

Serial No.02 Supplementary List
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HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.541/2019

Date of Order: 28.01.2020

Shri Latiplang Kharkongor	Vs.	Secretariat of the Governor of Meghalaya & ors
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Coram:

Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice

Appearance:

For the Petitioner/Appellant(s)	: Mr. K. Paul, Advocate
For the Respondent(s)	: Mr. A. Kumar, Advocate General with Ms. A. Thungwa, G.A. for R/3-5 Mr. V.G.K. Kynta, Senior Advocate with Ms. M. Kyanta, Advocate for R/6&7

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| i) Whether approved for reporting in
Law journals etc.: | Yes |
| ii) Whether approved for publication
in press: | Yes/No |

1. This writ petition under Article 226 of the Constitution of India has been filed by Mr. Latiplang Kharkongor, who has been elected and appointed as Chief Executive Member of the Khasi Hills Autonomous District Council (for short, 'the KHADC'), praying for issuance of a writ of mandamus, directing the respondents to immediately issue appointment order of Mr. Mitchel Wankhar, Smt. Macdalyn Sawkmie Mawlong, Mr. Lamphrang Blah and Mr. Ronnie V. Lyngdoh, as the Executive Members of the KHADC and Smt. Grace Mary Kharpuri, as the Deputy Chief Executive Member of the KHADC, pursuant to his advice as the Chief Executive Member to the Governor of the State of Meghalaya vide letters dated 27.11.2019 and 29.11.2019 (Annexures 8 and 9).

2. The petitioner is the elected Member of the KHADC from 16th Nongthymmai District Council Constituency. He has been elected as such Member for four consecutive terms, firstly in the year 2004 and recently in the year 2019. Mr. Teinwell Dkhar was originally elected as the Chief Executive Member of the KHADC but a no-confidence motion against him was put to vote in a duly convened session of the KHADC on 20.11.2019. Since no-confidence motion was carried, he stood removed from that Office. In the fresh election that took place on 22.11.2019, the petitioner was elected as the new Chief Executive Member. Report of removal of the erstwhile Chief Executive Member, namely, Mr. Teinwell Dkhar and subsequent election of the petitioner by majority as the Chief Executive Member was sent to the Deputy Commissioner, East Khasi Hills District by the Secretary to the KHADC by two separate letters, both dated 22.11.2019, with the request to convey to the Governor of Meghalaya about election of the petitioner as the Chief Executive Member for the needful. The Deputy Commissioner, East Khasi Hills District, Shillong, wrote back to the Secretary of the KHADC vide letter dated 22.11.2019 (Annexure-3), asking for a comprehensive report along-with the proceedings of the election of the Chief Executive Member. In response thereto, the Secretary, vide letter dated 23.11.2019 (Annexure-4), sent a comprehensive report to her. Thereupon, the Deputy Commissioner vide letter dated 23.11.2019 (Annexure-5), forwarded the result of the election to the Secretary to the Governor of Meghalaya, Raj Bhawan, Shillong. The Deputy Secretary to the Governor of Meghalaya intimated to the Deputy Commissioner, East

Khasi Hills District vide letter dated 25.11.2019 (Annexure-6) the approval of the Governor of the election of the petitioner as the new Chief Executive Member of the KHADC. A copy each of this communication was endorsed to the Joint Secretary, District Council Affairs Department, Government of Meghalaya, and the Secretary to KHADC for information and necessary action. The Secretary to KHADC then vide letter dated 25.11.2019 (Annexure-7) informed the Secretary to the Executive Committee of the KHADC regarding approval of the Governor of Meghalaya of the election of the petitioner as the new Chief Executive Member of the KHADC.

3. That the petitioner thereafter vide letter dated 27.11.2019 (Annexure-8) advised the Governor of the State to appoint (1) Mr. Mitchel Wankhar, (2) Smt. Macdalyn Sawkmie Mawlong, (3) Mr. Lamphrang Blah and (4) Mr. Ronnie V. Lyngdoh, as the Executive Members of the KHADC. He also subsequently vide letter dated 29.11.2019 (Annexure-9) advised the Governor to appoint Smt. Grace Mary Kharpuri as the Deputy Chief Executive Member in the Executive Committee of the KHADC. Copies of these two letters were also forwarded by the Secretary to the Executive Committee of the KHADC, to the Deputy Secretary to the Governor of the State of Meghalaya, respectively on 27.11.2019 (Annexure-10) and 29.11.2019 (Annexure-11). Since no action was taken on the recommendation made by the petitioner for quite sometime, the petitioner has approached this Court by means of the present writ petition seeking a writ of mandamus in the terms as prayed for.

4. I have heard Mr. K. Paul, learned counsel for petitioner as also Mr. A. Kumar, learned Advocate General with Ms. A. Thungwa, learned Government Advocate for respondents No.3 to 5 and Mr. V.G.K. Kynta, learned Senior Advocate assisted by Ms. M. Kyanta, learned counsel for respondents No.6 and 7, viz., Secretary to the KHADC and Secretary, Executive Committee of the KHADC. All the learned counsel have supplemented their oral submissions by written arguments as well.

5. Mr. K. Paul, learned counsel for petitioner, has submitted that Rule 20(1) of the Assam [and Meghalaya] Autonomous Districts (Constitution of District Councils) Rules, 1951 (for short, 'the Rules of 1951) provides that the Chief Executive Member shall be elected by the District Council and the other Executive Members shall be appointed by the Governor on the advice of the Chief Executive Member from amongst the members of the District Council. The proviso thereto stipulates that one from amongst the members under sub-rule (1) of Rule 19, may be appointed as the Deputy Chief Executive Member by the Governor on the advice of the Chief Executive Member. Rule 20(2) of the Rules of 1951 provides that the election of the Chief Executive Member shall be conducted according to the procedure provided for the election of the Deputy Chairman in Rule 10, which, inter alia, provides that there shall be a Chairman and a Deputy Chairman of the District Council, who shall be elected by the District Council in the manner provided for in Rules 32 and 33. It is argued that Rule 32 pertains to the election of Chairman and Rule 33 provides for procedure for election of the Deputy Chairman, which

provisions shall be, *mutatis mutandis*, applicable to election of the Chief Executive Member. However, Rule 41 provides that proceedings of the Council would not be rendered invalid only for the reason of failure to comply any of these rules.

6. Learned counsel for the petitioner submitted that a bare reading of Rule 20(1) of the Rules of 1951 would show that the Chief Executive Member shall be elected by the District Council on the floor of the House and the other Executive Members shall be appointed by the Governor on the advice of the Chief Executive Member. There is no provision in the Rules of 1951 giving any authority to the State Government in such proceedings. Therefore, the Governor on being advised by the Chief Executive Member, was obligated to appoint the Deputy Chief Executive Member and four Executive Members by issuing formal orders. In support of this argument, learned counsel has relied on the judgment of Gauhati High Court in **Ram Sing Ronghang Vs. Karbi Anglong Autonomous Council and Others**, (2001) 3 GLR 344. It was argued that the Gauhati High Court in that case, while interpreting Articles 75 and 174 of the Constitution of India in juxtaposition with the Rules of 1951 clearly held that while the President and the Governor may have some discretion with regard to the choice of Prime Minister and Chief Minister respectively, but the Governor has no say in the appointment of the Chief Executive Members of the District Council under Rule 20 of the Rules of 1951 as it is based on election by majority. As per Rule 20 of the Rules of 1951, other members of the Executive Committee of a District Council have to be

appointed by the Governor on the advice of the Chief Executive Member from amongst the members of the District Council. There is no discretion left with the Governor with regard to choice of a member of the Executive Committee to be appointed by him and he has to follow the advice of the Chief Executive Member in this regard.

7. Learned counsel submitted that the election of the petitioner as the Chief Executive Member of the KHADC is not in dispute before this Court as the same has not been challenged by any party including the State, which having not done so, cannot now raise the issue regarding validity of the election of the petitioner. The contention of the respondents that the taking up of the no-confidence motion by the Chairman of the House and subsequent election of the petitioner as Chief Executive Member are marred by procedural infirmities does not hold water, inasmuch as Rule 41 of the Rules categorically provides that "No proceedings of the District Council shall be deemed to be, or ever to have been, invalid by reason of any rule not being, or not having been, complied with; but in case of any such non-compliance, any member may raise a point of order." Mere irregularity of procedure thus cannot be a ground to challenge the election of the Chief Executive Member. Learned counsel argued that Rule 41 being akin to Article 212 of the Constitution of India, ratio of the judgment of the Supreme Court in para 377 of the report in **Raja Ram Pal Vs. Hon'ble Speaker Lok Sabha, (2007) 3 SCC 184**, would fully apply to the present case, which reads as thus:-

"377.

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 xxxx Article 212(1) seems to make it possible for a citizen
 to call in question in the appropriate court of law the
 validity of any proceedings inside the legislative chamber
 if his case is that the said proceedings suffer not from mere
 irregularity of procedure, but from an illegality....."

8. It is argued that the position of law being so, even if for argument sake it is accepted but not admitted that there was indeed an infraction of rules, the same does not vitiate the proceedings as it only amounts to mere irregularity and not illegality. Even otherwise, in the absence of any challenge to the election by any member of the District Council and especially Mr. Teinwell Dkhar himself, who was removed as Chief Executive Member and the petitioner elected as Chief Executive Member in his place, the State cannot step into his shoes and question the legitimacy of the petitioner occupying the post of Chief Executive Member.

9. It is submitted that there is no requirement for the Governor to obtain consent of the Council of Ministers in approving the election of the petitioner. Even though the Sixth Schedule to the Constitution of India provides for creation of the District Council for tribal areas in respect of each of the areas mentioned in Para 20, but the procedure in which the District Council and its Executive Committee have to function and how their elections shall be conducted, has been provided in the Rules of 1951. Election of Chief Executive Member as well as the appointments of the Executive Members have to be made strictly in compliance of the requirements mandated in Rule 20 of the Rules of 1951, which mandates that the Executive Members are to be appointed by the Governor on the

advice of the Chief Executive Member. This rule cannot be by any stretch of interpretation construed to mean that the Governor has any discretion in the matter. The words Chief Executive Members as appearing in Rules 20 and 21 cannot be substituted to mean Council of Ministers. Therefore, the consultative process with the Council of Ministers under Article 163(1) of the Constitution is not sine qua non for appointment of Executive Members. Argument of the respondent-State with regard to discretionary power of Governor is of no consequence in matters which are expressly covered under the Rules of 1951.

10. Mr. K. Paul, learned counsel further submitted that under the constitutional scheme of the things, the District Councils enjoy autonomy with regard to administration of tribal areas and State Legislature has minimal role over the functioning of the District Councils. The action of the respondents in seeking Administrator's Rule in respect of the KHADC would have to be read in the context of what is prevailing as on today, the same being that for reason of infraction of procedure enumerated under the Rules of 1951, the State has requested the Governor to exercise power under Para 16(2) of the Sixth Schedule to the Constitution and the same was declined by the Governor. Later, another request has been made on 07.12.2019 for invocation of powers under Para 16(2) of the Sixth Schedule to the Constitution but till date no action on that basis has been taken by the Hon'ble Governor. It being settled law that an authority cannot be permitted to support its order relying on or on the basis of statements made in the affidavit *de hors* the order or for that matter, *de hors* the records. In such

circumstances, the affidavit now filed by the respondent-State cannot supplant reasons but can only supplement reasons contained in their original request to the Hon'ble Governor, being identical to the objection raised before this Court with regard to the validity of the election of the petitioner as Chief Executive Member. The respondent-State without having assailed decision (of the Hon'ble Governor) declining to invoke paragraph 16(2) of the Sixth Schedule before any competent Court of law, would be estopped from projecting such argument in the present proceedings. In support of this contention, learned counsel relied on the judgment of the Supreme Court in **Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chennai and Others, (2005) 7 SCC 627.**

11. It is submitted that the respondents in the writ petition filed by the petitioner cannot claim a declaration that election of the petitioner as the Chief Executive Member is invalid, especially in view of the rejection of their request of Administrator's Rule by the Governor. It is settled law that Courts cannot grant relief which is not specifically prayed for and pleadings thereabout are not exchanged to enable the Court to cull out the actual dispute between the parties. In the instant case, the dispute being non-appointment of Deputy Chief Executive Member and Executive Members despite advice of the Chief Executive Member, other issues would not be enquired into by this Court. Reliance in this connection is placed on the judgments of the Supreme Court in **National Textile Corporation Limited Vs. Naresh Kumar Badri Kumar Jagad & ors, (2011) 12 SCC 695, Para**

12 and **Trojen & Company Ltd. Vs. R.M.N.N. Nagappa Chettiar, 1953 SCR 789.**

12. Lastly, learned counsel for the petitioner argued that ratio of the cited judgments of the Supreme Court in **Samsher Singh Vs. State of Punjab & ors, (1974) 2 SCC 831** and **Pu Pui Myllai Hlychho & Others Vs. State of Mizoram & Others, (2005) 2 SCC 92** does not in any manner apply to the present case. Even otherwise, the issue raised in the case of **Pu Myllai Hlychho**, supra, was with regard to nomination of the Members of District Councils and their recall in exercise of powers under Paras 20 BA and 20 BB of the Sixth Schedule to the Constitution of India which exclusively deal with the powers of the Governor to be exercised in respect of the States of Mizoram and Tripura. Para 20 BB contained in Part-III of the Sixth Schedule of the Constitution of India is meant only for the purpose of Part-III region. No provision akin to paras 20 BA and 20 BB is there in the Constitution with regard to the State of Meghalaya. Therefore, the said paras cannot be made applicable to the general paragraphs of the Sixth Schedule, particularly to para 2(6) under which the Rules of 1951 have been framed by the Governor.

13. Per contra, Mr. A. Kumar, learned Advocate General, opposing the writ petition, submitted that one Mr. Lamphrang Blah, Member District Council, addressed letter dated 19.11.2019 to the Secretary to Khasi Hills Autonomous District Council under Rule 71(1) of the Rules of 1951 seeking to move no-confidence motion against the Executive Committee headed by Mr. Teinwell Dkhar. The said motion was incompetent because

Rule 71(1) is not meant for no-confidence motion but only pertain to policy of Executive Committee. A valid no-confidence motion can be moved only under Rule 22(1) and that too in a specially convened meeting of the Council to take up the motion. Admittedly, there was no specially convened meeting of the Council to take up the motion. In fact, one of the Members, in order to overcome the illegality of manner and mode of moving no-confidence motion, approached the Chairman for taking up votes under Rule 61(2) of the Rules of 1951 on 19.11.2019 itself. The Chairman issued a notification on 20.11.2019, stating that the post of the Chief Executive Member has fallen vacant on account of no-confidence motion and fixing the date of election of new Chief Executive Member under Rule 22(2) of the Rules of 1951. Learned Advocate General argued that there was no question of invoking Rule 22(2) by the Chairman as that situation would have arisen only if no-confidence motion had been taken up under Rule 22(1) of the Rules of 1951. Mr. Teinwell Dkhar, the then Chief Executive Member was illegally removed from the office through no-confidence motion bypassing the mandate and procedure laid down in Rules 22, 71 and 71A of the Rules of 1951. Since report mandated in Rule 121 was not submitted before the Governor through the Department of District Council Affairs, Government of Meghalaya, the removal of Mr. Teinwell Dkhar, the then Chief Executive Member by no-confidence motion itself was illegal.

14. Learned Advocate General submitted that the Secretary to the District Council, KHADC, addressed a letter on 22.11.2019 under Rules

32(2) and 32(3) of the Rules of 1951, to the Deputy Commissioner, East Khasi Hill District informing that the petitioner has been elected with 15 votes and this should be taken as the report under Rule 22(2) of the Rules of 1951. However, complete proceedings of the meeting of the Council dated 20.11.2019 and 22.11.2019 were not sent to the District Council Affairs Department. It is submitted that submission of the report under Rule 22(2) of the Rules of 1951 to the Deputy Commissioner for onward submission of the same to the Governor actually meant in parliamentary democracy, report to the State Government for further information to the Governor with the advice of the Minister of District Council Affairs Department. One more letter also dated 22.11.2019 was addressed by the Secretary, KHADC to the Deputy Commissioner, East Khasi Hills District, which is identical to earlier letter dated 22.11.2019, except that in this letter Rule 10 and Rule 20(2) of the Rules of 1951 were also mentioned. The Deputy Commissioner sought comprehensive report from the Secretary, Khasi Hills Autonomous District Council and on receipt of the report dated 23.11.2019, forwarded the same to the Secretary to the Governor of Meghalaya, who communicated to the Secretary to the KHADC on 25.11.2019 that the Governor has approved the election of the petitioner as the Chief Executive Member.

15. Learned Advocate General submitted that there is no provision under Rule 22(2) for the Governor to approve the election of the Chief Executive Member. The Governor does not possess the power of this nature anywhere in the Constitution. Communication of this nature does not entitle

the petitioner to declare himself appointed as Chief Executive Member. In the parliamentary form of government, the decisions taken in the name of the Governor shall not confer the power on the Governor to assume the power of Executive. In view of the mandatory provisions contained in Articles 154 to 163 and 164 of the Constitution, the Governor under the Constitution is only *de jure* head of the State whereas the State Government is *de facto* authority. It is argued that action of even the constitutional authority without jurisdiction is *non-est* and State Government is not bound to take note of any such order. Moreover, there is absolutely no requirement in law to challenge the same in the Court of law. Since the very election of the petitioner as the Chief Executive Member was illegal, the advice by him to the Governor for nomination of four persons to be appointed as Executive Members and one person to be appointed as Deputy Chief Executive Member was wholly illegal.

16. Learned Advocate General submitted that if the State Government has no role in the affairs of the District Council, as argued by the learned counsel for the petitioner, there was no need for him to either implead the State Government as party respondent or seek mandamus there against, alongside the Governor of the State. Considering serious allegation of maladministration and infraction of the rules in conduct of elections, as narrated above, the affairs of the KHADC cannot be carried out in accordance with the provisions of the Constitution and the Rules of 1951. Moreover, there is frequent shifting of the allegiance by Members of the District Council to various groups based on political and personal gains.

There is a total lack of transparency in the functioning of the KHADC at present, which requires its overhauling as per provisions of the Constitution by necessitating invocation of paragraph 16(2) of the Sixth Schedule to the Constitution by the Governor of the State to appoint Administrator to take over and run the affairs of the District Council. It is therefore that the Government of Meghalaya through its Council of Ministers has advised the Governor of the State to pass an order under para 16(2) of the Sixth Schedule to the Constitution of India assuming unto himself all the functions and powers vested in and exercisable by the District Council and appoint an administrator, *inter-alia*, on the grounds that it is not possible to conduct the affairs of the Khasi Hills Autonomous District Council in accordance with the provisions of the Sixth Schedule to the Constitution of India. The Governor in the Constitutional scheme has no option but to accede to the advice rendered by the Council of Ministers.

17. Learned Advocate General, relying on the judgment of Gauhati High Court in **Alphonse A. Sangma Vs. Roynath D. Sangma & Others, (2011) 3 GLR 657**, argued that in that case it was held that in case of suspected mal administration of the affairs of the Autonomous District Council, the Governor can exercise the powers under Paragraph 16(2) of the Sixth Schedule to the Constitution to assume functions of the Council without having necessity to prove such mal administration. Therefore, the Governor is not bound to act on the advice of illegally elected Chief Executive Member, whose appointment is under cloud, particularly when the Government has already taken a view for invoking para 16(2) of the

Constitution of India. It is argued that as per instructions received from the Governor on 13.11.2019, conveyed through the Secretary to the Governor, notification appointing Chief Executive Member has not been issued by the Government and in respect of other Executive Members also, the Governor has written to the Government. Earlier approval with regard to election of the petitioner as Chief Executive Member by the Governor was only an internal communication and notification for such appointment on the advice of the Council of Ministers has not yet been issued.

18. Learned Advocate General submitted that the judgment of the Gauhati High Court in **Ram Sing Ronghang Vs. Karbi Anglong Autonomous Council, (2001) 3 GLR 344**, is founded on different set of facts and is distinguishable on the facts in the instant case inasmuch as the issue involved in that case whether there was any provision in the Rules of 1951 empowering the Chief Executive Member to remove a Member of the Executive Committee, which is not the question involved in the present case. Learned Advocate General in support of his arguments has also relied on the judgments of the Supreme Court in **Rai Sahib Ram Jawaya Kapur & Others Vs. State of Punjab, (1955) 2 SCR 225 : AIR 1955 SC 549**, **Samsher Singh Vs. State of Punjab, (1974) 2 SCC 831**, Supreme Court **Advocates-on-Record Association & ors Vs. Union of India, (1993) 4 SCC 441**, **Pu Myllai Hlychho & Others Vs. State of Mizoram & Others, (2005) 2 SCC 92**, **Nabam Rebia & Bamang Felix Vs. Dy. Speaker, Arunachal Pradesh Legislative Assembly & Others, (2016) 8 SCC 1**, and that of the High Court of Gauhati in **Satyeswar Daolagupu Vs.**

Secretary to the Government of Assam & Others, AIR 1974 Gau 20,
and **Alphonse A. Sangma Vs. Roynath D. Sangma & Others, (2011) 3**
GLR 657.

19. Mr. VGK Kynta, learned Senior Counsel appearing on behalf of the respondents No.6 and 7, relying on Constitution Bench judgment of the Supreme Court in **S.R. Bommai & Others Vs. Union of India and Others, (1994) 3 SCC 1**, argued that the Governor, as per Article 159 of the Constitution, is required to discharge his functions in accordance with the law to preserve, protect and defend the Constitution, as incorporated in the oath of his office. Relying on another Constitution Bench judgment of the Supreme Court in **Rameshwar Prasad and Others Vs. Union of India and anr, (2006) 2 SCC 1**, learned Senior Counsel argued that it is open to this Court in exercise of the power of judicial review to examine the question as to why, despite approval of the election of the petitioner, the Governor has not issued the appointment orders of four Executive Members and one Deputy Chief Executive Member to the Council. The Supreme Court in para 173 of the report in **Rameshwar Prasad**, supra, has elaborated on the law as to immunity to the Governor but in the present case, this argument cannot be advanced as neither the Governor of Meghalaya has been impleaded as party nor any such immunity has been sought on his behalf. It is argued that applying the above analogy and legal position as to the role of the Governor of Meghalaya vis-a-vis the Khasi Hills Autonomous District Council in the backdrop of the statutory position of Rule 20(1) of the Rules of 1951, it can be safely concluded that the

Governor of Meghalaya does not have any other discretion but to issue appointment orders of the Executive Members and Deputy Chief Executive Member, adhering to the advice rendered by the Chief Executive Member. The discharge of constitutional duty of the Governor of Meghalaya is independent and not subject to any aid or advise or even prior discussion with the State Cabinet unlike the Governors of Assam or Tripura or Mizoram. It is further submitted that the writ petition may be graciously allowed by directing the respondents No.1 and 2, to immediately place the advice of the Chief Executive Member of the KHADC as contained in his letters dated 27.11.2019 and 29.11.2019 (Annexures 8 and 9) before the Governor of Meghalaya for favour of appointment of Executive Members and Deputy Chief Executive Member on the advice of the Chief Executive Member, Khasi Hills Autonomous District Council in terms of the statutory mandate of Rule 20(1) of the Rules of 1951.

20. I have bestowed my thoughtful consideration to the rival submissions, perused the material on record and studied the cited precedents.

21. Before proceeding to examine merits of the case, I deem it appropriate to discuss the law laid down by some of the cited precedents.

22. The Supreme Court in **Pu Myllai Hlychho & Others Vs. State of Mizoram & Others**, supra, was called upon to examine the validity of termination of four members of the Mara Autonomous District Council, who were nominated by the Governor of Mizoram, by virtue of the powers conferred under sub-para (1) of Paragraph 2 read with Paragraph 20BB of

the Sixth Schedule to the Constitution. Their Lordships held that in so far as nomination of the members to the Autonomous District Council is concerned, the Governor under Para 2(1) of the Sixth Schedule can exercise discretionary powers but the power of termination under Para 2(6A) is not left to the discretion of the Governor and has to be exercised, as envisaged under various provisions of the Constitution, especially Article 163, on the aid and advice of the Council of Ministers. It was held that the appellants, who were nominated members held their office during the pleasure of the Governor and that the Council of Ministers advised the Governor to terminate their membership by placing all the relevant record before him. The Governor was not left with any discretionary power as he was bound by the advice given by the Council of Ministers. The satisfaction required by the Constitution is not a personal satisfaction of the Governor but the satisfaction in the Constitutional sense under the Cabinet system of the Government, implying that the Governor exercises all his powers and functions conferred on him, by or under the Constitution, on the aid and advice of the Council of Ministers, save in spheres where the Governor is required by or under the Constitution, to exercise his functions in his discretion. Neither the protection granted under Article 311 to the public servants is available to the nominated members nor are the principles of natural justice applicable in such a situation, held the Supreme Court. Present one however is neither a case of appointment nor of nomination where the State Government can claim to have any role. Herein the

petitioner has been elected by majority vote by members of the District Council in accordance with procedure envisaged by the Rules of 1951.

23. In **Nabam Rebia & Bamang Felix Vs. Dy. Speaker, Arunachal Pradesh Legislative Assembly**, supra, the dispute that reached the Supreme Court was in the context of discretion exercised by the Governor for preponing the session of the Legislative Assembly by suo motu exercising the powers under Article 174 of the Constitution, without the aid and advice of the Council of Ministers, and sending message to the Legislative Assembly, exercising his power under Article 175(2) of the Constitution, not to adjourn the House till the notice of the resolution for removal of the Speaker is decided one way or the other and to take up the resolution for removal of the Speaker, as the first item on the agenda of the business of the Assembly and further that until the Session of the Assembly was prorogued, the Speaker should not alter the party composition of the House. Their Lordships held that there are limited situations where discretionary powers of the Governor can be exercised independent of or contrary to, aid and advice of the Council of Ministers; firstly, when Constitution expressly provides for the same and secondly, where the Constitutional provisions could not be otherwise construed on a legitimate interpretation of the same and thirdly, where the Court has laid down that such discretion is available to the Governor. Article 163(2) of the Constitution however must be read subject to Article 163(1) of the Constitution. Premised on Article 163(2) of the Constitution, it cannot be said that the Governor has freedom to determine when and in which

situation he can take decision to exercise his discretion independent of or contrary to aid and advise the Council of Ministers. It was held that the discretionary power exercised by the Governor is amenable to judicial review. Ratio of this judgment however does not apply to the facts of the present matter.

24. The Supreme Court in **Samsher Singh Vs. State of Punjab and Others, (1974) 2 SCC 831** was dealing with a case of challenge to removal of two Judicial Officers from service in an appeal filed against the judgment of the High Court dismissing their writ petitions. Their Lordships held that wherever the Constitution requires satisfaction of the President or the Governor, for exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360, the satisfaction required by the Constitution is not the personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor, in the Constitutional sense under the Cabinet system of Government. That is the satisfaction of the Council of Ministers on whose aid and advice, the President or the Governor, generally exercises all his powers and functions. The decision of any Minister or officer under the Rules of Business under any of the Articles, i.e., Article 77(3) and Article 166(3), is the decision of the President or the Governor respectively. These Articles did not provide for any delegation, therefore, the decision of a Minister or Officer under the Rules of Business is the decision of the President or the Governor. Even where the Governor has the discretion, and acts on his own judgment, the

Governor exercises his discretion in harmony with the Council of Ministers. Appointment as well as removal of Judicial Officers of the subordinate judiciary is the discretion of the Governor to be exercised with the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution, held the Supreme Court. In para 192 of the report of the judgment in **Samsher Singh**, supra, the Supreme Court observed that in certain paragraphs of the Sixth Schedule mention was made of the phraseology "in his discretion" in relation to certain powers of the Governor, to highlight the fact that the Governor can exercise his discretion where provisions of the Constitution so permits. In para 18 of the report, their Lordships noted that there are two paragraphs in Sixth Schedule, namely, 9(2) and 18(3) where the words "in his discretion" are used in relation to certain powers of the Governor. Para 9(2) is in relation to determination of amount of royalty payable by licensees or lessees prospecting for, or extracting minerals to the District Council. Para 18(3) however has been omitted with effect from 21.01.1972.

25. A Division Bench of Gauhati High Court in **Nabin Chandra Kalita Vs. State of Assam, 1999 (3) GAULJ 321**, while examining Article 361(1) of the Constitution of India held that while the Governor of the State is not answerable to a Court for exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him, in exercise and performance of those powers and duties. But, on analysis of second proviso to Article 361(1), the Court further held that nothing in the said clause (1) of Article 361 shall be construed as restricting the right of

any person to bring appropriate proceedings against the Government of a State. It was held that Governor is entitled to immunity afforded by Article 361 of the Constitution in respect of an order passed by him under Section 197, Cr.P.C. or Section 19 of the Prevention of Corruption Act, 1988 in the sense that he is not personally answerable to a Court of law, but any such order passed by the Governor can still be challenged on grounds, other than malafide on the part of the Governor, before the Court and in such a proceeding, the State Government and not the Governor is the necessary party. Then it was further held that the second proviso to Article 361(1) itself makes it clear beyond doubt that the protection afforded to the Governor under clause (1) of Article 361 of the Constitution does not bar initiation of appropriate proceedings before the Court against the Government of the concerned State. Since the Government of the State of Assam was impleaded as a party respondent, the objection as to maintainability of the writ petition citing Article 361 of the Constitution was overruled in that case. This judgment is also wholly inapplicable to the present case as the State Government and the Secretary to the Governor but not the Governor, have been impleaded as party respondent and no malice has been attributed to the Governor.

26. In ***Alphonse A. Sangma***, supra, under challenge before the Gauhati High Court was the extension of appointment of Administrator by the notification issued by the Governor of Meghalaya under Paragraph 16(2) of the Sixth Schedule to the Constitution. The contemporaneous records revealed that such allegation had been, to some extent, enquired

into and the report, though preliminary in nature, substantiated the same. The Governor had appointed a regular Commission as envisaged in Paragraph 14 of the Sixth Schedule, *supra* for full-fledged enquiry into such allegations of maladministration, corruption and financial irregularities. The Cabinet memo produced before the Gauhati High Court revealed that all the material having bearing on the issue were laid before the Cabinet for its necessary recommendations to the Governor of the State. In those facts, the Gauhati High Court concluded that evidence of gross administrative and financial irregularities were not conducive to immediate restoration of the House without an appropriate investigation into spewing disclosure by the Commission though the Gauhati High Court also additionally observed about continued vacillation in allegiance leading to varying composition of the members in number and configuration per se betraying lack of stability for purposeful floor test to determine the majority in the House with reasonable permanence. The allegations of maladministration and corruption largely formed the basis for issuance of the notification extending the appointment of Administrator. Such being not the facts of the present case, ratio of that judgment can hardly apply here.

27. In **Satyeswar Daolagupu**, *supra*, under challenge before the Gauhati High Court was the Notification of the Government of Assam terminating the membership of the petitioners, who were nominated members of the Mikir Hills District Council. It was argued on behalf of the State of Meghalaya that the Governor is not to exercise his functions specified therein as the constitutional head of the State, but must exercise

the same in his discretion as the entire object and scheme of the Schedule is to provide for the administration of the autonomous districts and autonomous regions within the State of Assam by District Councils and Regional Councils, which has conferred the right on these Councils, without interference from or subordination to the State Government of Assam. It was further argued that under paragraph 2(6) of the Schedule, certain matters including matters relating to or connected with elections or nominations to District Councils have been left under the rule-making power, first of the Governor and then of the District or Regional Council, as the case may be. It was further argued that paragraph 11 of the Schedule provides that rules made by a District or Regional Council shall upon publication in the official Gazette have the force of law. These rules made under para 2(7) are also to be held as laws within the legislative competence of the District or Regional Council and the power of the State Legislature is impliedly excluded with regard to these matters as well. It was therefore argued that the executive power of the State of Assam cannot extend to the autonomous districts of Assam with regard to the matters specified in paragraphs 3(1), 2(6) and (1) of the Schedule and that the Governor in discharging his functions under the Schedule with regard to the autonomous districts or regions of Assam cannot act with the aid and advice of his Council of Ministers, but must act in his discretion. The petition was opposed by the State of Assam on whose behalf it was submitted that the Governor under the Sixth Schedule is required to act on the aid and advice of his Council of Ministers. The Division Bench of the Gauhati High Court

repelling the argument of the State of Meghalaya but upholding that of the State of Assam, held that "the Governor under the Sixth Schedule is required to act on the aid and advice of his Council of Ministers, except in so far as he may be expressly or by necessary implication required to exercise his functions in his discretion" and that "the Governor must exercise his functions under the Sixth Schedule, as respects these areas, with the aid and advice of his Council of Ministers, unless he is expressly or by necessary implication required to act in his discretion.", and further that "the Governor is required to act in his discretion expressly or by necessary implication only as respects paragraph 9(2) and perhaps paragraph 14(2)". It was therefore held that "if the matter of nomination of a member to the District Council or cessation of his membership has been allocated by the Governor to any Minister under the Rules of Business, the Minister in charge can exercise such powers of the Governor under Article 166(3) of the Constitution. The Minister would not be exercising the Governor's pleasure as a delegate, but the Governor, as the constitutional head of the State, would be exercising his pleasure through the Minister under the Rules of Business framed for more convenient transaction of the business of the Government." It was further held that "it is also not a matter in which he has to act in his discretion", and that "there is no requirement of hearing of the person concerned, before his tenure of service can be terminated by withdrawal of Governor's pleasure." The Gauhati High Court thus dismissed all the writ petitions. In the case in hand, the petitioner was

elected and was not nominated, therefore, ratio of this judgment also can have no application.

28. As already discussed, ratio of none of the above discussed judgments apply to facts situation obtaining in the present case and in any case, does not help the respondent-State in any manner. It is trite that a precedent is an authority for what it has actually decided and not for what can be deduced therefrom. In order to cull out ratio of a judgment, the law laid down therein has to be ascertained by analyzing the material facts and issues involved in the case in the light of the argument of both the sides. What is held in the given case should therefore be read with reference to the facts situation of that case in the context of a particular statutory provision interpreted by the court. A decision cannot be relied in support of what it did not even decide. The Courts should not place reliance on a decision without discussing as to how relied decision applies in the factual situation of the case before it. A little variance of the facts as also position of law between two cases may make a lot of difference in the precedential value of cited judgment. I may in this connection usefully refer to observations of the House of Lords in their celebrated decision reported as (1901) A.C. 495 titled *Quinn v. Leatham*, which reads as under:-

"every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particulars fact so f the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that any seem to follow logically from it..."

29. Before embarking on examination of rival submissions, I deem it appropriate to consider the background leading to creation of the Autonomous District Councils. On the Constitution of India coming into force, the United Khasi Jaintia Hills district was formed as one of the tribal areas of Assam by merging the Khasi States with the other areas of the Khasi-Jaintia Hills, boundaries whereof were defined by para 20 (2) of the Sixth Schedule to the Constitution of India. The State of Meghalaya was, thus initially, formed as an Autonomous State by virtue of Section 3 of the Assam Re-organisation (Meghalaya) Act, 1969, which came into force w.e.f. 2nd April, 1970. The Autonomous State of Meghalaya was created within the State of Assam and the said Autonomous State of Meghalaya comprised of the Autonomous District of Khasi Hills, the Autonomous Garo Hills District and the Autonomous District of Jaintia Hills. Thereafter, North Eastern Areas (Re-Organisation) Act, 1971 was enacted which came into force w.e.f. 21st January, 1972 and by virtue of the same, the State of Meghalaya came into existence, which comprised the territories contained in the said Autonomous State of Meghalaya, the Cantonment and the Municipality Areas of Shillong. It is significant to note that prior to the enactment of the North Eastern Areas (Re-Organisation) Act, 1971, the areas comprising in the Cantonment and the Municipality of Shillong (known as Normal Areas) did not form part of the Autonomous State of Meghalaya. Now the entire State of Meghalaya, save and except the Cantonment Area and the Normal Area, including Shillong Municipal Area, form the tribal areas and the same are administered under the Sixth

Schedule to the Constitution. Any legislative or administrative scheme for the administration of justice has to conform to, and abide by, the scheme of administration of justice as envisaged by the Constitution of India.

30. It is relevant to mention here that the constitutional scheme with regards to administration of justice, in the tribal areas, that is, areas falling under the Autonomous District and Autonomous Regions is envisaged in clause (2) of Article 244, contained in Para X of the Constitution of India, which makes it amply clear that the provisions of the Sixth Schedule shall apply to the administration of tribal areas, amongst others, in the State of Meghalaya. Para 1 of the Sixth Schedule provides for the formation of an autonomous district. Under sub paragraph (2) of Para 1 of the Sixth Schedule it is clearly mentioned that if more than one Schedule Tribe inhabits in any one of those Autonomous Districts referred to in sub paragraph (1) of Para 1, the Governor may, by public notification, divide the area or areas inhabited by different Schedule Tribes into Autonomous Regions. Paragraph (2) of the Sixth Schedule envisages that there shall be a District Council for each Autonomous District and under sub paragraph (2) it is provided that there shall be a separate Regional Council for each area constituted to be an Autonomous Region mentioned under sub paragraph (2) of Para 1 of the Sixth Schedule. Sub paragraph (3) declares that each of the District or Regional Councils shall be a body corporate with perpetual succession and a common seal. The composition of such autonomous bodies and the manner of choosing persons for being members of such Autonomous District Councils is also specified. Sub paragraph (4) of Para

2 provides that the administration of each of these Autonomous Districts or Regions shall vest in those bodies corporate respectively to the exclusion of each other. Sub paragraph (5) deals with the distribution of powers between the Regional and District Councils. Sub paragraph (6) of Para 2 empowers the Governor to make rules for the first constitution of District Councils and Regional Councils in consultation with existing Tribal Councils or other representative tribal organizations within the autonomous districts and the regions. Paras 3 to 17 deal with the administration of Autonomous Districts and Autonomous Regions.

31. The Constitution makers in their wisdom under para 2(6) provided that the Governor shall make Rules for the first constitution of District Council and Regional Council, in consultation with the existing tribal councils or other representative tribal organization within the autonomous districts of the region concerned. In exercise of the powers conferred upon him by sub paragraph (6) of Para 2, the Governor therefore framed rules called as "the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951". The Rules of 1951 so framed by the Governor for effective functioning of the District Councils, provide for - (a) the composition of District Councils and Regional Councils and the allocation of the seats therein. (b) the delimitation of territorial constituencies for the purposes of elections to those Councils. (c) the qualifications for voting at such election and the preparation of electoral rolls therefore. (d) the disqualification for being elected at such elections and as members of such Councils. (e) the term of office of members of the Councils. (f) any other

matter relating to or connected with elections or nominations to such Councils. (g) the procedure and conduct of business [including the power to act notwithstanding any vacancy] in the District and Regional Councils, (h) the constitution of Executive Committee consisting of the Chief Executive Members as the head and other members to exercise the executive functions of the District Council. (i) the appointment of officers and staff of the District and Regional Councils, etc.

32. Chapter II of the Rules of 1951 contains the provisions with regard to officers of the District Council. Rule 10 thereof provides that there shall be a Chairman and a Deputy Chairman of the District Council, who shall be elected by the District Council in the manner provided for in Rules 32 and 33. Rule 20(1) provides that the Chief Executive Member shall be elected by the District Council and the other Executive Members shall be appointed by the Governor on the advice of the Chief Executive Member from amongst the members of the District Council. Proviso to sub-rule (1) of Rule 20 stipulates that one from amongst the members under sub-rule (1) of Rule 19, may be appointed as Deputy Chief Executive Member by the Governor on the advice of the Chief Executive Member. Sub-rule (2) of Rule 20 provides that the election of the Chief Executive Member shall be conducted according to the procedure provided for the election of the Deputy Chairman in accordance with Rule 10, which Rule in turns provides that the Chairman and the Deputy Chairman of the District Council shall be elected in the manner provided for in Rules 32 and 33 of the Rules. Rule 32 in fact contains the procedure for election of the

Chairman and Rule 33 contains the procedure for election of the Deputy Chairman. Therefore, it is only Rule 33, which shall be followed for holding election of the Chief Executive Member. Sub-rule (1) of Rule 33 provides that when owing to the existence of any vacancy in the office of the Deputy Chairman, the election of the Deputy Chairman of the District Council is necessary, the Chair shall fix a date for the holding of the election and the Secretary of the Council shall send to every member notice of the date so fixed. Sub-rule (2) of Rule 33 provides that the procedure for election of the Deputy Chairman shall be the same as that for the election of the Chairman as provided for except that meeting for the election of the Deputy Chairman shall be presided over by the Chairman. Since the procedure for holding the election of the Chief Executive Member, as per the mandate of Rule 20(2) would be same as provided for the election of the Deputy Chairman in Rule 10, Rule 33 would be immediately attracted. As per sub-rule (2) of Rule 33, the procedure of election of the Deputy Chairman shall be the same as that for the election of the Chairman. The date for holding such election shall be fixed by the Chairman of the Council as provided by sub-rule (1) of Rule 33 and the Secretary of the Council would be required to send to every member notice of the date so fixed. It is nobody's case that any of these Rules were violated in the proceedings of the Council presided by the Chairman for holding the election of the petitioner.

33. Contention of learned Advocate General that since the letter dated 19.11.2019 addressed to the Secretary to Khasi Hills Autonomous District

Council seeking to move no-confidence motion against the Executive Committee headed by Mr. Teinwell Dkhar referred to Rule 71(1) of the Rules of 1951, therefore, such motion was incompetent as the Rule 71(1) pertain to policy of Executive Committee and that a valid no-confidence motion could be moved only under Rule 22(1) in a specially convened meeting of the Council, is noted to be rejected for the reason that Rule 22 is contained in Chapter IV captioned "Executive Committee", which refers to removal of the Executive Committee by no-confidence motion in its sub-rule (1) and gives the consequences thereof in sub-rules (2) and (3). But Rule 71 is placed in Chapter V captioned "Motions" and refers in specific to the motion of no-confidence and gives the procedure how will it be taken up for consideration. Merely because both the provisions were not mentioned in the notice of no-confidence motion and only one provision was mentioned, does not in any way render the law fully carried out no-confidence motion invalid. It is trite if source of power can be traced to a correct provision of law, mere reference to an incorrect provision would not denude the authority of its power. Here, it is not even a case of referring to wrong provision but is about omission of another correct provision and referring only one of the two. The argument advanced by learned Advocate General that Rule 71(1) is not meant for no-confidence motion but only pertains to policy of Executive Committee, is liable to be rejected. Negation of this argument does not require any elaborate discussion. Rule 71, which is reproduced hereunder, will speak for itself:

"71. (1) A motion expressing want of confidence in the Executive Committee or a motion disapproving the policy of the Executive Committee in regard to any particular matter may be made with the consent of the Chairman and subject to the restriction that the member making the motion shall present to the Secretary a written notice of the motion before the commencement of the sitting of the day.

(2) If the Chairman is of the opinion that the motion is in order, he shall read the motion to the Council and shall request those members who are in favour of leave being granted, to rise in their places and, if not less than one-fourth of the members present rise accordingly, the Chairman shall intimate that leave is granted and that the motion will be taken on such day, not being more than two days and not less than twenty-four hours from the time at which leave is asked for, as he may appoint:

Provided that if exigencies of business required, the Chairman shall have power to relax the rule and take up the motion earlier than twenty-four hours.

(3) If less than one-fourth of the members rise, the Chairman shall inform the member that he has not the leave of the Council."

34. It may be significant to note that the Chairman, KHADC, while notifying the election of the Chief Executive Member, endorsed copy of the notification dated 20.11.2019, to not only members of the Council but also to the Commissioner and the Secretary to Government of Meghalaya, District Council Affairs Department, Shillong and the Deputy Commissioner, East Khasi Hills District, Shillong. The report of the election of the petitioner with 15 votes was sent by the Secretary of the KHADC vide letter dated 22.11.2019 under Rules 32(2) and 32(3) of the Rules of 1951 to the Deputy Commissioner, East Khasi Hills District for onward submission to the Governor. The Deputy Commissioner on receipt of such report from the Secretary of the KHADC vide letter dated 23.11.2019, in turn forwarded the same to the Secretary of the Governor of

Meghalaya. It was thereafter that the Secretary to the Governor of Meghalaya communicated to the Secretary of the KHADC vide letter dated 25.11.2019 that "the Hon'ble Governor has approved the election of Shri Latiplang Kharkongor as the new Chief Executive Member (CEM) of the Khasi Hills Autonomous District Council". A copy of this letter was also endorsed to the Joint Secretary, District Council Affairs Department, Government of Meghalaya, for information and necessary action. The report submitted to the Deputy Commissioner, East Khasi Hills District, who is a functionary of the State, and through her, to the State Government, should therefore be taken as sufficient compliance of Rule 121 and in any case, cannot be taken as such a grave infraction of the rule so as to justify invocation of paragraph 16(2) of the Sixth Schedule.

35. As has rightly been argued by the learned counsel for the petitioner that the election of the petitioner as Chief Executive Member of the KHADC is not disputed before this Court since none of the parties has challenged his election in the present proceedings or otherwise. The petitioner being the *dominus litis* of the instant writ proceedings, the respondents cannot pray for any declaration in the present proceedings that the election of the petitioner itself was illegal. In fact, Rule 41 of the Rules of 1951 categorically provides that "No proceedings of the District Council shall be deemed to be, or ever to have been, invalid by reason of any rule not being, or not having been, complied with; but in case of any such non-compliance, any member may raise a point of order." Any member of the Council thus could raise a point of order in the proceedings of the Council

when the no-confidence motion was taken up for consideration. But such motion cannot be called in question for mere reason of procedural irregularity. I must however hasten to add that this Court is not examining the validity of the no-confidence motion carried out against the earlier Chief Executive Member as none, not even Mr. Teinwell Dkhar, the then Chief Executive Member, who was removed by no-confidence motion, has questioned such removal, by challenging the same before this Court or any other competent forum.

36. Mere fact that the State Government has not notified the election of the petitioner does not lead to a situation where it can be said that the petitioner has not at all been elected. The process of election is governed by the Rules of 1951, which does not anywhere provide for notification of result of election by the State Government. When the petitioner has been elected as the Chief Executive Member of the Council, validity of his election cannot be made to depend upon the contingency of the notification by the State Government or else as this would completely negate the opinion of the majority and shall undermine the autonomy of the District Council, howsoever limited it may be, envisaged in the Sixth Schedule to the Constitution of India. It may be significant to note here that order of the Governor granting approval to the election of the petitioner, regardless of whether it is at all required in law, has neither been withdrawn till date nor has been otherwise challenged by anyone, by procedure known to law, before any Court. The contention that the Governor of the State of Meghalaya is bound by aid and advice of the Council of Ministers and

since the State Government has advised him to appoint an Administrator, to run the office of the District Council by invoking paragraph 16(2) of the Sixth Schedule, could be a matter between the Government and the Governor. But the process of democracy cannot be scuttled only because the present political dispensation of the State does not approve of the election of the petitioner as the Chief Executive Member and the group led by him. So long as the petitioner enjoys the confidence of majority, his functioning as duly elected Chief Executive Member and that of his Executive Committee, cannot be stalled as that would frustrate the popular mandate. In fact, I feel tempted to uphold at least one forthright argument of the learned Advocate General that there is no provision under Rule 22(2) empowering the Governor to approve the election of the Chief Executive Member and that the Governor does not possess the power of this nature anywhere in the Constitution. Obviously, report of election of the petitioner as Chief Executive Member sent to the Governor is only in the form of communication of the event of his election by majority of votes only for being placed on record. In such a situation, there is no occasion for the State Government rendering aid and advice to the Governor with reference to Articles 163 and 164 of the Constitution and the Governor being bound thereby.

37. The argument of the learned Advocate General that after the Hon'ble Governor declined to invoke para 16(2) and refused to appoint the Administrator to take over the administration of the District Council, the Government has again requested the Governor to do so as according to him

it is not possible for the present Council to conduct its affairs according to the provisions of the Sixth Schedule to the Constitution, considering serious mal-administration and infraction of the Rules in the conduct of the election, particularly when there is frequent shifting of the allegiance by members of the district Council to various groups based on political gains. In the first place, there is absolutely no material placed on record to substantiate the allegation of maladministration, which argument, even otherwise, cannot be countenanced as the new Executive Committee is yet to be formed and has not started working. Secondly, it is for the Governor to decide whether or not to invoke para 16 of the Sixth Schedule to the Constitution of India. The Governor having once declined to invoke that Clause and refused to appoint the Administrator, mere perception of the present ruling dispensation that the Members of the Council are shifting their allegiance, from one group to another, based on their political and personal gains, cannot be a reason for this Court not to entertain the present writ petition, which is founded entirely on a different cause of action, namely, the advice tendered by the Chief Executive Member, whose election has been approved by the Governor himself, for appointment of the Deputy Chief Executive Member and the Executive Members of the KHADC as envisaged in Rule 20 of the Rules of 1951, having not been acted upon by the Governor. Thirdly, if at all what is being alleged is correct that there is frequent shifting of allegiance by members of the District Council to various groups for political gains, appropriate course for them would be to again invoke Rule 71 read with Rule 22 of the Rules of

1951 by moving no-confidence motion against him, like they did against the erstwhile Chief Executive Member. Omission to timely notify the appointment of Deputy Chief Executive Member and Members of the Executive Committee would only breed an atmosphere of uncertainty and encourage horse-trading, undermining the constitutional values and autonomy of the District Council. Looking to the scheme envisaged by the Constitution makers in Article 244 read with Sixth Schedule to the Constitution, the administration of scheduled and tribal areas, on certain specific matters, has been entrusted to the Autonomous District Councils. These areas are enlisted in Part I, IIA and III, appended to para 20 of the Sixth Schedule. Members of the Autonomous District Councils are elected by popular vote on the basis of adult suffrage (very few being nominated) which reflects the will of the people. The question whether the petitioner enjoys the confidence of the Council therefore cannot be a matter to be decided by the Governor on the aid and advice of the Government but can be decided only on the floor of the house. If majority of the members of the District Council by resolving to pass the no-confidence motion against the erstwhile Chief Executive Member, have elected the petitioner on such post even when the Council was already in session and was not specially convened, the core issue would still be whether the petitioner enjoys the confidence of majority. And if he does not, he can be unseated from his office only in accordance with the provisions contained in the Rules of 1951.

38. The question whether the Governor can refuse to accede to advice of the Chief Executive Member to appoint Members of the Executive Committee in the scope of the Sixth Schedule to the Constitution of India, fell for consideration of the Division Bench of the Gauhati High Court in **Ram Sing Ronghang**, supra, which is the nearest judgment on the question of law involved in this case and still holds the field. Ram Sing Ronghang was given the charge of Food and Civil Supplies Department in the Executive Committee by the Chief Executive Member of the Council. Later on certain differences arose between the two and therefore the Chief Executive Member of the Council by issuance of Notification dated 02.12.1997 relieved him of that responsibility from the Executive Committee. The Deputy Secretary In-charge of the Council wrote to the Commissioner & Secretary to the Government of Assam, Hill Areas Department on 20.4.1998 that the Chief Executive Member has inducted Sri Jeevan Pathak and Sri Mangal Sing Teron, who were Members of the Council, as Members of the Executive Committee of the Council and requested him for conveying the approval of the Governor accordingly. When nothing was done, he sent a reminder on 08.06.1998 followed by yet another reminder dated 31.07.1998. While the approval of the Governor to the appointment of Sri Mangal Sing Teron as Member of the Executive Committee of the Council was conveyed by letter dated 28.5.1999, but Sri Jeevan Pathak was not appointed as a Member of the Executive Committee of the Council. It was therefore that he filed the writ petition praying for issuance of a writ of mandamus to the respondents to approve/appoint him

as a Member of the Executive Committee of the Council. Two questions arose before the Court, namely, (1) whether Ram Sing Ronghang could be removed from the post of Member of the Executive Committee by the Chief Executive Member of the Council without any order for such removal being passed by the Governor of Assam and (2) whether in view of the advice given by the Chief Executive Member of the Council, the Governor was obliged to appoint Sri Jeevan Pathak as Executive Member of the Council. On thorough examination of the Rules of 1951, the Gauhati High Court, speaking through Hon'ble Mr. Justice A.K. Pathak, as his Lordships then was, held as under:-

"13. Rule 20(1) of the 1951 Rules quoted above further provides that other Members of the Executive Committee of a District Council "shall be appointed by the Governor on the advice of the Chief Executive Member" from amongst the members of the District Council. Thus, although the power to appoint the other members of the Executive Committee of a Council has been vested in the Governor, the power to choose a Member of the Executive Committee of the Council from amongst the members of the Council has been vested in the Chief Executive Member. There is therefore no discretion left with the Governor with regard to choice of a Member of the Executive Committee to be appointed by him and he has to follow the advice of the Chief Executive Member with regard to appointment of a Member of the Executive Committee of the Council. There is a similar provision in Article 75 of the Constitution which states that other Ministers shall be appointed by the President on the advice of the Prime Minister. There is also similar provision in Article 164 of the Constitution which provides that other Ministers shall be appointed by the Governor on the advice by the Chief Minister. Thus, the President and the Governor of a State have hardly any discretion with regard to choice of Ministers to be appointed by them and it is the Prime Minister or Chief Minister of a State who have the power under Articles 75 and 164 of the Constitution respectively to choose their own Ministers. The principle in

rule 20(1) of the 1951 Rules and Articles 75(1) and 164 of the Constitution that the Chief Executive Member will choose the other Members of the Executive Committee of a Council or the Prime Minister or the Chief Minister of a State will choose other Ministers of their Council of Ministers is a principle of a Cabinet System of Government which exists in England. Sir Ivor Jennings in his famous book "Cabinet Government", Third Edition, published by Cambridge University Press, 1969, has written:

The nomination of ministers rests with the Prime Minister. This does not mean that the Sovereign may not have considerable influence. Examples will presently be cited where Royal influence has been excluded persons from office. But as against the Queen the Prime Minister has the final word. He must have a Government which can work together and which can secure the support of the House of Commons. If he says that for this reason he must have the assistance of a certain person, the Queen must either give way or find another Prime Minister. The Queen cannot commission another member of the same party; for that is to interfere with the internal affairs of the party and is contrary to precedent. She must, therefore, find another party which can secure the support of the House of Commons, and it must be a strange House that is willing to support alternative Governments." (at page 61)

14. Rule 21(1)(b) of the 1951 Rules provides that the Chief Executive Member may at any time submit his resignation to the Governor through the Chairman of the Council, but a Member of the Executive Committee other than the Chief Executive Member is to submit his resignation to the Chief Executive Member. Thus, there is an express provision in rule 21(1)(b) that a Member of the Executive Committee other than the Chief Executive Member is to submit his resignation to the Chief Executive Member and not to the Governor, Rule 21(1)(b) states that on his resignation being accepted by the Governor, such Chief Executive Member will be deemed to have vacated office. It only speaks of the resignation of the Chief Executive Member being accepted by the Governor, but it does not anywhere state that the resignation of a Member of the Executive Committee other than the Chief Executive Member is to be accepted by the Governor. Since the said rule expressly provides that the resignation of a Member of the Executive Committee other than the Chief Executive Member is to be submitted to the Chief Executive Member, the only intent behind the rule

can be that resignation by a Member of the Executive Committee is to be accepted by the Chief Executive Member to whom it is submitted. Rule 21(1) of the 1951 Rules contemplates only two situations when a Member of the Executive Committee of a Council vacates his office : (i) when he ceases to be a Member of the Council; and (ii) when he submits his resignation. Rule 21 (2) contemplates a third situation when a Member of the Executive Committee ceases to hold office on the resignation or vacation of office by the Chief Executive Member. Sri Ram Sing Ronghang has not ceased to be a Member of the Council. The Chief Executive Member of the Council has also not resigned or vacated his office. First and third situations, as indicated above, therefore, do not exist in the present case. The present case is one where the Chief Executive Member, as per the affidavit-in-opposition filed on behalf of the Council, has lost confidence in Sri Ram Sing Ronghang. In such a situation, Sri Ram Sing Ronghang has to resign by submitting his resignation to the Chief Executive Member and the Chief Executive Member is to accept the said resignation under rule 21(l)(b) of the 1951 Rules.

15. It is true that under rule 20(1) of the 1951 Rules a Member of the Executive Committee of the Council is appointed by the Governor. Hence, normally and by virtue of what has been provided in section 16 of the General Clauses Act, 1897, a Member of the Executive Committee of the Council could be removed or dismissed by the Governor. But section 16 of the General Clauses Act itself makes it clear that the principle that an authority having power to make an appointment will also have the power to dismiss such person appointed by him will not apply where a different intention appears from the provisions of law sought to be interpreted. A different intention appears in the 1951 Rules. Although under rule 20(1) member of the Executive Committee other than the Chief Executive Member is appointed by the Governor on the advice of the Chief Executive Member, under rule 21(1)(b) such Member of the Executive Committee is to submit his resignation to the Chief Executive Member and not to the Governor. Thus, the intent of the rule 21(1)(b) is that the Chief Executive Member can remove a Member of the Executive Committee by accepting his resignation. This provision is unlike the provision in Article 75(2) of the Constitution which provides that a Minister shall hold office during the pleasure of the President. This provision

Committee. The aforesaid analysis would further show that once the Chief Executive Member of the Council decides to take a particular Member of the District Council as a Member of the Executive Committee of the Council and tenders his advice to the Governor to appoint him as a Member of the Executive Committee of the Council, the Governor has to appoint such person chosen by the Chief Executive Member as a Member of the Executive Committee of the Council.

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Committee. The aforesaid analysis would further show that once the Chief Executive Member of the Council decides to take a particular Member of the District Council as a Member of the Executive Committee of the Council and tenders his advice to the Governor to appoint him as a Member of the Executive Committee of the Council, the Governor has to appoint such person chosen by the Chief Executive Member as a Member of the Executive Committee of the Council.

18. Thus, once the Chief Executive Member of the Council has lost his confidence in Sri Ram Sing Ronghang, and

for the Karbi Anglong Autonomous Council, has informed the court that after the hearing of the writ petitions on 30.5.2000, the Chief Executive Member of the Council who had earlier tendered his advice to the Governor to appoint the petitioner, Sri Jeevan Pathak, as a Member of the Executive Committee of the Council has been replaced by another Chief Executive Member, and Sri Jeevan Pathak has been included in the Executive Committee of the Council by the said new Chief Executive Member. So long as Sri Jeevan Pathak continues to enjoy the confidence of the new Chief Executive Member he will continue as a Member of the Executive Committee of the Council and in case any formal orders are necessary to that effect, the State Government and the Secretary to the Governor of Assam will place the relevant file before the Governor for such formal orders."

39. A detailed analysis of the Rules of 1951, makes it clear that the principles of the Cabinet system of the Government are ingrained in its various provisions, especially Rule 20, according to which it is the prerogative of the duly elected Chief Executive Member of the Council to choose the Deputy Chief Executive Member and other Members of the Executive Committee of the District Council. In the event of such advice, the Governor has to appoint person/persons of his choice accordingly. This provision is analogous to Article 75 of the Constitution, which vests the authority in the Prime Minister to advise the President to appoint other Ministers and Article 164 of the Constitution, which similarly empowers the Chief Minister to advise the Governor to appoint the other Ministers. Both these constitutional provisions do not leave any discretion with either the President or the Governor, as the case may be, as to the choice of the persons to be appointed as Ministers. In view of the afore-discussed law, it must be held that on the advice being rendered by the petitioner in his capacity as the Chief Executive Member, for appointment of one Deputy

Chief Executive Member and four Executive Members of the Executive Committee of the KHADC, the Hon'ble Governor of the State of Meghalaya does not have any discretion to withhold their appointment and has no option but to notify their appointment acting on such advice.

40. Having regard to the conclusion that has been arrived at following the above discussion, this petition deserves to succeed and is accordingly allowed. The respondent No.1, namely, the Secretary to the Governor of Meghalaya, Raj Bhawan, Shillong is directed to place the relevant file before the Hon'ble Governor of the State of Meghalaya for issuance of the formal orders accordingly.

Meghalaya
28.01.2020
"*Lam* AR-PS"



(Mohammad Rafiq)
Chief Justice