not form part of Khasi Hills District whereas for rest of the purposes these areas form part of Khasi Hills District.

Jurisdiction of the Court of Deputy Commissioner and his Assistants under the Rules of Administration of Policy 1937 to try cases falling within Mawkhar including Barabazar area was questioned for the first time before a Special Bench of Gauhati High Court in U.Owing Singh. The Deputy Commissioner and his Assistant exercised jurisdiction only over non tribal area. By an exhaustive and illuminating judgment Sarjoo Prasad CJ has held:

"These provisions make it clear even in the Syiemship area appertaining to the Shillong Municipal area, the District Council has no power to administer justice. It maybe pointed out that the District Council has been constituted in respect of the United Khasi and Jaintia Hills District and the District Council has framed rules for the administration of justice in the autonomous district. Under these rules the village court is composed of the Doloi, Sardar, Syiem, Rynjah, Lyngdoh, etc.; and these courts are vested with powers to try suits of a civil nature.

The rules are dated the 8th December, 1953, and were promulgated with the assent of the Governor. These rules under the proviso to paragraph 20 sub paragraph (2) of the Sixth Schedule have no application to the "Administered Area" or the area of the State of Milliem falling within the Shillong Municipality.

Thus the court of the Syiem and his Durbar even if functioning under these rules had no jurisdiction to try civil cases in the Administered area."

The jurisdiction of Deputy Commissioner and his Assistant to exercise jurisdiction over Laitumkhrah area falling within Shillong Administered Area came up for consideration before a Division Bench of Gauhati High Court in Bhagabati Debi". Mehrotra J. expresses the view that the District Council courts have no jurisdiction over the territory of Syiem of Myllem. It was held:

"The scheme of paragraph 20 is that the area specified in Parts A and B Of the table attached to that paragraph will be deemed to be the tribal areas and by virtue of paragraph 1 of Schedule Six all the tribal area will be within the autonomous districts. Item 1 of Part A of the table as I have already indicated, refers to the United Khasi Jaintia Hills District and sub paragraph (2) of paragraph 20 only defines what the United Khasi Jaintia Hills District shall comprise of. This sub paragraph clearly lays down that the entire Khasi State will form part of the United Khasi Jaintia Hills District excluding the area of Shillong Municipality but including that part of the Shillong Municipality which formed part of the Khasi State of Myllem. This means that the Khasi States will form part of the United Khasi Jaintia Hills District excluding the part of the Municipality of Shillong other than the part which formed part of the Khasi State of Myllem. By the proviso for the purposes of paragraphs 4 and 5 the entire, area of the Shillong Municipality has been excluded from the territory of United Khasi Jaintia Hills District.

The result of the proviso to sub paragraph (2) of paragraph 20 of the Sixth Schedule is that the District Council Courts will have no jurisdiction over the area of the Shillong Municipality which formed part of the territory of the Syiem of Myllem."

The jurisdiction of District council over Shillong Administrative Area came to be considered by Constitution Bench of the Supreme Court in Hardeo DaS24. In this case the Central Government in exercise of power under section 4 of the Extra Provincial Jurisdiction Act 1947 extended the provisions of the Assam Sales Tax 1947 to the Shillong Administered Area which included Bara Bazar by notification dated 15-4-1948. Question was raised as to whether Dominion of India was entitled to exercise extra provincial jurisdiction over the Shillong Administrative Area on 15-4-1948. Their Lordships were of the view that the question in issue was not a 'question of fact' but is a question relating to 'fact of the State' which is within the sole jurisdiction of the Central Government. Accordingly the Supreme Court referred the following two questions to the Central Government under section 6 of the Extra Provincial Jurisdiction Act 1947;

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"1. Whether the Dominion of India exercised extra provincial jurisdiction over the Shillong Administered Area including Barra Bazar, which also included Mawkhar, a part of the erstwhile Myllem State, on April 15, 1948.

2. Whether the Dominion of India had extra provincial jurisdiction on April 15, 1948 to extend the Assam Sales Tax Act, 1947 (Act 17 of 1947) to the Shillong Administered Area including Bara Bazar under section 4 of Extra Provincial Jurisdiction Act (Act 47 of 1947)"

These two questions were replied by the Central Government vide letter dated 12-1-1968 in which it was opined as under:

"Bara Bazar area was thus a part of the area belonging to the erstwhile Myllem State in which the British Government in India exercised jurisdiction under the Indian (Foreign Jurisdiction) Order-in-Council. On the withdrawal of the British Rule the jurisdiction over the territories of the erstwhile Myllem State which has been included in the Shillong Administered Area continued to be exercised with the consent of the Syiem and the jurisdiction which was until then exercised in those areas by the British Government in India was assumed by the Dominion of India and it was retained thereafter by virtue of the Instrument of Accession signed by the Siem of Myllem and the agreement annexed thereto. The Dominion of India exercised extra provincial jurisdiction over the Shillong Administered Area including the Bara Bazar which also included Mawkhar a part of the Myllem State on April 15, 1948.

The Dominion of India therefore had on April 15, 1948 extra provincial jurisdiction in terms of the Extra Provincial Jurisdiction Act, 1947 (Act 47 of 1947) to extend the Assam Sales Tax Act, 1947 (Act 17 of 1947) to the Shillong Administered Area including Bara Bazar, Assam Sales Tax was actually extended to the Shillong Administered Area including Bara Bazar, after obtaining the consent of the Siem of Myllem, in the Ministry of State Notification No.186-IB dated the 15-4-1948."

On the basis of aforesaid letter, the Supreme Court concluded that the Government of India was entitled to exercise jurisdiction over the Shillong Administered Area even before commencement of the Constitution. The aforesaid view that District Council exercises jurisdiction over the Shillong Administered Areas only for the purposes other than those mentioned in the proviso to clause 2 paragraph 20 of the Sixth Schedule was prevailing till the year 1975. However, on 20-2-1975 the Supreme Court in *Ka Drepila* held that the District Council has jurisdiction over Mawkhar comprising Barabazar (falling within Shillong Administered Area) and this area is not a part of the Shillong Municipality. It was held:

"In view of the notification dated January 16, 1934, which preserves the distinct entity of the ceded villages and in the absence of any provision effecting a merger of these territories in the Municipality of Shillong, reference in the Khasi Syiemships (Application of Laws) Order, 1949 to any part of the Khasi-Jaintia Hills District as "comprised within the Municipality of Shillong" must be read to mean that part of the District in which the officers and the authorities of the Shillong Municipality continued to exercise power and discharge duties as before. In our opinion, the jurisdiction of the District Council of the Khasi-Jaintia Hills extends to the Bara Bazar area and as such the impugned orders issued at the instance of the appellants to the first respondent in each of these two appeals restraining them from constructing shops in the aforesaid area are not invalid."

The question whether District Council has jurisdiction over Mawkhar including Barabazar area in Shillong was again raised in a reference made by I.C. Chakraborty, Assistant Deputy Commissioner as to his jurisdiction in the matter of administration of justice in the said area. A Full Bench of Gauhati High Court considered this aspect in detail. D. Pathak, CJ concluded that in view of judgment of Supreme Court in *Ka Drepila*, it is only the District Council which have full jurisdiction in Mawkhar area. K. Lahiri, J in his concurring judgment came to the conclusion that there is strong force in the contention that Mawkhar including Bara Bazar area was included in Shillong Municipality at the commencement of the Constitution and should not be deemed to be within the tribal area for various purposes including administration of justice and requirement of trading by non tribals as enumerated in proviso 20 to para 20(2) of the Sixth Schedule and gave detailed justification for coming to that conclusion. It was also pointed out by Lahiri, J

that the certain vital facts were not gone into by the Supreme Court in Ka Drapsila and the Supreme Court's findings in the said case was said to be arrived by means of the materials placed before it. It was observed that the following material facts which were not brought to notice of the Supreme Court:

It is true that their Lordships attention was not drawn to the decision of Hardeo Das wherein the Constitution Bench held, that the very Mawkhar including Bara Bazar had long ceded to the British Government and it was administered by them under the Indian (Foreign Jurisdiction) Orders-in-Council.

The attention of the Court were not drawn to the decision of the Gauhati High Court in U Owing Singh wherein the history of Shillong Administered Area was stated and it was held that in respect of civil litigation arising within the Shillong Administered Area Municipality, the Deputy Commissioners and his Assistants have exclusive jurisdiction and not District Council Court.

It is also true that the debates in the Constituent Assembly were not placed before their Lordships. The attention of the Court to the relevant notifications prior to 1934 and subsequent thereto were not brought to the notice of the Court.

It is also correct that their Lordships attention was not drawn to the correct definition of the "Shillong (Administered Area)" as referred in the Khasi Syiemships (Application of Laws) Order, 1949. The definition which was placed was as amended in the year 1952.

It is also true that it was not brought to the notice of their Lordships that the name of the Shillong (Administered Area) Municipality was not designated as the Siem of Myllem Municipality but it was designated as the Administered Area Municipality. It is also true that it was not brought to the notice of their Lordships that the Shillong (Administered Area) Municipality had no legal entity whatsoever, it had no found, it could not sue nor be sued, nor could it appoint any employee.

However, Lahiri J. finally concluded as under:

"It is difficult for me to assume that the decision was rendered by their Lordships without considering these material factors. Those were certainly considered but were not treated to be relevant for the purpose of the decision. I can express this much and no further that the Constitution-makers stated that the areas for the time being comprised within the Cantonment and the Municipality of Shillong were excluded from the United Khasi and Jaintia Hills District but out of that area falling within the Municipality v of Shillong belonging to State of Myllem to be within U.K.J. Hills District, for all purpose other than those referred in the proviso. But the said view is not correct as their Lordships held that the area if ceded to the British Government only attracted the provisions of sub para (2) of para 20 of the Sixth Schedule. There is strong force in the contention that the area which was included within the Municipality of Shillong at the commencement of the Constitution, whether ceded or not but merely comprised within it should not be deemed to be within the U.K.J. Hills district for the purposes of the clauses, sub para and paras referred to in the proviso to sub para (2) of para 20 of the Sixth Schedule. Indeed the proviso seems to refer to that area which comprised within the Municipality of Shillong. By the deeming provision and for limited purposes referred to in the proviso, the Constitution makers directed that the said area should not be treated as part of the U.K.J. Hills District for the purposes set out in the proviso."

The State of Meghalaya appealed to Supreme Court (Civil Appeal No. 4255-56/1984) against the aforesaid judgment of the Full Bench of High Court.

The question was re-agitated by the Barabazar Merchants and Shop Keepers' Association (Civil Rule No. 424 of 1975) when they were asked to obtain licence under the United Khasi-Jaintia Hills District (Trading by Non-Tribals) Regulation, 1954 and licence fee was imposed under the United Khasi Jaintia Hills District (Trading by Non-Tribals) Rules, 1959 frame under the aforesaid regulation. The Gauhati High Court in its judgment and order dated 12-6-1987 upheld the validity of the Regulation and the Rules in its application to the Bara Barzar area. The Supreme Court also upheld the High Court order by dismissing Special Leave Petition.

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Yet again in 2002 the issue was re-agitated in a writ petition under Article 32 of the Constitution by Non Tribal Youth Union and the Supreme Court once again dismissed the writ petition by holding that the issue was covered in its decision in Ka Drapsila.

A Division Bench of Gauhati High Court in Pawan Sharma once more considered the issue. This was a case filed by way of public interest litigation seeking mandamus for holding election by Shillong Municipal Board which were not held since 1973 especially in the context of the Constitution 74th Amendment Act, 1992 making provisions for constitution and election to the Municipalities. Challenge was also made to an Ordinance passed by the Meghalaya legislature amending the Municipal Act which provided for election on the basis of Electoral College instead of direct election. The High Court struck down the Ordinance, despite the fact that it had lapsed and directed holding of election forthwith. In this context the provisions of paragraph 20(2) of the Sixth Schedule was considered and High Court held:

"Proviso to clause (2) states that for the purposes stated therein the areas which are comprised within the Municipality of Shillong shall not be deemed to be within the Khasi Hills District. The real import of the proviso can be understood only with reference to Clause (2) of that para wherefrom it has already been found out that the district mentioned in para II of the table appended to the para will be known within reference to the territories which were comprised in those district in the autonomous State of Meghalaya. Reading 1969 Act, 1971 Act and para 20 of the Sixth Schedule together a confusion appears to arise regarding the areas in respect of which Autonomous State of Meghalaya was formed under section 3 of 1969 Act. Though in that Act no exception has apparently been made for the exclusion of Municipal and cantonment areas of Shillong from the autonomous State of Meghalaya but a reading of section 5 of 1971 Act which later on conferred Statehood to Meghalaya by Clause (b) Specifically included in the new State the territories which were comprised in the Shillong cantonment and Shillong Municipality in the State of Meghalaya. The position has further been made clear from the words occurring in clause (b) to the effect as did not form part of that autonomous State, hence it is for certain that those areas did not form part of the autonomous State of Meghalaya which was formed by section 3 of the 1969 Act. Now reverting to para 20 of the Sixth Schedule it is important to note that the para while defining 'tribal areas' of the State of Meghalaya does not refer to the districts which were included in that State by section 5 of 1971 Act but it refers to the district which formed part of the Autonomous State of Meghalaya under section 3 of 1969 Act. The position which then clearly emerges is that the Tribal district of Khasi Hills District, in para II of the table appended to para 20 of Sixth Schedule would be exclusive of the areas and territories which were comprised in the cantonment and Municipality of Shillong immediately before the date appointed under Clause (b) of section 2 of 1971 Act. So far other areas of that district, which were not comprised in the Municipality or cantonment of Shillong, shall be Tribal Areas for para 20."

"We are therefore of the view that all the areas which are comprised in from the part of municipality of Shillong including the normal area represented by five wards and rest of the 23 wards so far as municipal administration and establishment of municipalities concerned do not form part of Khasi Hills District, hence are not covered by the 'tribal area' used in clause (1) of Article 243 ZC."

The areas comprised in these 23 wards of Shillong Municipality belong to the included in the Shillong Municipality for the purpose of municipal administration. In this way though the areas of these 23 wards are comprised in the Municipality of Shillong for the purposes of municipal administration still for purposes other than those which are mentioned in the said proviso of clause (2) of para 20 these areas are governed by the laws and rules made by the Khasi Hills Autonomous District Council as per the provisions of the Sixth Schedule. In that regard the Autonomous District Council of Khasi Hills District exercises its powers in those areas. It was in regard of these 23 wards in Municipality of Shillong that the framers of clause (2) of para 20 used aforementioned wards in last part of the proviso. Real import of these wards therefore will be that in the matters which have been specifically mentioned in the proviso, areas comprised in these 23 wards of Municipal Board Shillong, would not be deemed to be within the Khasi Hills District whereas for rest of subjects which are mentioned in paras 3,4,5,6,8 and 10 of Sixth Schedule these 23 wards will be treated to be within the Khasi Hills District. The 23 wards named above thus have a dual personality. One for purposes of clauses (2) and (f) of sub para (1) of para 3, para 4, para 5 para 6 sub para (2) clause (a) (b) and (d) sub para (2) and sub para 4 of the para 8 and clause (d) of sub para (2) of para 10

they do not form part of Khasi Hills District whereas for rest of the purposes these areas form part of Khasi Hills District."

The aforesaid judgment, however, has been set aside by the Supreme Court on the ground that in view of lapse of Ordinance under challenge, there was no occasion for High Court to adjudicate upon its validity as the Ordinance had died its own death.

Khasi Hills Autonomous District Council v. Pawan Sharma, C.A.No.41 of 1999 vide order dated 10-12-1999. "The Assam Municipal Act, 1956 adopted by Meghalaya State as amended by the Meghalaya Municipal (Amendment) Ordinance, 1998. By this amendment, Section 12A to 120 were inserted in the principal Municipal Act. During the pendency of the proceedings before the High Court, the Ordinance lapsed. But still the High Court proceeded to dispose of the public interest litigation and quashed the Ordinance.

We are of the view that the Meghalaya Municipal (Amendment Ordinance, 1998 having not been adopted by the Legislature, and having lapsed, there was no occasion for the High Court to adjudicate upon its validity or to quash it, particularly as no action under the Ordinance was taken. The Ordinance had died its own death.

In view of the above, the appeals are allowed. The impugned judgment of the High court is set aside with the observations that the municipal elections may now be held within six months, in accordance with law."

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