
(2011) 01 GAU CK 0065
In the Gauhati High Court
Case No : Writ Appeal No. 387 of 2010

Alphonse A. Sangma

APPELLANT

Vs

Roynath D. Sangma and Others

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 — Rule 17, 19, 19(2), 20, 22
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Constitution of India, 1950 — Article 1, 142, 153, 162, 163

Citation : (2011) 3 GLR 657 : (2011) 2 GLT 80

Hon'ble Judges : I.A. Ansari, J; Amitava Roy, J

Bench : Division Bench

Advocate : N. Dutta and D. Baruah, for the Appellant; Vijay Hansaria, Sneha Kalita, S.G. Momin, S. Sangma and D. Saikia, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—Abstruse issues of constitutional overtones in the singular perspective of the Sixth Schedule confront this Court in this adjudicative venture. In assailment in the present appeal is the judgment and order dated 16.11.2010 rendered by a learned Single Bench of this Court in WP(C) 330 (SH)/2010. Not only thereby the notification No. DCA.18/2004/Pt./141 dated 17.9.2010 in the name of the Governor of Meghalaya under Paragraph 16(2) of the Sixth Schedule to the Constitution of India extending the term of administration of Garo Hills Autonomous District and conduct of the functions and powers vested in or exercisable by the Garo Hills Autonomous District Council (for short hereafter referred to as the Council) has been annulled, operative directions have been issued as well inter alia to convene a Special Session of the Council by the State Respondents on 25.11.2010 at 10A.M. for holding a floor test to ascertain if the Nationalist Congress Party (for short hereafter referred to as the NCP) led alliance command the majority in the House and to submit compliance report to this Court on or before 28.11.2010.

2. We have heard Mr. N. Dutta, Sr. Advocate assisted by Mr. D. Baruah, Advocate for the Appellant, Mr. Vijay Hansaria, Sr. Advocate assisted by Ms. Sneha Kalita, Smt. . S.G. Momin and Mr. S. Sangma, Advocates for the Respondent No. 1 to 18 and Mr. D. Saikia, learned Additional Advocate General, Meghalaya for the official Respondents.

3. The instant appeal filed on 23.11.2010 was moved for admission on the next date i.e. 24.11.2010 at 2 P.M., the Respondents 1 to 18 being represented by Mr. S. Dey, Advocate. After hearing the learned Counsel for the parties for the admission and the interim relief prayed for by the Appellant, by order of the same date i.e. 24.11.2010, the operation of the impugned judgment and order was kept in abeyance till the returnable date i.e. 1.12.2010. The interim restraint notwithstanding, the floor test was conducted on 25.11.2010. The parties have exchanged their pleadings on this facet of the debate, which would be alluded to at a later stage. As the hearing of the appeal on merits progressed thereafter, further steps on the basis of the floor test so held have reportedly not been pursued.

4. The pleadings that lay the preface of the emulous submissions that have followed deserve their primacy at this juncture. The private Respondents, as the writ Petitioners on 06.09.2010 instituted WP(C) 272(SH)/2010 at the Shillong Bench of this Court seeking to invoke the writ jurisdiction thereof for an appropriate writ to quash the notification No. DCA.18/2004/Pt./80 dated 1.4.2010 as well as the notification No. DCA.18/2004/Pt./81 of the same date whereby the Governor of Meghalaya in exercise of power conferred by paragraph 16(2) of the Sixth Schedule to the Constitution of India had assumed to himself the administration of the Garo Hills Autonomous District as well as all functions and powers vested in or exercisable by the Council and had consequently appointed Shri S. Goel, IAS, Deputy Commissioner, West Garo Hills District, Tura, to exercise all the functions and powers exercisable by the Executive Member, Chairman, Deputy Chairman and Executive Member of the said Council subject to such directions to be issued by him from time to time. Prior thereto, on 6.4.2010, the Appellant herein had lodged a caveat anticipating such challenge in view of a notification dated 30.3.2010 issued by the Governor of Meghalaya whereby, according to him, he had invited the interested parties in the opposition sitting in the Council to attempt and prove their majority. In the caveat application, the Appellant introduced himself to be an elected representative of the Garo people and a member of the Council representing 15 MDC as part of the sitting opposition who had proposed a vote of no confidence contending majority and registering a claim for forming the next Government/Executive Committee in the District Council of Garo Hills. The Appellant thereafter during the pendency of the aforementioned writ petition also applied to be impleaded as a Respondent therein. The interim application registered as MC 400/2010, after hearing the learned Counsel for the parties and on a consideration as well of the written objection filed by the writ Petitioners was allowed by order dated 30.9.2010 and he (Appellant) was impleaded as a Respondent in the writ petition which was

eventually closed on withdrawal on 4.10.2010. It was on the next date i.e. 5.10.2010 that WP(C)330(SH)/2010 was initiated seeking the following reliefs:

(i) Nullification of the notifications dated 1.4.2010 and 17.9.2010.

(ii) Immediate convention of a session of the Council to hold floor test for ascertaining the majority confidence of the House.

5. The private Respondents/writ Petitioners claim to be permanent residents belonging to the Garo Schedule tribe. Following the election to the Council from the 29 constituencies thereof held on 12.2.2009, they were elected from their respective constituencies. The Council is comprised of 29 elected and one nominated member making the total strength of the House as 30. Out of the 29 seats, 19 in the election was secured by candidates nominated by the NCP and Smt. Ethel Witty Ch. Marak was the nominated member. According to the private Respondents, the first meeting of the newly constituted House of the Council was held on 18.2.2009 and thus in terms of paragraph 16(2) of the Sixth Schedule to the Constitution of India, each of the elected members thereof were entitled to hold his/her office for a minimum term of five years on and from that date.

6. As the matter stood at that, the Governor of Meghalaya by notification No. DCA 18/2004/Pt./65 dated 30.03.2010, in exercise of his power under Rule 36(5) of the Assam and Meghalaya Autonomous Districts (Constitution of District Council) Rules, 1951 (for short hereafter referred to as the Rules) summoned a special session of the Council to meet on 31.3.2010 at 10.30 A.M. for proving the majority in the floor of the House. Incidentally the Council at the relevant point of time was in session deliberating upon the budget proposals on 30.3.2010. The writ Petitioners have averred that thus there was no contingency to summon a special session thereof. Additionally, inspite thereof, in view of Rule 22(1) read with Rule 71(1) of the Rules, the Chairman of the Council convened a special session on 30/3/2010 and a report was forwarded by him to the Governor of Meghalaya vide the communication No. GHAC/Ch./Gov/001 dated 30.3.2010 on the same day indicating the support of majority of the 16 members in the House in favour of the Executive Committee headed by Shri P.K. Sangma, writ Petitioner No. 8. The above notwithstanding, the notification dated 1.4.2010 was issued in the name of the Governor of Meghalaya in purported exercise of power under paragraph 16(2) of the Sixth Schedule to the Constitution of India. The writ Petitioners have attributed colourable exercise of power informed with political considerations vitiating this action.

7. While assailing as well, the notification dated 1.4.2010 appointing the Deputy Commissioner, West Garo Hills District, as the Administrator of the Council as per the direction of the Governor of Meghalaya and the notification dated 17.9.2010 extending the term of the suspended animation of the House for a further period of six months w.e.f. 1.10.2010, the writ Petitioners have insisted that since the date of the first meeting of the Council they, as the members thereof owing allegiance to NCP had enjoyed the overwhelming majority. On the date of the

institution of the writ petition as well they asserted that they constituted the single group of 18 members and thus claimed majority to be eligible and entitled to form the Executive Committee of the Council and to administer its affairs. According to them, the majority members of the Council owing allegiance to the NCP submitted memorandum dated 8.5.2010, 23.8.2010 and 25.8.2010 before the Governor of Meghalaya expressing their solidarity and confidence demanding the withdrawal of the notifications dated 1.4.2010. They also averred to have paraded before him in group to prove the above as their memoranda/representations failed to evoke any response. They, however, admitted that meanwhile the seat of the nominated members fell vacant due to withdrawal of the nomination of Smt. Withel Witty Ch. Marak for having supported the majority group of members owing allegiance to NCR. They denounced the notification dated 1.4.2010 and 17.9.2010 to be afflicted by colourable exercise of power in absence of any tangible ground in support thereof and impeached the same to be in gross abuse of the constitutional scheme enshrined in paragraph 2(6A) of the Sixth Schedule.

8. The State Respondents in their counter affirmed by the Under Secretary to the Government of Meghalaya, District Council Affairs Department, refuted the claim of majority of the writ Petitioners in the House pleading absence of any material on record to that effect. The answering Respondents admitted that in terms of Rule 6 of the Rules adopted by the Council, it is comprised of 29 elected and one nominated member and that Smt. Ethel Witty Ch. Marak though nominated, the Governor of Meghalaya in exercise of its powers under Paragraph 2 (6A) of the Sixth Schedule to the Constitution of India was eventually pleased to withdraw the said nomination. They maintained that on an examination of a representation submitted by 16 members of the Council (but signed by 15 of them), the Governor of Meghalaya being satisfied that it was warranted in the best interest of the democratic norms recommended that a Special Session be summoned under Rule 36(5) of the Rules for proving the majority on the floor of the House. On the approval of his Excellency to the above effect, the State Government vide notification dated 30.3.2010 directed such session to be summoned to meet on 31.3.2010 and authorised the Chairman to preside over the same. In response, however, the Chairman of the Council by his letter dated 30.3.2010 addressed to the Governor of Meghalaya sought for a clarification indicating that the Council was in session and that 16 members thereof were in support of the Executive Committee.

9. The answering Respondents perceived this response of the Chairman of the Council to be in disregard of the order of the Governor of Meghalaya. According to them, the proceeding of the ongoing session of the House held on 30.3.2010 disclosed that the democratic norms had not been adhered to inasmuch as four members were not allowed to cast their votes in violation of the letter and spirit of the Sixth Schedule of the Constitution of India and the Rules framed thereunder. The Respondents have averred that in the above facts and circumstances, there was no option left but to take over the administration of the

Council and to appoint an Administrator in exercise of power under paragraph 16(2) of the Sixth Schedule to the Constitution of India.

10. With reference to the memoranda/representations dated 8.5.2010, 21.5.2010 and 23.8.2010, it has been stated that these patently testified horse trading for the formation of the Executive Committee of the Council. The answering Respondents also mentioned about reports received by the Government on irregularities in the Council, which warranted investigation to facilitate which it was essential to install a free and fair environment. The State Cabinet thus recommended the extension of the term of six months mentioned in the notification dated 1.4.2010 as well as the constitution of a Commission of Inquiry under paragraph 14 of the Sixth Schedule to the Constitution of India. The answering Respondents alleged that all such irregularities had ensued with the consent and approval of the Executive Committee for which inter alia it could not pay the salary and pay of the staff for six months. They also pleaded release of the following amounts by the concerned State Departments to the Council for the corresponding period as herein below:

Name of Department

Year

Amount (in Rs.)

Mining & Geology

2009-2010

5,29,28,241/-

2010-2011

3,00,00,000/-

Forest & Environment

2009-2010

1,73,22,867/-

Transport Department

2009-2010

49,99,883/-

11. While endorsing the issuance of the notification dated 17.9.2010 on the above counts, the Respondents have as well averred that meanwhile a Commission of Enquiry had been appointed to enquire into and report on the affairs and the administration of the Council.

The present Appellant did not file any affidavit. His application for impleadment as a Respondent in the writ petition, however, was allowed on 25.10.2010 and

the arguments in the writ petition were heard on the very same date whereafter the impugned judgment and order followed on 16.11.2010.

12. The Respondent No. 1 here in his affidavit in the appeal while seeking to vacate the same has in essence pleaded that in compliance of the judgment and order of the learned Single Judge, the Deputy Commissioner, West Garo Hills, by his letter dated 22.11.2010 required the Secretary, Legislative Branch, Garo Hills Autonomous District Council, to summon a special session of the House on 25.11.2010 who on 23.11.2010 issued notice to all the members of the Council intimating them of the said session. While contending that the Appellant had suppressed the above fact from this Court, the Respondent No. 1 averred that the appeal was heard for admission on 24.11.2010 at 2 P.M. and that the Court rose at 2.40 P.M. without pronouncing any order and that its order of interim restraint was available to the parties only after 12 Noon on 25.11.2010. According to this Respondent, the Appellant had sent a copy of the said order by fax at about 2 P.M. on 25.11.2010 to the Secretary of the Executive Committee of the Council but by that time the confidence motion had already been passed in his favour. The Respondent asserted that the majority has been established in his favour in the floor of the House and that the Appellant, lacks locus standi to oppose the revival of the Council as a member thereof. According to him, the Appellant did neither seek time to file reply to the writ petition after the order of impleadment was passed nor did submit anything on merit.

13. In his reply, the Appellant denied of having been served with the communication dated 23.11.2010 intimating about the special session of the House on 25.11.2010. According to him, this communication was placed in course of the hearing on 24.11.2010. Responding to the pleas of Respondent No. 1 he has asserted that in course of the admission hearing on that day, this Court had clearly indicated that the appeal was being taken up for consideration of the interim relief as well and that they knew that the Court would pass appropriate orders on the prayer therefore on that day itself. They further averred that on 24.11.2010, the certified copy of the order of the instant date passed in the writ appeal could not be obtained due to paucity of time as by the time the order was signed the Copying Section of the Court had closed down. He, however, asserted that his Counsel upon his instructions issued a communication dated 24.11.2010 addressed to the Secretary, Garo Hills Autonomous District Council, expressly stating that this Court had kept in abeyance the judgment and order dated 16.11.2010 passed in WP(C)330(SH)/2010 and that therefore the directions contained therein (impugned judgment and order) ought not to be given effect to. He also averred to have visited the residence of Shri A. Momin, Secretary, Legislative Branch, Garo Hills Autonomous District Council, Tura, along with Mr. Brigady N. Marak and Mr. Premananda Koch at about 9.30 P.M. that night to hand him over a copy of the said communication. According to him, the Secretary, Garo Hills Autonomous District Council, insisted for a certified copy of the order to be produced before 10 A.M. on the next date i.e. 25.11.2010 else the proceedings of the special session would be conducted. The Appellant further

stated that around 9.45 A.M. on 25.11.2010, he along with Mr. Brigady N. Marak and Mr. Premananda Koch also approached the Secretary, Executive Committee, Shri H.A. Sangma and handed over to him a copy of the communication issued by his counsel on 24.11.2010 but this authority as well did not pay any heed and insisted for a certified copy of the order passed in the appeal. That Shri Besterfield N. Sangma, the Leader of Opposition had also approached the Deputy Commissioner, West Garo Hills District, with a copy of the communication dated 24.11.2010 was stated. The Appellant maintained that on 24.11.2010, upon his instructions, his learned Counsel had depatched a fax message of the communication of the same date intimating about the interim order of this Court to the Official quarter of the Deputy Commissioner, West Garo Hills.

14. The Appellant has thus imputed intentional and deliberate violation of the interim order of this Court inspite of full knowledge thereof by the Respondents. According to him, the certified copy of the order dated 24.11.2010 passed in the appeal was faxed to the Office of the Deputy Commissioner, West Garo Hills at about 11.43 A.M. of 25.11.2010. He has thus repudiated the proceedings of the special session held on 25.11.2010 to be a nullity. He has insisted on affirmation that on the prayer being made on his behalf by his learned Counsel before the learned Single Judge, praying for time to file counter to the writ petition, a copy thereof was only handed over to him during the course of the hearing on 25.10.2010 and that he was not offered any opportunity to instruct him (his learned Counsel) who was thus rendered unable to advance his arguments on the merits of the case.

In the background of the above pleaded matrix, Mr. Dutta has persuasively argued that the impugned notifications dated 1.4.2010 and 17.9.2010 being the yield of the subjective satisfaction of the Governor of Meghalaya, drawn on the basis of objective materials at his disposal, no interference therewith was warranted in the facts and circumstances of the case in the exercise of this Court's limited power of judicial review. While emphasising on the abstention on the part of the learned Single Judge to examining the validity or otherwise of the notification dated 1.4.2010, the term whereof in essence was extended by the one dated 17.9.2010, the learned Sr. Counsel urged that the writ Petitioners having failed to assail the judgment and order in appeal on that count was estopped from supporting it on merits. The notification dated 1.4.2010, therefore, being valid for all intents and purposes, having regard to the constricted scope of analysing the sufficiency of materials warranting the same, no interference with the extension notification dated 17.9.2010 is sustainable, he urged. Mr. Dutta contended that the impugned decision appealed against is nonest in law as well for denial of reasonable opportunity of hearing to the Appellant following his impleadment on the very day on which the arguments were heard and closed for judgment. The learned Sr. Counsel reiterated that inspite of repeated requests made by the Appellant, only a copy of the writ petition was served on him on the very same date but he was not accorded any scope to present his case in refutation of the writ Petitioners' pleas.

15. Referring to paragraphs 2, 3 and 4 of the Sixth Schedule to the Constitution of India in particular, Mr. Dutta maintained that as the Council envisioned thereby was essentially a conglomeration of judicial, legislative and executive institutions, mal-administration of its affairs could assuredly be a ground for invoking the powers exercisable under para 16(2) thereof. As the legislative, executive and administrative powers are vested in the Council as one unit, the view of the learned Single Judge in the context of Article 356 of the Constitution of India that mal-administration by a State Government enjoying majority in the Assembly was not a ground available to invoke the said provision was not only untenable but too broad a proposition to be applied to the textual facts, he pleaded. Analysing the salient features of this constitutional provision, the learned Senior Counsel maintained that depending on the contingencies though the President under Article 356 of the Constitution of India can adopt any of the courses contemplated in Clause (a), (b) and (c) in the alternative or in conjunction, institution wise segregation therefore is neither contemplated nor feasible in similar eventualities vis-a-vis a Council under the Sixth Schedule. The factors identified by the learned Single Judge in testing the sustainability of the impugned notification dated 17.9.2010 excluding mal-administration to be a ground therefore in this premise has been obviously an erroneous approval, he insisted. Referring profusely to the series of memoranda/representations submitted by the varying groups of the members of the Council staking their majority in the House, Mr. Dutta urged that the composition of the signatories per se demonstrate continuous shift of allegiance and consequent lack of permanence in their formations so as to assure a stable Executive Committee.

Drawing the attention of this Court amongst others to the report dated 28.5.2010 (Annexure E to the affidavit in opposition of the State Respondents), Mr. Dutta, insisted that it would be apparent therefrom that the conduct of the affairs of the Council was sullied by rampant mismanagement and corruption resulting in colossal siphoning of public revenue. The learned Single Judge though had taken note of the Cabinet Memorandum dated 6.9.2010 referring to such instances of mal-administration on a wrong interpretation of the renderings in *S.R. Bommai and others Vs. Union of India and others etc. etc.*, and *Rameshwar Prasad and Others Vs. Union of India (UOI) and Another*, declined to construe the same to be a relevant consideration for exercise of power under paragraph 16(2) of the Sixth Schedule to the Constitution of India disregarding the distinction in configuration of a Council and a State Government with three independent constituents namely, legislature, executive and judiciary, he urged. As the mal-administration of the affairs of the Council evidenced inter alia by the whimsical, irresponsible and arbitrary squandering of public money was an outright constitutional sacrilege the same per se constituted a decisive and persuasive determinant for necessary remedial intervention under paragraph 16(2) of the Sixth Schedule, he pleaded. As in the existing state of affairs, the Governor of Meghalaya was satisfied on the basis of contemporaneous and tangible materials that the administration of the Council could not be carried on

in accordance with the provisions of the Sixth Schedule to the Constitution of India, the notification dated 1.4.2010 was rightly issued, he contended. To endorse this submission, Mr. Dutta also referred to the proceedings of the Fifth Session of the Council held on 30.3.2010, which, according to him, attested subversion of all democratic norms in the House of the Council. He also assailed the impugned judgment and order to be per incuriam of a decision of a coordinate Bench rendered in *D. Uphing Maslai and Anr. v. State of Assam and Anr.* 2001 (3) GLT 510.

16. Vis-a-vis, the operative directions contained therein, Mr. Dutta besides seeking to impress upon us that the same were beyond the purview of the jurisdiction of a writ Court, has urged that thereby the learned Single Judge had amongst others superceded the relevant provision in the Rules mandating notice for such special sessions. According to him, even assuming that interference with the notification dated 17.9.2010 was valid, the same per se did not revive the House of the Council in absence of any order to that effect by the Governor of Meghalaya and that, therefore, the direction to hold the floor test in such an eventuality was null and void. Not only by the directions so issued the Appellant was denied notice of the proposed floor test, even the statutory empowerment of nomination engrafted in paragraph 2(A) was sought to be nullified. The learned Sr. Counsel thus contended in summation that the impugned judgment and order is patently unsustainable in law and on facts and is liable to be interfered with. Qua the holding of the floor test on 25.11.2010, Mr. Dutta pleaded that the same was staged in blatant and deliberate violation of the order of interim restraint dated 24.11.2010 of this Court, which called for necessary penal action. To endorse his arguments the learned Sr. Counsel placed reliance on the following decisions.

S.R. Bommai and others Vs. Union of India and others etc. etc., .

Rameshwar Prasad and Others Vs. Union of India (UOI) and Another,

Jagdambika Pal Vs. Union of India and Others,

(2005) 3 SCC 150: *Anil Kumar Jha v. Union of India and Ors.* (2008) 1 SCC 683 : *Divisional Manager, Aravali Golf Club and Anr. v. Chander Hass and Anr.*

State of Rajasthan and Others Vs. Union of India and Others,

17. In emphatic controversion of the above, Mr. Hansaria has at the threshold questioned the credibility of the Appellant's resistance to the restoration of the Council of which he admittedly is a member and contemned it to be an affront to all democratic notions. Pointing out that the instant appeal is not by the State, the learned Sr. Counsel pleaded that the Appellant in the facts and circumstances of the case is thus not entitled to any relief. Mr. Hansaria urged with elaborate reference to the various memoranda/representations submitted by the writ Petitioners, proceedings of the budget session of the House conducted on 30.3.2010 as well as the floor test held on 25.11.2010 that through out they

(Petitioners) owing allegiance to the NCP have commanded majority and that therefore the interference of the Governor of Meghalaya under the purported exercise of power under Sixth Schedule to the Constitution of India was wholly uncalled for. While pleading that the passing of the Budget of the Council in the floor of the House thereof on 30.3.2010 testified the majority of the NCP led members thereof and that therefore, no special session was imperative, he maintained that as even otherwise the Chairman of the Council by his letter dated 30.3.2010 addressed to His Excellency the Governor of Meghalaya, Shillong, detailing the reasons against the necessity of a special session summoned by him, having eventually left it to him to decide on the issue, there was no contingency at all to invoke the extraordinary powers under paragraph 16(2) of the Sixth Schedule to the Constitution of India. This is more so as the proceedings of the House conducting the Budget session on 30.3.2010 witnessed that the no confidence motion against the Executive Committee in office stood defeated. This decisively negated the necessity of the notification dated 1.4.2010, he insisted.

18. The learned Sr. Counsel referring amongst others to the memoranda/representations dated 8.5.2010, 21.5.2010 and 23.8.2010 of the members of the Council contended that though all of them sought for a floor test, the Governor of Meghalaya dithered to respond thereto on one hand and instead extended the term of the suspended animation of the Council without ascertaining the imperative need therefor. Mr. Hansaria was critical of the delay in the response of the Governor of Meghalaya vis-a-vis these memoranda/representations in contradistinction to the noticeable expedition in summoning a special session of the Council by the notification dated 30.3.2010 on the very next day. The learned Sr. Counsel dismissed the allegations of mal-administration against the Council contending that those were post notification dated 1.4.2010 developments and pointed out in specific terms that the Cabinet memorandum dated 6.9.2010 embodying particulars of such anomalies were in fact not the recorded conclusions of the Cabinet.

19. On a detailed allusion to paragraph 14 and 16 to the Sixth Schedule to the Constitution of India as a whole, the learned Sr. Counsel urged that having regard to the composite scheme portrayed thereby, the power under paragraph 16(2) is not exercisable in absence of any report by the Commission to be appointed by the Governor. Mr. Hansaria also relied upon Rule 19, 20 and 22 of the Rules delineating the procedure for removal of the members of the Executive Committee of the-Council to contend that the summary procedure adopted in the instant case is not approvable in law.

20. With profuse reference to various excerpts from the decisions of the Apex Court in Bommai, supra, the learned Sr. Counsel endorsed the determination of the learned Single Judge that corruption and mal-administration were not the grounds comprehended for invocation of Article 356 of the Constitution of India. He pleaded as well on the basis of the said rendering that on the invalidation of

the notification dated 17.9.2010, no further intervention of the Governor was essential to revive the Council. As the decision in Rameswar Prasad, supra, had noticed the one in Bommai, supra, the former by no means can be held to be per incurium, he urged. In any view of the matter, the observations in Rameswar Prasad, supra, did not override those in Bommai, supra, bearing on the exclusion of corruption and mal-administration as grounds for resorting to Article 356 of the Constitution of India, he argued. According to him, as anti defection laws in the Sixth Schedule areas having been rendered non est by the decision of this Court in Hispreacheringson Shylla Vs. Khasi Hills Autonomous District Council and Others, shifting of allegiance thus could not be taken note of as well for applying paragraph 16(2) and thus on that count as well the notifications dated 1.4.2010 and 17.9.2010 are clearly non est and void ab initio. As the assumed non-compliance of the notification dated 30.3.2010 was the overwhelming factor leading to the issuance of the notification dated 1.4.2010, the Appellant ought not to be aggrieved by the operative directions contained in the impugned judgment and order he contended. Further as he has at no point of time raised any grievance for want of notice for such floor test, this plea as well is not entertainable in the instant appeal, he argued. While pointing out that the directions issued by the Apex Court from time to time in holding floor test in the Assembly were not necessarily under Article 142 of the Constitution of India, Mr. Hansaria has endorsed the directions to that effect in terms of the impugned judgment and order relying on the decisions in B.C. Chaturvedi Vs. Union of India and others, insisting that thereby on complete justice was intended by this Court. He argued with reference to Shri Ravinder Kumar Sharma Vs. The State of Assam and Others, that the writ Petitioners are entitled to support the impugned judgment and order even if no appeal had been preferred by them as the ultimate decision had been recorded in their favour. The learned Sr. Counsel has distinguished the decision of this Court in D. Uphing Maslai (supra) stating that it was rendered in a different set of facts.

21. The learned Sr. Counsel expressed his stout reservation about the plausibility of the Appellant's learned Counsel's knowledge and information about the order dated 24.11.2010 after the office hours of this Court and sounded critical of the functioning of the office as well in this regard. He, however, insisted that in absence of a certified copy of the said order, the holding of the floor test on 25.11.2010 at 10 A.M. could by no means be faulted with and the imputation of deliberate and wilful violation of the interim order is wholly unfounded. He implored the dismissal of the appeal mentioning that in view of the prevailing stasis in the affairs of the Council. To buttress his arguments, Mr. Hansaria relied on the following decision.

Official Liquidator Vs. Dayanand and Others,

1994 (1) GLJ 229 Dr. Jayanta Rongpi v. State of Assam and Ors.

(2001) 3 GLR 510 D. Uphing Maslai and Anr. v. State of Assam and Anr.

B.C. Chaturvedi Vs. Union of India and others,

Shri Ravinder Kumar Sharma Vs. The State of Assam and Others,

22. Mr. Saikia, learned Additional Advocate General, Meghalaya, has urged that no appeal by the State notwithstanding, it is entitled in law to support the challenge laid against the impugned judgment and order. On an exhaustive reference amongst others to the letters dated 27.3.2010, 30.3.2010 and 31.3.2010 and the Cabinet memorandum dated 1.4.2010 produced as excerpts from the original official records otherwise placed at the disposal of this Court, Mr. Saikia has emphatically urged that adequate materials subsisted to justify the notifications in exercise of the powers under paragraph 16(2) of the Sixth Schedule to the Constitution of India and thus those are valid. With particular reference to the proceedings of the budget session of the Council conducted on 30.3.2010, the learned Advocate General has argued that the same evinced utter chaos and extinction of the democratic precepts necessitating immediate intervention by way of assumption of the power and functions of the Council by the Governor of the State. While endorsing the Appellant's plea of shifting allegiance gatherable from the various memoranda/representations, Mr. Saikia submitted that the report dated 28.8.2010 submitted by the Deputy Commissioner and Administrator, Garo Hills Autonomous District Council to the Chief Secretary to the Government of Meghalaya qua the financial position of the Council, substantiated gross and alarming anomalies authenticating the charge of maladministration and corruption to the core. According to Mr. Saikia, the Cabinet memorandum dated 6.9.2010 (produced in course of the arguments from the records) took note of the successive developments bearing on maladministration and corruption while recommending extension of the term of the suspended animation of the Council or the dissolution thereof. According to him, the Cabinet on a threadbare scrutiny of all available records recommended such extension on 8.9.2010 following which the impugned notification dated 17.9.2010 was issued. Mr. Saikia informed this Court as well that a Commission meanwhile has been constituted on 19.10.2010. He relied on the following decisions to buttress his submissions *Tractor and Farm Equipment Ltd. Vs. Secretary to the Govt. of Assam, Dept. of Agriculture and Others*,

23. Mr. Dutta in his pointed reply sought to bring about the distinction in the proposition laid down by the Apex Court in *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, and *S.R. Bommai, supra*, on the aspect of the import of the invalidation of one or more of the grounds comprehended for an order of preventive detention qua others to emphasise in the alternative that sans mal administration or corruption as well, the impugned notifications are valid. He reiterated that even if the House stood automatically revived with the expunction of the notification dated 17.9.2010, notice of the floor test under 36(1) and (5) of the Rules was indispensable.

24. Mr. Hansaria responded that the State having accepted the impugned judgment and order by conducting the floor test, the arguments now made in its

behalf in the appeal are not entertainable. According to him, the official records were not produced before the learned Single Judge and, therefore, the documents now offered in course of the arguments ought not to be looked into. While reiterating that the documents bearing on mal-administration are not only irrelevant but also do not signify ipso facto the break down of the State machinery, Mr. Hansaria pleaded that in view of the notices issued on 23.11.2010 by the Secretary of the Council to all its members about the proposed floor test on 25.11.2010 at 10 A.M., Appellants grievance to that effect is frivolous.

25. The rival pleadings and the competing arguments have received our anxious scrutiny. Certain fringe facets of the confronting dissensions need be attended to at the threshold to clear the deck for the resolution of the determinative issues.

26. A preliminary objection on behalf of the private Respondents (the writ Petitioners) has been raised against the bona fide of the instant appeal with the imputation that the Appellant being an elected member of the Council, it is both reprehensible as well as an undemocratic step on his part to resist a process for its restoration following a judicial determination. Admittedly, the cause of action for the writ proceeding has its roots in the notifications dated 01.04.2010 invoking the powers of the Governor under paragraph 16(2) of the Sixth Schedule to the Constitution of India and the one dated 17.09.2010 extending the term of six months referred to in the former. The writ Petitioners and the Appellant are the elected Members of the Council and their term as per the Rules has not yet expired. They, however, belong to opposite factions in the House. The Appellant at the institution of the writ proceeding was not impleaded therein and it was on his application therefore that by order dated 25.10.2010 passed in M.C. No. 457/2010 he was assimilated as Respondent No. 4 in the writ petition. The said order reveals that a copy of the writ petition was on that day furnished to his learned Counsel. Incidentally, the hearing of the writ proceeding was taken up and closed on the very same date, whereafter, the impugned judgment and order was delivered on 16.11.2010. Neither the cause title of the judgment and order, nor the text thereof disclose that he was so impleaded and that either he or his learned Counsel was heard or allowed to contest the writ petition by filing his counter. There is no indication therefrom that either he or his learned Counsel had waived such a right or had expressed his disinclination to resist the challenge of the writ Petitioners in any manner. On the other hand, the judgment and order reveals that the consideration was confined to the pleadings of the writ Petitioners and the State Respondents, as well as the pleas advanced on their behalf. This indeed is one of the grounds urged before us seeking interference with the impugned decision on the ground of denial of opportunity to contest writ proceedings. The materials on record do not overwhelmingly demonstrate to the contrary.

27. Be that as it may, the issues bearing on the merit of the controversy pose formidable ramifications pertaining to a democratic institution and hence are of public interest. Therefore, individual perspectives notwithstanding the debate on

the facets of greater moment demand attention.

28. Noticeably, the learned Single Judge refrained from adjudicating on the validity or otherwise of the notification dated 01.04.2010, on the ground that it had lapsed on the date of the institution of the writ proceeding, i.e. 05.10.2010. In response to the Appellant's contention that in absence of any appeal by the writ Petitioners, they are estopped from pursuing the challenge thereto in the present appeal, it is asserted otherwise by the private Respondents. As the writ Petitioners had laid their assailment against both the aforementioned notifications in the writ petition, the latter being by way of extension of the former, we are inclined to sustain their stand. The eventual declaration being in their favour, in our estimate, the writ Petitioners while supporting the impugned judgment and order can permissibly question the tenability of the notification dated 01.04.2010 on merits. This view of ours is endorsed in letter and spirit by Order 41 Rule 22 of the Code of CPC as well as the enunciation to this effect by the Apex Court in Ravindra Kr. Sarma v. State of Assam and Ors. (Supra). The writ Petitioners, as well had insisted in course of the hearing that the State of Meghalaya having acted on the impugned judgment and order by conducting the floor test as directed on 25.11.2010, it cannot be heard to support the appeal. Resistance too was offered to the production of the documents from the official records in course of the submissions of the learned Addl. Advocate General, Meghalaya contending that those had not been placed in the writ proceedings. In our comprehension conduct of the floor test on 25.11.2010 as claimed by the writ Petitioners in the circumstances noticed hereinabove, per se does not convey a prohibitive import to exclude the State from justifying the impugned notifications on the basis of the pleadings substantiated by the official records. Neither the authenticity nor the genuineness of the documents produced during the arguments has been impeached by the writ Petitioners, copy whereof had been furnished to the learned Counsel for the parties in Court. The official records have been laid before us for perusal. In view of the multifaceted debate unfolded in the appeal and the far reaching implications of the instant adjudication, it would be indispensably essential to examine the records in order to ascertain the existence or otherwise of the relevant coeval materials bearing on the intervention under paragraph 16(2) of the Sixth Schedule to the Constitution of India. The confinement to the pleadings alone would be wholly inexpedient in the interest of the analysis warranted in the instant appeal. The pleas to the contrary are thus unsustainable.

The constitutional as well as the legal provisions dilated upon in reinforcement of the rival assertions demand prefatory precedence. Article 356 of the Constitution of India provides for a contingency demonstrating failure of the constitutional machinery in the States. It recites that if the President on receipt of report from the Governor of the State or otherwise is satisfied that a situation has arisen, in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, he may by proclamation:

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of the provisions of the Constitution either relating to anybody or authority in the State.

29. The proviso to Clause (1) of the Article however, does not authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of the provision of the Constitution either relating to High Court. The further details visa-vis the term of the Proclamation and the manner of approval, revocation and variation thereof being inessential, are not being elaborated upon.

30. Visibly thus, whereas, the steps enumerated in Clause (a), (b) and (c) can be in the alternative or cumulative the imperative and inviolable precondition therefore is the satisfaction of the President based on the report of the Governor of the State or otherwise that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

The Sixth Schedule to the Constitution of India in terms of Article 244(2) and 275(1) provides for the administration of the Tribal Areas in the State of Assam, Meghalaya, Tripura and Mizoram. Paragraph 2 thereof mandates the constitution of a District Council and a Regional Council each for every Autonomous District and Autonomous Region subject to other arrangements, if any, as indicated therein. The District Council for each Autonomous District is to consist of not more than 30 members of whom not more than 4 members are to be nominated by the Governor and the rest are to be elected on the basis of adult suffrage. Each District Council and Regional Council is to be a body corporate with the respective names of the District/Region and is to have perpetual succession and common seal and sue and be sued in the said name. Sub paragraph 4 of Paragraph 2 vests the administration of the Autonomous District in the District Council for such District and its elected members are to hold Office for a term of five years from the date appointed for its first meeting after the general elections to it, unless it is sooner dissolved under paragraph 16. Sub paragraph (6-A) provides that a nominated member shall hold Office at the pleasure of the Governor. Under Sub paragraph 7 of paragraph 2, the District Council may after its first constitution, make Rules with the approval of the Governor with regard to matters specified in sub paragraph 6 and may in addition make Rules regulating inter alia all matters relating to the transaction of the business pertaining to administration of the District. Paragraph 3 empowers the District Councils and

the Regional Councils to make laws on subjects as catalogued in Clause (a) to (j) of Sub Paragraph 1 thereof relating to various facets of administration. Paragraph 4 dealing with the administration of justice in Autonomous Districts and Regions vests such Councils with the power to constitute Village Councils or Courts for trial of suits and cases between the parties as mentioned therein. Sub paragraph 2 of paragraph 4 obligates inter alia that a District Council for an Autonomous District or any Court constituted in that behalf by it shall exercise the powers of the Court of Appeal in respect of all suits and cases triable by a Village Council or Court constituted under sub paragraph 1 of that paragraph other than those to which the provision of sub paragraph 1 of paragraph 5 apply. A Regional Council or a District Council may with the previous approval of the Governors make regulating amongst others, the constitution of Village Councils and Courts, the powers to be exercised by them and the procedure to be followed in the trial of suits and conduct of appeals. Paragraph 5 conferment of powers under the CPC 1908 and Code of Criminal Procedure Act, 1973 on the Regional and District Councils. Paragraph 7 enjoins the constitution of a District Fund and a Regional Fund for each Autonomous District and Autonomous Region to which is to be credited all moneys received respectively by the District Council for that District and the Regional Council for that Region in course of the administration of such District or Region as the case may be in accordance with the provisions of this Constitution. Sub paragraph 2 of paragraph 7 empowers the Governor to make Rules for the management of the District Fund or as the case, may be the Regional Fund and for the procedure to be followed in respect of payment of money into the said Fund. The withdrawals therefrom, the custody thereof and any other matter connected with or ancillary thereto have to be in conformity with the Rules, if any framed by the Governor. The accounts of the District Council and the Regional Council as the case may be have to be maintained in such form as the Comptroller and Auditor General of India, may with the approval of the President prescribe. These are to be audited by this authority in the manner as he may think fit and his reports relating thereto are to be submitted to the Governor who would cause them to be laid before the Council. Paragraph 6,8,9 and 10 elaborate the powers of the District Council to take necessary steps in conducting the affairs of his administration including assessment and exaction of land Revenue and Taxes. Paragraph 13 ordains that the estimated receipts and expenditure pertaining to a Autonomous District which are to be credited to or are to be made from the Consolidated Fund of the State shall have to be first placed before the District Council for discussion and thereafter be shown separately in the Annual Financial Statement of the State to be laid before its Legislature under Article 202 of the Constitution of India.

31. Paragraph 14 equips the Governor of the concerned State in which the Autonomous District or the Autonomous Region is located to appoint a Commission to examine and report, in any matter specified by him relating to the administration thereof including those specified in clauses, (c), (d), (e) and (f) of Sub paragraph (3) of Paragraph 1 or to enquire into and report from time

to time on such administration generally and in particular on inter alia, the administration of the laws, rules and regulations made by the District and Regional Councils. The Governor is empowered in this regard to define the procedure to be followed by the Commission. The report of every such Commission with the recommendation of the Governor with respect thereto is to be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken by the Government of the State.

32. Paragraph 16, which forms the bedrock of the adjudication embarked upon, is extracted in hereinbelow for ready reference.

16. Dissolution of a District or a Regional Council: (1) The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a District or a Regional Council and

(a) Direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months.:

Provided that when an order under Clause (a) of this paragraph has been made, the Governor may take the action referred to in Clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election:

Provided further that no action shall be taken under Clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.

[(2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification assume to himself all or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months:

Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.

(3) Every order made under Sub-paragraph (2) of this paragraph with the reasons therefore shall be laid before the Legislature of the State and shall cease

to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the orders, unless, before the expiry of that period it has been approved by the State Legislature.

33. A plain reading of the above extract would evince that whereas, the action contemplated in Sub Paragraph 1 would follow the recommendation of a Commission appointed under Paragraph 14, the same essentially is not a prerequisite for the course envisaged in Sub Paragraph 2 of Paragraph 16. Following the dissolution of the District/Regional Council under Sub Paragraph 1, the Governor may direct that a fresh general election shall be held for the reconstitution of the Council or subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place it under the Commission so appointed or under any other body considered suitable by him for a period not exceeding 12 months. Even if a direction for a fresh general election has been issued, the Governor may still adopt any of the mode of administration of the area as above pending the reconstitution of the Council on such election. It is however incumbent before the assumption of such administration that an opportunity to the concerned District or Regional Council be accorded for placing its views before the Legislature of the State.

34. In contradistinction, under sub paragraph 2 of paragraph 16, the satisfaction of the Governor that a situation has arisen where the administration of an Autonomous District or Region cannot be carried on in accordance with the provisions of the Schedule is sufficient for him to assume to himself by a public notification all or any of the functions or powers vested in or exercisable by the District Council or as the case may be, the Regional Council and declare that such functions or powers would be exercisable by such person or authority as he may specify in that behalf for a period of not exceeding six months. The proviso to sub paragraph 2 of paragraph 16 vests the Governor with the power to extend the operation of the initial order by a further order(s) for a period not exceeding six months on each occasion. Sub paragraph 3 however requires that every order made under sub paragraph 2 would have to be laid before the Legislature of the State alongwith the reasons therefore and would cease to operate at the expiration of 30 days from the date on which the State Legislature first sits after the issuance of the orders unless before the expiry of the aforementioned period, it has been approved by it.

35. Having regard to the Scheme of paragraph 14 & 16 in conjunction, it cannot thus be irrefutably construed that the invocation of the power of the Governor under sub paragraph 2 of paragraph 16 is unavoidably contingent on a recommendation by a Commission appointed under paragraph 14. While this is so, obviously for the course outlined in subparagraph 1 of paragraph 16 for dissolution of a District or Regional Council, it is neither decipherable nor perceptible to be so for assumption by the Governor to himself all or any of the functions or powers vested in or exercisable by the District Council or as the case

may be the Regional Council, if he is satisfied otherwise that a situation has arisen that the administration of the said Autonomous District or Region cannot be carried on in accordance with the provisions of the Schedule. Though, conceptually for all practical purposes the assumption of all functions and powers vested in or exercisable by the Governor under sub paragraph 2 of paragraph 16 may signify the suspension of the Council, the indispensable essentiality of a recommendation of a Commission envisaged under paragraph 14 cannot be read into this sub paragraph. The power conceived of in sub paragraph 2 of paragraph 16 is residuary and supervening in nature exercisable by the Governor only subject to his satisfaction of the kind as stipulated therein. The distinctive features of these two sub paragraphs are too self evident and no inter dependence is visualised for a valid invocation of the powers under sub paragraph 2 of paragraph 16. It is not deductible either that the notification perceived of in sub paragraph 2 of paragraph 16 is to contain the grounds and reasons in details fortifying the satisfaction of the Governor. The reasons assuredly, however, have to be relevant, supported by germane materials traceable in the contemporaneous official records. We thus cannot lend our concurrence to the plea of invalidity of the impugned notifications for want of a recommendation by the Commission referred to in paragraph 14. This plea thus fails.

36. The Rules have been framed under Sub paragraph 2 of paragraph 6 by the Governor for the first constitution of the District Councils for the Autonomous Districts as referred to therein. Rule 6 provides that a District Council for each Autonomous District shall consist of a specified number of members, both elected and nominated. An Executive Committee of the District Council with the Chief Executive Member at the head is contemplated. Rule 19 Sub-rule 2 prescribes a Secretary to the Executive Committee to be appointed by the Chief Executive member. The Executive Committee under Rule 22 is collectively responsible to the District Council and may be removed on a vote of no confidence passed by a majority of its members in a meeting convened for the purpose. In case the Executive Committee is so removed, a Chief Executive member for the new Committee is to be elected within 48 hours by the District Council, on the failure whereof, the Governor shall appoint any member of the Council to be the Chief Executive Member and other members of the Council as the Members of the Executive Committee. Whereas, Rule 36 outlines the manner of summoning the District Council for a meeting, Rule 71 spells out the procedure to conduct a motion of no confidence in the Executive Committee. Under Rule 36(1) the Chairman or such other person authorised by the Governor in that behalf would summon the District Council to meet at such time and place as he thinks fit and he would inform the Deputy Commissioner of the date, hour and place for such meeting. Notwithstanding the above, the Governor is vested with the power to summon a meeting of the District Council at any time he deems fit.

These provisions of the Rules referred to on behalf of the writ Petitioners to underline the existence of an alternative statutory mode of dissolution of the

District Council in denunciation of the impugned intervention of the Governor under sub paragraph 2 of paragraph 16 do not in our considered view detract from or annihilate or truncate the plenitudes of his powers constitutionally conferred in the Sixth Schedule thereby. This contention, as well is unconvincing.

37. The differentiating traits of the two entities namely the Government of a State conceptualised by the Constitution of India and a District Council enjoined by the Sixth Schedule thereof vis-a-vis their constitution and the nature and extent of their powers need be tended to in the context of the Appellant's plea that mal-governance in the administration of the affairs of the Council is an admissible determinant in the matter of invocation of powers under paragraph 16(2).

38. The essential attributes of Article 356 of the Constitution of India and paragraph 16 have been dwelt upon hereinabove. The District Council under the Sixth Schedule to the Constitution of India to reiterate is to be composed of not more than 30 members of whom not more than four would have to be nominated by the Governor and the rest are to be elected on the basis of adult suffrage. It is invested with administrative, legislative and judicial jurisdictions. District Fund of the District Council is one in which all moneys received by it are to be credited in course of the administration of its District in accordance with the provisions of the constitution. Its accounts are to be maintained in the form as the Comptroller and Auditor General may with the approval of the President prescribe and are to be audited by the said authority following which a report is to be submitted to the Governor on its onward placement before the Council. Powers pertaining to all conceivable aspects of administration including assessment and collection of land revenue and taxes have been endowed to the Council. The scheme of the Sixth Schedule envision the Council to be an amalgam of administrative, legislative and judicial institutions rolled into one. It is a trinity of these three inseverable limbs of the organisational edifice envisaged for the conduct of the affairs of the areas to which the Sixth Schedule applies. No cleavage of this composite entity is visualised.

39. Under Article 1 of the Constitution, India is defined to be an union of States and its territory is comprised of (a) the territories of the States (b) the Union Territories specified in the First Schedule and (c) such other territories as may be acquired.

40. Chapter-II of Part-VI of the Constitution of India deals with the Executive. Under Article 153 of the Constitution of India, there would be a Governor of each State and the Executive power of the State vests in him and is exercisable by him either directly or through the officers subordinate to him in accordance with the Constitution. Under Article 162, the executive power of a State, subject to the provisions of Constitution extends to matters with respect to which its Legislature has the power to make laws. Article 163 provides that there would be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under

this Constitution required to exercise his functions or any of them in his discretion. The Council of Minister in terms of Article 164(2) is collectively responsible to the Legislative Assembly of the State. The Chief Minister of each State under Article 167 is obligated (a) to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation (b) furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for and (c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

41. Chapter-III of the aforementioned Part is devoted to the State Legislature. Under Article 168, for every State, there would be a Legislature, which shall consist of the Governor and in the States referred to in Clause (a) there would be two Houses and in others one House. In the States in which there is only one House, it would be known as Legislative Assembly. Article 170 which prescribes the composition of the Legislative Assembly mandates that subject to the provisions of Article 333, such Assembly of each State would consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State. Article 178 ordains that every Legislative Assembly of a State would choose two members of the Assembly to be respectively the Speaker and the Deputy Speaker thereof. The House or the Houses of a Legislature of a State, as Article 187 provides, would each have a separate Secretarial Staff and would by law regulate the recruitment and the conditions of service of persons appointed thereto. This part also deals exhaustively amongst others with the procedure for conduct of the business of the Legislative Assembly including introduction and passing of Bills. Article 208 authorizes the House of a State to make Rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business. Article 212 enshrines a bar against enquiry by Court into the validity of any proceeding in the Legislature of a State on the ground of any alleged irregularity of procedure and no officer or member of a State in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order therein would be subject to the jurisdiction of any court in respect of the exercise by him of those powers. The Legislative power of the Governor by promulgating ordinance during the recess of the Legislature is engrafted in Article 213.

42. Chapter-V of the above part dwells on judiciary in the States. Article 214 prescribes that there would be a High Court for each State. In addition to the detailed provisions for the constitution of such High Court in the State and the norms of appointment and the conditions of the office of a Judge, power to issue writs of the types as enumerated in Article 226 for the enforcement of any of the rights conferred by Part-III and for any other purpose has been conferred on it as well. While Article 227 equips a High Court to exercise its power of superintendence over all Courts and Tribunals in relation to which it exercises

jurisdiction, provisions for appointment to the sub-ordinate judiciary have also been made.

43. The distribution of legislative powers is lodged in Chapter-I of Part-XI of the Constitution of India whereunder to the exception in the contingencies as referred to in the various Articles catalogued thereunder the Parliament and the Legislature of any State is empowered to make laws with respect of any of the matters illustrated in List I and List II of the Seventh Schedule to the Constitution of India. The Parliament and the Legislature of a State subject to the conditions as conceived of in Article 246 have power to make laws with respect of any of the matters enumerated in List-III of the aforementioned Schedule.

Part XVIII which deals with emergency provisions enfolds Article 356 permitting the intervention of the President of the nature as narrated therein in case of failure of the constitutional machinery of the State.

44. The framework of the Constitution, therefore, unambiguously comprehends three independent and separate units of a State having distinct sets of functional precepts singular in their application as enjoined by the scheme thereof. The Constitution of India does not conceive the Government of a State to be a lone entity composed of an identical group of identified constituents being the same elected representatives of the people to wield as such a synthesized whole the Executive, Legislative and Judicial powers in administering the governance of its affairs. The constitutional model as adumbrated hereinabove, commensurate to the essentiality of the present adjudication thus does not admit of a notion that the Government of a State is a singular body with total functional dominion in the realms of executive, legislative and judicial jurisdictions to the exclusion of all other entities. A perceptual dissimilarity between the Government of a State and a Council under the Sixth Schedule is thus apparent on the face of the Constitution of India.

45. Noticeably whereas Article 356 is in-vocable in case the Government of a State cannot be carried on in accordance with the provisions of the Constitution, Paragraph 16(2) of the Sixth Schedule to the Constitution of India can be applied only if the administration of the autonomous district cannot be carried on in accordance with the provisions of the Schedule. Though, the contingencies impelling such an extraordinary step may share semblances of likeness, the same ipso facto do not necessarily posit situational exactitude for an absolute analogy.

46. That following the elections and the constitution of the Council, the new House held its first meeting on 18.2.2009 is a matter of record. On the date of the impugned notification dated 1.4.2010, the Council was constituted of 29 election members and the seat for the nominated member was vacant. The elected members shared allegiance to the NCP and the Congress political parties. While the Executive Committee of the Council as constituted under the Rules was in office, 16 elected members (for short also referred to as the MDC) forming the

Congress led alliance submitted a representation on 27.3.2010 before the Chief Minister of the State contending that the NCP led Executive Committee had meanwhile been reduced to minority after successive withdrawal of the support of four members on 23.3.2010 and 2 MDCs on 26.3.2010. Claiming that these members have extended their support for the formation of the Congress led alliance in the name of Garo Hills United Alliance for the installation of new Executive Committee, necessary action from the Government as per the Constitution of India as well as the practice and convention in vogue was sought for to induct a new and stable Executive Committee. It was alleged in the representation that following the reduction of the NCP led Executive Committee to a minority, the Chairman of the Council in order to undemocratically and unconstitutionally protect it had adjourned the House sine die while in session.

47. The official records laid with this Court reveal that on receipt of the said representation, a detailed note was put up on the very same date before the Chief Minister of the State proposing that the matter be placed before the Council itself for the needful and that His Excellency the Governor of Meghalaya be requested to convene a special session of the House for that purpose on 31.3.2010 in accordance with Rule 36(5) of the Rules. The proposal as affirmed by the Chief Minister was laid before the Governor who also approved it on 29.3.2010 whereafter the notification dated 30.3.2010 was issued in his name to summon the special session of the Council on 31.3.2010 at 10 A.M. for proving the majority in the floor of the House. By a separate notification of the same date, the Governor of Meghalaya authorized the Chairman of the Council to preside over the said session. As the first notification would reveal the direction to summon the special session of the Council was in exercise of the powers of the Governor conferred under Rule 36(5) of the Rules.

48. The letter No. GDC. 1/1/2004/114 dated 31.3.2010 of the Secretary, Garo Hills Autonomous District Council, Tura, addressed to the Secretary to the Government of Meghalaya, District Council Affairs Department, Shillong, reveals that the copies of the aforesaid notification issued to the MDCs though were accepted by the members of the opposition numbering 15, those of the ruling Bench including the Chief Executive Member, Executive Member, Chairman and Deputy Chairman refused to do so. It was further stated in the said letter that on 31.3.2010 while the members of the opposition waited for nearly half an hour for the initiation of the session, neither the Chairman of the Council nor any member from the Treasury Bench did turn up to attend the same without assigning any reason.

49. The Secretary of the Council by his communication No. GDC-L/2004/116 dated 31.3.2010 also forwarded to the aforementioned State authority a copy of the proceedings of the Fifth Session of the Council conducted on 30.3.2010. Reading between the lines, the said proceedings recorded presence thereat of 14 members in the Treasury Bench excluding the Chairman and 15 in the Opposition Bench. The business of the House as the proceedings reveal comprised of the

deliberations on the provisional Budget of the Council for the period 1.4.2010 to 31.7.2010 and a no confidence motion against the NCP led Executive Committee in office.

50. As the Chairman of the Council sought to initiate the voting on the Payments for Grants, Shri Besterfield N. Sangma, Leader of the Congress led Opposition Bench objected thereto contending that it was impermissible as the Treasury Side had meanwhile been reduced to a minority. The House witnessed uproar of protests and repeated interruptions thereafter by the members of the Opposition Bench against the decision of the Chairman of the Council still to pursue the agenda. The Chairman in reply to a query, however, disclosed that one member namely Shri L.D. Shira had approached him with a request to allow him to sit in the Opposition Bench before the commencement of the proceedings. The subsistence of the paradigm of vacillating factional loyalty was thus demonstrable even on the eve of the Budget Session on 30.03.2010.

The din and commotion continued and almost all the members of the opposition rose in protest of the proceedings. On this the Chairman of the Council suspended three members of the Opposition Bench namely Shri Besterfield N. Sangma, Shri Alphonso A. Sangma and Shri Ditherson D; Shira and in addition to debarring them from participation also divested them of their voting right therein. The voting right of Shri L.D. Shira was also suspended. All these four members incidentally are amongst the signatories of the representation dated 27.3.2010. The Chairman refused as well to disclose to Shri Ditherson D. Shira the reason for suspending him

51. In the teeth of the protests and objections raised by all the members of the Opposition Bench, the Chairman proceeded with the moving of the various Grants pertaining to the Budget and after all the Grants had been moved, those were put to vote. The Chairman while initiating the process of voting declared that those who are in favour of the Motion should say "Ayes" and those against "Nos". The proceeding recorded that there were loud Nos from the Opposition Bench. The proceedings disclose that the voting demonstrated the following verdict

Those who said "Ayes" please raise your hands (counted?14 hands).

Those who had "Nos" please raise your hands (counted?11 hands).

The above result was sans the votes of the three suspended members and of Shri L.D. Shira. The provisional budget in the above premise was passed.

52. The Chairman after a short break took up the no confidence motion disclosing that on 29.3.2010, a notice to the above effect had been addressed to him signed by nine members (amongst the representationists of 27.3.2010) expressing no confidence in the Executive Committee in office. According to the Chairman, this notice was not in compliance of Rule 71 of the Rules and on that ground the same was held to be not in order. While recording that conclusion,

the Chairman of the Council had observed that majority or minority of the Executive Committee has to be proved only and only on the floor of the House and no other authority can determine whether the Executive Committee has majority or minority.

53. The Chairman of the Council on the very same day i.e. 30.3.2010 also addressed a letter to the Governor of Meghalaya in response to the notification of the even date whereby the special session of the House of the Council was ordered to be summoned on 31.3.2010 at 10 A.M. for proving the majority in the floor thereof. While admitting the receipt of that notification at a time when the budget session was underway, the Chairman expressed his reservation on the necessity of such a special session on the anticipation that it would be adjourned on that day. In intimating the addressee that the session of the day had been disposed of in accordance with the Rules or procedure, he expressed his inability to understand the necessity of a special session so summoned on the same subject matter. He also referred to a letter dated 29.3.2010 supporting the Executive Committee in office led by the NCP party signed by 16 members of the Council which, according to him, demonstrated its (Executive Committee in Office) majority support in the House. The Chairman of the Council therefore opined against the need to summon a special session on the issue. He advised the Governor of Meghalaya to go through the minutes of the session and then to decide on the needfulness of a special session. The letter was accompanied by a copy of the minutes of the proceedings of the Fifth Session of the Council conducted on 30.3.2010 and elaborated as hereinabove.

54. The official records disclose that the letters dated 30.3.2010 of the Chairman of the Council and dated 31.3.2010 of the Secretary of the Council as above were analyzed in details and the matter was proposed to be placed before the Cabinet for a decision. The note put up to that effect recorded that the majority in the House for passing the Grants was obtained by suspending the voting rights of four members of the opposition and that the administration of the Council was not in accordance with the provisions of the Sixth Schedule and the Rules framed thereunder. The proposal having been approved by the Chief Minister of the State, a Cabinet memorandum being No. DCA.18/2004/Pt./71 dated 1.4.2010 detailing the above developments in full was drawn up. For ready reference, this memorandum is extracted herein-below.

GOVERNMENT OF MEGHALAYA

DISTRICT COUNCIL AFFAIRS DEPARTMENT No. DCA.18/2004/part/71

Dated Shillong the 1st April, 2010

CABINET MEMORANDUM

(To be circulated under the Rule 17 of the Executive Business of the Government of the State of Meghalaya)

Subject: Administration of Garo Hills Autonomous District Council.

1. Government received a petition signed by 15(fifteen) MDCs indicating that the Executive Committee of the Garo Hills Autonomous District Council led by NCP have been reduced to a minority after the withdrawal of support of four members (MDCs) on the 23rd March, 2010 and subsequent withdrawal of support by another two members on 26th March, 2010. These 6(six) MDCs have extended support for formation of Congress led alliance in the name of Garo Hills United Alliance (GHUA) in the best interest of the people. However, after having been reduced to minority, the Chairman GHADC, in order to undemocratically and unconstitutionally protect the present NCP led Executive Committee, have adjourned the House sine die which was in session. In view of this constitutional crisis, the members requested the Government as per provisions of the Constitution of India and practice and convention to immediately install a new and stable Executive Committee.

2. After examining of the above petition of the 16 (sixteen) MDCs (signed by 15 of them) and having satisfied from the information contained in the petition received by the Government, the Government in the best interest of democratic norms and taking into consideration the norms and practice in this regard recommended to the Governor of Meghalaya for a Special Session under Rule 36(5) of the Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951 for proving the majority on the floor of the House. The Governor of Meghalaya, in exercise of the powers conferred under Sub-rule (5) of Rule 36 of the Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951, as amended, was pleased to summon the Special Session of the Garo Hills Autonomous District Council, Tura, to meet on the 31" March, 2010 at 10.00 A.M. in the District Council Hall for proving the majority in the floor of the House, and authorized the Chairman of the Garo Hills Autonomous District Council to preside over the aforesaid Session.

3. In response to the Government Notification No. DCA.18/2004/Pt./65 dated 30* March, 2010 the Chairman, Garo Hills Autonomous District Council submitted a letter addressed to His Excellency, the Governor of Meghalaya challenging the order of the Governor where he has indicated the Council is on Session and that 16 (sixteen) MDCs are supporting the present Executive Committee. In fact there should have not been any problem for him to prove the same on 31st March, 2010 as directed by the Governor, but he refused to do so and ignored the orders of His Excellency, the Governor.

4. The Secretary, Garo Hills Autonomous District Council has informed that on receipt of the aforesaid Notification, he has multiply copies of the same and circulated to all the Honourable Members under his signature with the copies to the Deputy Commissioner, West Garo Hills, Tura. The members belonging to the Opposition Bench received the copies on the 30th March, 2010. However, the Members of the Ruling Bench including the Chief Executive Member, Executive Members and Chairman and Deputy Chairman refused to take the copies for the reason which is not known to the office. When the preparation for the Special

Session was all set to be held on 31st March, 2010 at 10 A.M. it was informed that only 15(fifteen) members namely, Shri Alphonse A. Sangma, Shri Silgra N. Marak, Shri Boston Ch. Marak, Shri Besterfield N. Sangma, Shri Chonjing Marak, Shri Premananda Koch, Shri Nripendra Koch, Shri Kredithson Marak, Shri Lalthanthluanga D. Shira, Shri Fozibor Rahman, Shri Rongban B. Marak, Shri Ranjith Rabha, Shri Brigady N. Marak, Shri Dithdarson D. Shira and Shri Thadious N. Sangma have attended the Special Session and signed on the Attendance Register. They waited for nearly half an hour for the Chairman who is authorized to conduct the session by the Governor of Meghalaya. On the other hand, the member from the Treasury Bench including the Chairman of the Council who is supposed to conduct the Session did not turn up to attend the session for the reason not known to the office.

5. On 1st April, 2010, His Excellency, the Governor of Meghalaya summoned Shri P. Tyangsong, Minister i/c PHE, etc., Shri CD. Kynjing, IAS, Principal Secretary, District Council Affairs Department and Shri L.M. Sangma, Secretary to the Government of Meghalaya, Law Department in his office chamber. The Minister and the officials briefed the status in the Garo Hills Autonomous District Council to His Excellency, the Governor of Meghalaya. His Excellency, the Governor of Meghalaya has viewed very seriously the Chairman's attitude in showing disobedience to the order of the Governor.

6. Government has received information that the re-convening of the meeting of the District Council, which was adjourned on the 26th March, 2010 sine die was done hurriedly on the 30th March, 2010. It thus appears that the orders of His Excellency, the Governor of Meghalaya have been ignored by the Chairman, Garo Hills Autonomous District Council and mat democratic norms have not been followed as 4(four) MDCs were not allowed to cast their votes, which is in violation of the spirit of the Sixth Schedule and also Rules framed thereunder. Proceedings of the 5th Session of the GHADC on 30* March, 2010, clearly pointed out mis fact.

7. In the circumstances stated above, there appears to be no option left for the Government but to take over the Administration of the Garo Hills Autonomous District Council temporarily and appoint an Administrator in exercise of the powers conferred by Sub-para (2) of para 16 of the Sixth Schedule of the Constitution of India. Hence, the Deputy Commissioner, West Garo Hills District may be appointed as Administrator of the Garo Hills Autonomous District Council with immediate effect and until further orders.

8. The matter is placed before the Cabinet for consideration and approval of proposal at para 7 above for taking over of the administration of the Garo Hills Autonomous District Council temporarily and to appoint Shri Sanjay Goyal, Deputy Commissioner, West Garo Hills District, Tura, as Administrator.

Dated Shillong,

The 1st April, 2010

(CD. Kynjing)

55. It would be apparent from the contents of this memorandum that:

(i) The stand of the Chairman of the Council as conveyed by his letter dated 30.3.2010 was construed to be his refusal to convene the special session of the House as required by ignoring the order of the Governor of Meghalaya and that the latter had viewed this very seriously.

(ii) Democratic norms have been flouted by not allowing the four members of the Opposition Bench to cast their votes in the proceedings in violation of the spirit of the Sixth Schedule and also the Rules framed thereunder.

(iii) A proposal was mooted for taking over the administration of the Council temporarily under paragraph 16(2) to the Sixth Schedule to the Constitution of India and to appoint the Deputy Commissioner, West Garo Hills District, Tura as the administrator.

The issue of the administration of the Council was discussed in terms of the above memorandum in the Cabinet on 1.4.2010 and the decision recorded in its proceedings reveals that following a detailed discussion it was concluded that the atmosphere prevailing in the Council was not conducive to the smooth administration of the affairs according to the provisions of the Sixth Schedule to the Constitution of India. The fact that the Chairman of the Council had not complied with the directions of the Governor of Meghalaya for holding a special session of the Council under Rule 36(5) was noted. The Cabinet, therefore, requested the Governor to assume the administration of the Council with the suggestion that the Deputy Commissioner, West Garo Hills, be appointed as the Administrator. The concerned department was directed to take necessary steps in that regard. The recommendation of the Cabinet was processed thereafter and being approved by the Governor of Meghalaya, the impugned notification dated 1.4.2010 was issued.

56. The sequence of events preceding the aforementioned impugned notification and the totality of the factors taken note of as substantiated by the records do not admit of a deduction that the satisfaction of the Governor of Meghalaya as predicated by paragraph 16(2) in the facts and circumstances of the case was wholly unfounded. The contemporaneous materials attendant on the decision to take this extraordinary step can by no means be disregarded as irrelevant or extraneous for generating such satisfaction. The Cabinet memorandum as would be evident from its text is a self-contained one encompassing all relevant facts having a bearing on the step eventually taken. The facts and the documents in endorsement thereof are of matters of record, the existence and the authenticity whereof are not in dispute. The decision to invoke paragraphs 16(2) of the Sixth Schedule to the Constitution of India does not appear to be swayed or afflicted by any collateral consideration. Neither any relevant material has been ignored nor any extraneous factor has contributed thereto. As in the exercise of the power of judicial review this Court is not permitted to assess or analyze the

sufficiency or adequacy of the inputs pertinent to the decision finally taken, we are of the unhesitant opinion that the impugment of the notification dated 1.4.2010 does not merit acceptance.

57. Before advertng to the impugned notification dated 17.9.2010, the notification dated 1.4.2010, the operation whereof was extended by a period of six months w.e.f. 1.10.2010 needs to be viewed to discern the real purport thereof in the perspective of the developments that followed. The context of the notification dated 1.4.2010 are quoted herein below.

GOVERNMENT OF MEGHALAYA DISTRICT COUNCIL AFFAIRS DEPARTMENT
ORDERS BY THE GOVERNOR NOTIFICATION

Dated Shillong, the 1st April, 2010

No. DCA. 18/2004/P1/80: Whereas the Governor of Meghalaya has received reports that changes of allegiance of the Members of the Garo Hills District Council are taking place and Orders of the Governor have not been complied with, which has made the functioning of the Council untenable and is satisfied that this has resulted in a situation where the administration of the Garo Hills Autonomous District Council cannot be carried on in accordance with the provisions of the Sixth Schedule to the Constitution of India.

Now, therefore, the Governor of Meghalaya, in exercise of the powers conferred by Sub-paragraph (2) of Paragraph 16 of the Sixth Schedule to the Constitution of India is pleased:

(a) to assume to himself the administration of the said Autonomous District and all functions and powers vested in or exercisable by the Garo Hills Autonomous District Council;

(b) to declare that all functions and powers vested in or exercisable by the Executive Committee, Chief Executive Member, Deputy Chief Executive Member, Chairman, Deputy Chairman and Executive Member of the aforesaid District Council under the Sixth Schedule or any law in force in the said District, shall subject to his Superintendence, direction and control, be exercisable by such officer of the State Government and/or by such person or authority as the Governor may, by notification appoint in this behalf and that the Chairman and Deputy Chairman, of the said District Council shall during the period of assumption of the administration of the District Council by the Governor to himself under this Order, cease to exercise the functions and powers aforesaid.

(c) To direct that during the period of operation of this Order:

(i) no sitting of the District Council shall unless so directed by the Governor be called, held or convened at any time during the said period;

(ii) all references to in the Sixth Schedule or in any laws, regulations or orders to the "District Council" shall in relation to the said district in so far as it relates to the functions and powers vested in or exercisable by the District Council be

construed, unless the context otherwise requires, as references to the "Governor of Meghalaya" and references in any laws, rules, regulations or orders in force in that District to the "Executive Committee", "Chief Executive Member", "Chairman", "Deputy Chief Executive Member". "Deputy Chairman" and "Executive Member" be construed unless the context otherwise requires as reference to such officer, person or authority referred to in paragraph (b) of this order.

This order shall take immediate effect and shall, unless terminated or extended further, remain in force for a period of six months.

Sd/- C.D. Kynjing

58. The opening recital of this document spells out the following grounds for the invocation of paragraph 16(2) of the Sixth Schedule to the Constitution of India.

(i) Receipt by the Governor of reports of ongoing changes of allegiance of the members of the Council.

(ii) Non-compliance of the order of the Governor by the Chairman of the Council rendering its functioning untenable.

(iii) Satisfaction of the Governor that this has resulted in a situation where the administration of the Council cannot be carried on in accordance with the provisions of the Sixth Schedule.

59. The Governor of Meghalaya thus in exercise of the aforementioned power assumed to himself the administration of the autonomous district and declared all functions and powers vested or exercisable by the Executive Committee, Chief Executive Member, Deputy Chief Executive Member, Chairman, Deputy Chairman and Executive Member of the Council under the Sixth Schedule or any other law in force to be subject to his superintendence direction and control to be exercisable by such officer of the State Government and/or by such person or authority as he may by notification appoint in that behalf and that the Chairman and the Deputy Chairman of the Council would during the period of assumption of the Council cease to exercise the functions and powers as aforesaid. By this notification, the Governor also directed that during the period of operation thereof, there would be no sitting of the Council unless so directed by him to be called, held or convened. By another notification being No. DCA. 18/2004/Pt./81 of the same date, the Governor of Meghalaya appointed Shri Sanjay Goyal, Deputy Commissioner, West Garo Hills District, Tura, to exercise all the functions and powers exercisable by the Executive Member, Chairman, Deputy Chairman and Executive Member of the Council as the Administrator of Garo Hills Autonomous District Council.

60. While the matter rested at that on 8.5.2010, 17 members of the Council, all belonging to NCP under the leadership of Shri P.K. Sangma submitted a representation before the Governor of Meghalaya contending that considering their mustered strength they were in clear majority in the House of 30 and were

in a position to form the Executive Committee and run the administration of the Council as per the provisions of the Sixth Schedule of the Constitution of India and other laws of the land. They, therefore, beseeched the Governor in the changed circumstances that the notification dated 1.4.2010 be withdrawn and a sitting of the Council be convened to restore the democratic set up as envisaged in the Sixth Schedule of the Constitution.

61. Close on the heels of this representation, was another dated 21.5.2010 of 15 members of the House forming a Congress led alliance under the name "Garo Hills United Alliance" asserting majority and claiming to be entitled to take over the reins of the administration of the Council in keeping with the democratic principles. The Governor of Meghalaya was thus requested to cause formation of the new Executive Committee with them.

62. Incidentally, two of the representationists of 8.5.2010 namely Shri Lalthantluanga D. Shira and Shri Fozibor Rahman figured amongst those who had claimed to have merged in the aforementioned Congress led alliance. The fleeting allegiance was visibly continuing. Meanwhile Shri Besterfield N. Sangma, the Leader of Opposition in the Council and also one of the 15 who had represented on 21.5.2010 as above had by his letter dated 15.5.2010 addressed to the Minister of Home, P.W.D. (R), District Council Affairs etc Meghalaya, Shillong, highlighted series of anomalies and illegalities in the Council. The imputations levelled were as follows:

(1) Controversial and illegal appointment (which exceeds more than 141 employees) made in various departments of Garo Hills Autonomous District Council after losing majority and boycotting the trial of strength ordered by the Governor of Meghalaya on 31.4.2010.

(2) Misappropriation of funds by the Executive Committee by:

(i) Diversion of TFCA (12th Finance Commission Award) for staff salaries, T.A./D.A. of the staff and E.M., Chairman etc.

(ii) No proper accounts of the Council's own fund.

(iii) Inability to pay the salary even for six months from own funds.

(iv) Payment for supply order made by the E.C. from the TFCA and also without budget

(3) Controversial and illegal promotions made by the Executive Committee.

(4) Misappropriation of funds by the Chairman of the Growers Association, which is earned from the Settlement of Monopoly for the year 2010-2011 etc.

(5) Improper settlement of lessee for the Toll Gates, Hats, Weigh Bridges etc for the year 2010-2011.

(6) Re-employment of retired employees for more than two times.

(7) Appointment of five Secretaries {Secretary (Executive), Secretary (Legislative), Additional Secretary, Joint Secretary, Under Secretary} against duties performable by two Secretaries.

(8) Cancellation of Laskers and Village Courts Staffs without reason.

(9) Inequal distribution of funds meant for the Developmental schemes for MDCs.

Necessary steps were solicited by this communication.

63. In this backdrop, 18 members of the Council belonging to NCP by their representation dated 3.8.2010 addressed to the Minister in-Charge of the District Council Affairs, Government of Meghalaya staked their claim to form the Executive Committee of the Council under the leadership of Shri Roynath D. Sangma. Not only this representation recorded a change in the Leadership of this group, it was reinforced as well by one additional member. On 25.8.2010, the above request was reiterated before the Governor of Meghalaya Noticeably three members of the Council belonging to the Congress led alliance as witnessed by the representation dated 21.5.2010 namely Shri Silgra N. Marak, Shri Boston Ch. Marak and Shri Kredithson Ch. Marak, now were shown to have joined the NCP fold. That the inter factional shifts were continuing unabated is thus borne out by the above disclosures. Both the camps depending on their transitional consolidations were intermittently asserting majority to install the Executive Committee though, no permanence or stability in their claims was decipherable.

64. Acting on the complaint submitted by Shri Besterfield as alluded hereinabove, a copy whereof had been forwarded to him, the Deputy Commissioner and Administrator, Garo Hills Autonomous District Council, West Garo Hills, requested the Secretary, Executive Committee of the Council to submit a detailed report on the matter. On receipt of the report, the Deputy Commissioner and Administrator, Garo Hills Autonomous District Council, constituted a team headed by the Treasury Officer, Tura and issued an order to check the financial stability of the Council. The preliminary report submitted by the said Body was thereafter forwarded by the Deputy Commissioner and Administrator Garo Hills Autonomous District Council to the Chief Secretary to the Government of Meghalaya, Shillong vide letter No. PA/ADMN/GHADC/2010/07/292 dated 28.8.2010. This letter would portray the following irregularities/anomalies as detected by the enquiry team.

1. Civil Works Department: There is a difference of Rs. 3,18,40,595/- in the account of PL A-II from PLA-I indicating that the same amount was not refunded back to PLA-II. The transfer of money from PL A-II to PLA-I seem to be not as per Govt. norms and the difference amount might be more if previous years are taken into account.

2. Office of the Cotton/Jute/Betel nut and Cashew nut Trade Regulation under GHADC: As per the report submitted by the present Secretary of the Association and also in the report of the team the following irregularities have been

highlighted.

(a) Rs. 4,12,400/- collected as fees from the Agents was not deposited in the account of the Association.

(b) The records of the expenditure on the revenue collected through the settlement of mahals in the year 2008-09 amounting to Rs. 18,96,000/- is not available.

(c) The settlement of the markets is done through a close tender called and settled by the Chairman himself. This raises serious doubt over the settlement procedure for these markets.

(d) An amount of Rs. 2,17,120/- as license fees for the year 2008-09 and Rs. 2,23,755/- for year 2009-2010 was not deposited into the Council Treasury.

3. General Administration: The mode of appointment and promotions are not very cleared as reflected report from the team wherein it is mentioned that additional post of P.S. to the CEM, Addl. Secretary, Addl. Under Secretary, Asstt. Law Officer, OSD were created without having provisions in the budget for the year 2009-2010.

4. Forest Department:

(a) The records of the settlement of the Weigh Bridge and the revenue collected and remitted into Council Treasury do not reflect an encouraging situation as is clear from the report of the Team.

(b) Huge anomalies to the tune of Rs. 10,24,000/- were found for the period of 2009-2010 in the Remittance Register record and Cashier Cash Book record. This difference is unaccounted amount which should have been deposited in the Council Treasury but was not done. Serious doubts have been raised regarding involvement of some officers in forging the accounts.

(c) The settlement of Mahals for various forest produces was done through a close tender rather than going for an open tender.

65. According to the Administrator, the preliminary report demonstrated that financial procedures followed at the relevant point of time were not as per the desirable norms in the Council and that a comprehensive audit was required to disintegrate the true picture. It was observed that the exercise had been undertaken on the complaint in order to unearth the problems plaguing the Council resulting inter alia in its inability to pay the salary to its staff for more than five months. A bare look into the anomalies highlighted would reveal that several of these relate to 2008-09 and 2009-2010. This assumes significance in view of the admitted fact that the Executive Committee comprised of members of the NCP had assumed office after the elections in the month of February, 2009.

Meanwhile, the Joint Secretary, Garo Hills Autonomous District Council and In-charge Secretary, Cotton, Jute, Ginger, Cashew nut and Betel nut Growers"

Association had by his letter No. GHADC/DAD/A/253/2010/728 dated 28.5.2010 submitted a report to the Deputy Commissioner and Administrator, Garo Hills Autonomous District Council following an enquiry on the direction of the latter into the receipts, deposits, expenditures of the said Association for the years 2008-2010. The findings as this letter testifies, which are based on the scrutiny of the relevant vouchers, registers, cash books etc and the statement of the concerned Secretary, Head Assistant and Cashier on deposits and expenditures were to the following effect:

DEPOSITS

(1) Out of total amount of Rs. 390435/- received from license fees, only Rs. 1.73.315/- was deposited into the Council Treasury through challan (verified from remittance register) during 2008-09. Rs. 2.17.120/- was deposited.

(2) Out of total amount of Rs. 4.36.815/- received from license fees, only Rs. 2.13.060/- was deposited into the Council Treasury through challan (verified from remittance register) during 2009-2010. Rs. 2.23,755/- was not deposited.

(3) Rs. 39,600/- received from issuance of clearance certificates book were deposited into the Association's account maintained with the Meghalaya Cooperative Apex Bank in 2008-2009 (verified from cash book).

(4) Rs. 64.350/- received from issuance of clearance certificate book were deposited into the Association's account maintained with the Meghalaya Cooperative Apex Bank in 2009-2010 (verified from cash book).

(5) Receipts from appointment/registration of Haat Representatives during 2008-2009 and 2009-2010 were not deposited into any account.

EXPENDITURE

In 2008-09, out of Rs. 2,17,120/-, which was not deposited into the Council treasury was dealt with as herein below:

Rs. 2,17,120/- (amount not deposited)

-Rs. 69.330/- (payment of contract bills etc) Rs. 1,47,790/-

-Rs. 25.000/- (loan of Smt. Basobi R. Marak, UDA)

Rs. 1,22,790/-

-Rs. 46.819/- (loan of Smt. Projeni Ch. Marak, Secy.)

Rs. 75,971/-(balance amount)

In 2009-2010, out of Rs. 2,23,755/-, which was not deposited into the Council Treasury was shown to be utilized as hereunder:

Rs. 2,23,755/- (amount not deposited)

-Rs. 56.633/- (payment of contract/supply bills)

Rs. 1,67,122/-

-Rs. 30,000/- (payment for preparation of project estimates)

Rs. 1,37,122/-

-Rs. 36,620/- (payment of miscellaneous bills)

Rs. 1,00,502/-

-Rs. 60,550/- (staff loan)

Rs. 39,952/- (balance amount)

In 2008-09, out of Rs. 1,82,400/-, collected from appointment/registration of Haat Representatives Rs. 1,03,400/- was used for payment of office contingency, contract, supply etc bills; Rs. 4000/- was borrowed by Shri Larson Sangma, MDC and Former Chairman and total amount of Rs. 75,000/- was borrowed by Shri Joshburdin Sangma, ex MDC and Former Chairman.

In 2009-2010, out of Rs. 2,30,400/-, collected from appointment/registration of Haat Representatives, Rs. 91,600/- (verified from vouchers) was used for payment of supply, miscellaneous etc bills. Remaining Rs. 1,38,800/- is with Shri Larson Sangma, MDC and Former Chairman.

66. According to the official Respondents, as pleaded in their affidavit in opposition, though the following amounts were released by the State Government in the various departments named hereinbelow to the Council, the salary for five months of its staff could not be paid because of the prevailing irregularities resorted to by the Executive Committee in Office.

1.

Mining and Geology Department

2009-2010

Rs. 4,00,00,000/-

Sanctioned vide Letter No. M.G.51/2004/ 328 dated 3.9.2009

Rs. 1,00,00,000/-

Sanctioned Vide Letter No. M.G.51/2004/ 369 dated 31.3.2009

Rs. 29,28,241/-

Sanctioned vide Letter No. M.G.51/2004/ 391 dated 7.7.2009

2010-2011

Rs. 1,50,00,000/-

Sanctioned vide letter No. M.G.51/2004/ PL/45 dated 7.7.2010

Rs. 1,50,000/-

Sanctioned vide letter No. M.G.51/2004/ Pt./60 dated 23.9.2010

2

Forest and Environment Department

2009-2010

Rs. 1,73,22,867/-

Sanctioned vide letter No. FOR. 94/2005/ 106 dated 3.3.2010

For the Collection year 2009- 2010

3

Transport Department

2009-2010

Rs. 49,99,883/-

Sanctioned vide letter No. TPT. 130/2008/ 45 dated 17.12.2009

For 2008-2009

67. The official communications and the facts and figures contained therein and elaborated as above are parts of the pleadings as well as the records and as earlier stated the authenticity thereof has not been questioned by the writ Petitioners. This assumes considerable importance in the face of the State Respondent's persistent plea that in view of such reports the surfacing irregularities needed to be investigated which in turn necessitated the existence of a free and fair environment for conducting the same. According to them, such a probe was not possible to be undertaken in the teeth of claims and counter claims of the two belligerent groups seeking to wrest power in the House of the Council and thus on a cumulative consideration of all above, the Cabinet had recommended extension of the term of the notification dated 1.4.2010 by another period of six months.

68. The records maintained in the official course of business attest that the representations dated 8.5.2010 and 21.5.2010 submitted by the NCP as well as of the members of the Congress alliance staking their claims to form the new Executive Committee were duly processed whereupon the appropriate authority of the Government, on a scrutiny thereof observed that no immediate action thereon was called for as the situation was still fluid. The representation dated 23.8.2010 of the members of the NCP too was processed in due course and eventually the Cabinet memorandum No. DCA.18/2004/Pt./6 dated 6.9.2010 was drawn up by the District Council Affairs Department, Government of Meghalaya to be laid before the Cabinet for an appropriate decision. This Cabinet memorandum dealt with the above facts in extenso for the consideration of the

Cabinet to (1) recommend the extension of the term of the Administrators Rule by another six months (2) constitute a Commission of Enquiry under paragraph 14 of the Sixth Schedule of the Constitution of India to enquire into the conduct and disposal of the business of the Council during its session held on 30.3.2010 with special reference to the order by the Governor issued DCA.18/2004/Pt./65 dated 30.3.2010 and the administration of laws, Rules and Regulations made by it with special reference to the alleged financial irregularities and misappropriation of public funds by it. In the alternative, it was left to the Cabinet to recommend dissolution of the Council for not being able to administer its affairs in accordance with the provisions of the Sixth Schedule of the Constitution.

69. The Cabinet in its meeting held on 8.9.2010 decided to recommend to the Governor to extend the period of Administrator's rule in the Council for a period of six months on its expiry on 30.9.2010. It also recommended the constitution of a Commission of Inquiry under paragraph 14 of the Sixth Schedule of to Constitution of India to enquire into the financial and administrative irregularities having regard to the gravity and seriousness thereof. After completion of the necessary official formalities, the impugned notification dated 17.9.2010 was issued.

69.A The parties are asunder on the aspect of relevance and admissibility of maladministration and corruption as cognizable factors for invocation of powers under paragraphs 16(2) of the Sixth Schedule to the Constitution of India. The learned Single Judge has answered the issue in the negative in favour of the writ Petitioners relying chiefly on some excerpts from the decision rendered by the Apex Court in S.R. Bommai, supra and Rameshwar Prasad, supra. The learned Counsel for the parties have also profusely adverted to the relevant paragraphs in support of their rival pleas. In S.R. Bommai, supra, several proclamations issued by the President of India under Article 356 of the Constitution of India dismissing the Governments and dissolving the Assemblies in a number of States including Karnataka, Nagaland, Meghalaya, Rajasthan, Madhya Pradesh and Himachal Pradesh had been assailed on a spectrum of grounds. The majority of five Hon'ble Judges Hon'ble Mr. Justice S. Ratnavel Pandian, A.M. Ahmedi, Kuldip Singh, J.S. Verma, P.B. Sawant, K. Ramaswamy, S.C. Agarwal, Yogeshwar Dayal and B.P. Jeevan Reddy, JJ, having concurred on the proposition that the exercise of power under Article 356 was subject to judicial review principally limited it to the examination of the existence or otherwise of any material, if at all or whether it was relevant or if the action was tainted by malafide, perverse or irrational exercise of power. Their Lordships propounded as well that only, if a prima facie case is made out in the challenge to a proclamation under the aforementioned constitutional provision, the burden would be on the Union of India to prove the existence of any material and its relevance. Absence of bar against the scrutiny of the material on which the President had arrived at his satisfaction was underlined in the context of Article 74(2) of the Constitution of India. Noticeably there has been no debate on this aspect in the instant appeal

more particularly vis-a-vis the ambit of the power of judicial review of this Court and therefore a detailed analysis thereof is inessential.

70. The majority view as well was that if the proclamation is held invalid by the Court, than notwithstanding its approval by the Parliament the status quo ante can be restored by the Court in its discretion signifying that the dissolved Legislative Assembly and the Ministry can thus be revived. The above conclusions are borne out by paragraphs 153, 434 and 435 of the decision. Their Lordships Hon'ble Mr. Justice Sawant and Singh, JJ, in their segment of the verdict in paragraph 82 set out the illustrated situations enumerated in paragraphs 6.5.10 of the Report of the Sarkaria Commission on Centre-State relations which were broadly approved to be the exigencies where exercise of power under Article 356(1) would be improper and uncalled for. The three eventualities highlighted on behalf of the writ Petitioners to be applicable in the facts of the instant case are quoted hereunder:

(i) A situation of mal-administration in a State where a duly constituted Ministry enjoying majority support in the Assembly is in office, imposition of President Rule in such a situation will be extraneous to the purpose for which the power under Article 356 has been conferred. It was made indubitably clear by the Constitution framers that this power is not meant to be exercised for the purpose of securing good Government.

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(iii) Where, despite the advice of a duly constituted Ministry which has not been defeated on the floor of the House, the Governor declines (?) to dissolve the Assembly and without giving the Ministry an opportunity to demonstrate its majority support through the floor test, recommends its supersession and imposition of the President's rule merely on his subjective assessment that the Ministry no longer commands the confidence of the Assembly.

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(x) This power cannot be invoked, merely on the ground that there are serious allegations of corruption against the Ministry.

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K. Ramaswami (as he was then) while enunciating the expression "Cannot Be Carried On" appearing in Article 356 observed as hereunder in paragraph 219 of the decision.

While it was not possible to exhaustively catalogue diverse situation when the constitutional breakdown may justifiably be inferred from, for instance (i) large - scale breakdown of the law and order or public order situation; (ii) gross mismanagement of affairs by a State Government; (iii) corruption or abuse of its power; (iv) danger to national integration or security of the State or aiding or

abetting national disintegration or a claim for independent sovereign status and (v) subversion of the Constitution while professing to work under the Constitution or creating disunity or disaffection among the people to disintegrate democratic social fabric.

71. Whereas, the Appellant contends that the view expressed by Hon"ble Mr. Justice Ramaswamy amply acknowledge gross management of affairs by a State Government or corruption or abuse of its power to be a valid determinant for the invocation of Article 356 of the Constitution of India, it has been pleaded on behalf of the writ Petitioners that this view being in minority, in the face of one by the majority in the Bench as portrayed in paragraph 82 as above if is not of any decisive worth.

Jeevan Reddy opining for Hon"ble Mr. Justice Agarwal and for himself had in Sub-paragraph 7 of paragraph 434 of the decision propounded that though the proclamation under Article 356(1) is not immune from judicial review, the Supreme Court or the High Court would not examine the correctness of the material or its adequacy and its enquiry would be limited to ascertain as to whether it was relevant to the action. Their Lordships enounced that even if part of the material is irrelevant the Court cannot interfere so long there is some material, which is relevant to the action taken. This view was endorsed by Hon"ble Mr. Justice Pandian.

72. In Rameswar Prasad, supra, in challenge was the constitutional validity of the Presidential proclamation under Article 356(1) of the Constitution of India ordering dissolution of the Legislative Assembly of the State of Bihar even before the first meeting thereof on the ground that demands were being made to cobble together a majority by illegal means and to lay claim to form the Government in the State and that if these demands continue, it would amount to tampering with the constitutional provisions.

The majority view while dwelling on the purport of the power under Article 356(1) defined it to be of emergent nature but not an absolute one. The satisfaction of the President, the essential precondition of exercise of such power was required to be informed with objectivity, the purpose of such exceptional step being to protect and preserve the constitution. While observing that the scope of judicial review as outlined by the Apex Court in State of Rajasthan and Others Vs. Union of India and Others, stood enlarged in S.R. Bommai, supra, their Lordships ruled that it is open to the Court in the exercise of such power to examine the question whether the Governor's report is based on relevant materials or not or whether it was made bonafide and whether the facts had been duly verified or not. The contention that the report of the Governor itself is the material and that it is impermissible within the realm of judicial review to traverse the same was negated. While underlining that the facts and circumstances of a given case have a bearing on the scope of judicial review their Lordship broadly concurred with the view that interference with the exercise of power under Article 356(1) would be permissible when it is used in a grossly

perverse and unreasonable manner so as to constitute patent misuse of the provisions or an abuse thereof. Their Lordships exhaustively referred to the determination in *S.R. Bommai, supra*, on all essential aspects and following a scrutiny of the contextual facts and other attendant materials on record held as hereunder in paragraph 145, 146 and 165 of the judgment. *Rameshwar Prasad and Others Vs. Union of India (UOI) and Another*,

145. In the present case, like in *Bommai* case there is no material whatsoever except the ipse dixit of the Governor. The action which results in preventing a political party from staking claim to form a Government after election, on such fanciful assumptions, if allowed to stand, would be destructive of the democratic fabric. It is one thing to come to the conclusion that the majority staking claim to form the Government, would not be able to provide stable Government to the State, but it is altogether a different thing to say that they have garnered majority by illegal means and, therefore their claim to form the Government cannot be accepted. In the latter case, the matter may have to be left to the wisdom and will of the people, either in the same House, it being taken up by the Opposition or left to be determined by the people in the elections to follow. Without highly cogent material, it would be wholly irrational for a constitutional authority to deny the claim made by a majority to form the Government only on the ground that the majority has been obtained by offering allurements and bribes, which deals have taken place in the cover of darkness, but his undisclosed sources have confirmed such deals. The extraordinary emergency power of recommending dissolution of a Legislature Assembly is not a matter of course to be resorted to for good governance or cleansing of the politics for the stated reasons without any authentic material. These are matters better left to the wisdom of others including the Opposition and the electorate.

146. It was also contended that the present is not a case of undue haste. The Governor was concerned to see the trend and could legitimately come to the conclusion that ultimately, people would decide whether there was an "ideological realignment", then their verdict will prevail and such realigned group would win the elections, to be held as a consequence of dissolution. It is urged that given a choice between going back to the electorate and accepting a majority obtained improperly, only the former is the real alternative. The proposition is too broad and wide to merit acceptance. Acceptance of such a proposition as a relevant consideration to invoke exceptional power under Article 356 may open a floodgate of dissolutions and has far-reaching alarming and dangerous consequences. It may also be a handle to reject post-election alignment and realignments on the ground of the same being unethical, plunging the country or the State into another election. This aspect assumes great significance in a situation of fractured verdicts and in the formation of coalition Governments. If, after polls two or more parties come together, it may be difficult to deny their claim of majority on the stated ground of such illegality. These are the aspects better left to be determined by the political parties which, of course, must set healthy and ethical standards for themselves, but, in any case, the ultimate

judgment has to be left to the electorate and the legislature comprising also of members of the Opposition.

165. If a political party with the support of other political party or other MLAs stakes claim to form a Government and satisfied the Governor about its majority to form a stable Government, the Governor cannot refuse formation of the Government and override the majority claim because of his subjective assessment that the majority was cobbled by illegal and unethical means. No such power has been vested with the Governor. Such a power would be against the democratic principles of majority rule. The Governor is not an autocratic political ombudsman. If such a power is vested in the Governor and/or the President, the consequences can be horrendous. The ground of maladministration by a State Government enjoying majority is not available for invoking power under Article 356. The remedy for corruption or similar ills and evils lies elsewhere and not in Article 356(1). In the same vein, it has to be held that the power under the Tenth Schedule for defection lies with the Speaker of the House and not with the Governor. The power exercised by the Speaker under the Tenth Schedule is of judicial nature. Dealing with the question whether power of disqualification of members of the House vests exclusively with the House to the exclusion of the judiciary which in Britain was based on certain practices of the British Legislature as far as India is concerned, it was said in *Kihoto Case* that: (SCC p. 705, para 94)

94. It is, therefore inappropriate to claim that the determinative jurisdiction of the Speaker or the Chairman in the Tenth Schedule is not a judicial power and is within the non-judicial legislative area.

For the limited purpose of the dissention seeking resolution, a detailed reference of the decision in *State of Rajasthan v. Union of India*, *supra*, is inessential.

73. In the backdrop of the pleaded facts and the documents on record, the opinions expressed by their Lordships in *S.R. Bommai*, *supra*, and *Rameshwar Prasad*, *supra*, vis-avis the availability and pertinence of mal-administration in the affairs and/or corruption or abuse of power as grounds contributing to the generation of satisfaction or otherwise qua paragraph 16(2) of the Sixth Schedule to the Constitution of India are neither repugnant to each other nor are mutually extinctive. The majority view in *S.R. Bommai*, *supra*, while approving the illustrative instances recited in the report of the Sarkaria Commission excluded a situation of mal-administration in the State where a duly constituted Ministry enjoyed majority support in the Assembly to be a factor for the notification of power under Article 356 of the Constitution of India on the ground that it was not meant to be exercised for the purpose of securing a good Government. This contingency in our opinion presupposes, in the context of the Council a duly constituted Executive Committee enjoying the majority in the House with no element of uncertainty, ambivalence, speculation or indeterminability whatsoever. The eventuality envisaged in the report of the Sarkaria Commission and approved in *S.R. Bommai*, *supra*, does not admit of a

situation of constantly changing scenes of fealty of pliable groups authenticating in obvious terms their utter fragility incapable of guaranteeing a stable democratic set up with reasonable durability. The situation taken note of by their Lordships in *S.R. Bommai*, supra, is thus not akin to the one as it obtains in the present case.

74. There was no advice at any relevant point of time by the Executive Committee in office seeking a floor test before the issuance of the memorandum dated 1.4.2010 to demonstrate its majority in the House. Contrary thereto inspite of a special session of the House being summoned by the Governor of Meghalaya by the notification dated 30.3.2010, the Chairman of the Council declined to abide by the same offering justifications for his disinclination therefor. The proceedings of the Fifth Session of the Council conducted on 30.3.2010 clearly records the numerical majority of the members of the Opposition Bench. The Budget however was passed by suspending three of them and divesting them along with another of their voting rights. The records of the Session disclose that though 15 members of the Opposition Bench were present compared to 14 of the Treasury Bench, the Budget was passed with 14 Ayes and 11 Nos in these circumstances. The points of objections raised on behalf of the members of the Opposition Bench and the manner in which those were dealt with by the Speaker who eventually excluded four of them from effective participation in the proceedings for all practical purposes do not substantiate the writ Petitioner's claim of unassailable majority in the House at the relevant point of time. Suffice it to state that the proceedings of the Fifth Session of the Council were not informed with the letter and spirit of democratic ideologies, tenets and procedure as prescribed. This instance as well, in our view, is of no significance vis-a-vis the writ Petitioners' pleas in the instant appeal.

75. The allegations of maladministration and corruption which are relevant vis-a-vis the extension notification, as the contemporaneous records would reveal, had been enquired into to some extent and the reports though preliminary in nature, substantiate the same subject to the investigation underway by the Commission already constituted. Not only this situation culled out in Clause (X) of paragraph 82 of *S.R. Bommai*, supra, irrefutably pre-supposes a certitude of the stability of the Ministry concerned for which, mere allegation of corruption in isolation has been construed to be irrelevant for the exercise of the power under Article 356 of the Constitution of India. Having regard to the nature of the imputations that have surfaced encompassing the vices of mal-administration and corruption this situation as well does not have any application in the facts of the present case qua a Council under the Sixth Schedule to the Constitution of India.

76. The observations made by the Apex Court in *Rameshwar Prasad* that the extra ordinary emergency power of recommending dissolution of a legislative assembly is not a matter of course to be resorted to for good governance or cleansing of politics without any authentic material thus has to be deciphered in the background of the facts therein and in the context of those in the hand.

Apart from the distinctive features of Article 356(1) of Constitution of India and paragraph 16(2) of its Sixth Schedule as well as the entities involved and the rules ordained for them as narrated herein before, the eventualities permitting the exercise of the powers are also of deserving significance. Whereas Article 356(1) mandates the satisfaction of the President that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, invocation of paragraph 16(2) obligates satisfaction of the Governor in the extant situation, that the administration of an Autonomous District or Region cannot be carried on in accordance with the provisions of the Schedule. This pre-condition for the activation of the power under paragraph 16(2) predicates formidable relevance in view of the prescribed composition of the Council and the varied nature and the expanse of the powers conferred on, it by the Sixth Schedule. In view of the fusion of jurisdictions vested in the Council and the all permeable presence thereof in every sphere of its activities, in our considered comprehension, even otherwise a complete analogy of the constitutional inhibitions approved in *S.R. Bommai, supra*, and *Rameshwar Prasad, supra*, cannot be drawn in the matter of application of paragraph 16(2) to a District Council under the Sixth Schedule to the Constitution of India. Mal-administration in conducting the affairs of the District Council as well as corruption thereat, thus, in our opinion, in the above factual and legal perspectives would be relevant considerations to decide on the essentiality or otherwise for exercise of power under paragraph 16(2) of the Sixth Schedule to the Constitution of India.

Having regard to the plentitude of the powers under this constitutional provision, the plea of alternative statutory procedure for removal of the members of the Executive Committee of the Council as provided in Rule 22 is also not convincing. These two provisions apparently operate in independent domains and paragraph 16(2) by no means having regard to the need for the application thereof and the objective therefore can be subservient to the Rules.

77. Having regard to the progression of events subsequent to the notification dated 1.4.2010, two manifestations can be decisively sketched: (a) the vacillation in allegiance had continued leading to varying composition of the members in number and configuration per se betraying lack of stability for a purposeful floor test to determine the majority in the House with a reasonable degree of permanence and (b) the atmosphere and background, in the face of the forthcoming evidence of gross administrative and financial irregularities were not conducive to the immediate restoration of the House without an appropriate investigation into the spewing disclosures.

78. In these emerging perspectives, the State Government through its Cabinet recommended the extension of the Administrator's rule for another period of six months w.e.f. 1.10.2010. The Cabinet memorandum dated 6.9.2010 is redolent of the fact that all materials bearing on the issue were laid before the Cabinet for its necessary recommendations to the Governor of the State. The Cabinet

decision and the related note sheets in the records substantiate that the authorities at all the levels had duly applied themselves to the issues and that the Governor of Meghalaya being satisfied that the extension of the term beyond 30.9.2010 was called for, decided to order the same. In doing so, His Excellency consciously exercised his powers under paragraph 16(2) of the Sixth Schedule to the Constitution of India.

79. In terms of the Cabinet decision dated 8.9.2010, meanwhile a Commission of Enquiry has been constituted vide notification No. DCA.39/2002/4 dated 19.10.2010 to enquire into and report on the affairs and the prevailing situation of the administration of the Council with special reference to (i) the facts and circumstances leading to financial instability in the Garo Hills Autonomous District Council (ii) the financial irregularities and misappropriation of public funds committed by the Garo Hills Autonomous District Council (iii) the administration of the laws, rules and regulations made by the Garo Hills Autonomous District Council with special reference to the alleged cancellation of appointment in respect of Laskers and Village Court staff without reasons and irregular and illegal appointments made in the various departments of the Garo Hills District Autonomous Council (iv) to suggest ways and means for revamping the administration in respect of Garo Hills Autonomous District Council. The Commission is required to complete its enquiry and submit its report to the Government within three months from the date of the notification.

80. Though, as pleaded on behalf of the writ Petitioners, the allegation of mal-administration is neither proved as on date nor is a relevant factor for exercise of powers under paragraph 16(2) of the Sixth Schedule to the Constitution of India the official reports dealt with hereinabove, in our opinion, furnish sufficient materials to warrant an investigation into the affairs of the Council and the impugned decision of deferring the restoration of the Executive Committee of the Council till the completion of a full fledged enquiry cannot in the contextual facts be readily denounced as illegal, arbitrary, whimsical or malafide. The criticism of delay on the part of the Governor to act on the representation of the members of the Council belonging to NCP in the above factual premise lacks in persuasion to attribute abuse of power in the extension of the term of the Administrator's role. In the attendant facts and circumstances, restoration of the Council as contemplated in the Sixth Schedule to the Constitution of India as well as in the Rules was neither a ready choice nor an unavoidable compulsion. The prolongation of the term of suspension of the Council as the facts and circumstances testify is not an unnecessary procrastination but an interval for imperative mentations and remedial measures to effectuate revival of a democratic institution in the true sense of the term.

81. The learned Single Judge, to reiterate, did not adjudicate upon the validity or otherwise of the notification dated 1.4.2010 on the ground that it had meanwhile spent its force on 30.9.2010 and that the same had not been challenged in time. Noticing the same quoted excerpts from S.R. Bommai, supra and Rameshwar

Prasad, *supra*, the learned Single Judge, returned a finding that mal-administration by a Government enjoying majority support in the Assembly cannot be a ground for dismissing a Ministry. It was, however, observed that if a legitimate inference can be drawn from the objective facts and circumstances that the majority staking claim to form the government would not be able to provide a stable Government to the State, it can be a relevant factor for proclamation of President's Rule in the State or for extending the duration thereof. The learned Single Judge, while observing that defection howsoever abhorring and despicable it may be, cannot be a ground for continuation of the Governor's Rule, however, in our opinion, missed to notice the continually changing scenario that witnessed the claims and counter claims by varying melange of members defying all notions of abiding loyalty to an ideological affinity and steadfast stability. It was, however, observed that if the degree of the defections or their frequencies indulged in by the members of the District Council were such that no group was likely to form a stable Executive Committee in the District, it might be reasonable to conclude that a situation had *ipso facto* arisen in which the administration of the District Council could not be carried on in accordance with the provisions of the Sixth Schedule thereby warranting the proclamation by the Governor under paragraph 16(2) of the Constitution. Though the Cabinet memorandum dated 6.9.2010 was extracted in full, the learned Single Judge limited his attention only to the representation dated 23.8.2010 of the 18 members claiming allegiance to NCP. According to the learned Single Judge, this representation manifested the majority of this group by totally leaving out of consideration the procession of events that preceded the same more particularly the counter claim of majority lodged on 21.5.2010 by the members of Congress led alliance including a few common persons. The learned Single Judge was of the view that the extension of the term beyond 1.10.2010 was on the ground only on mal-administration, misappropriation of public funds, illegal appointments and promotion of staffs by the previous Executive Committee and that the possibility of that writ Petitioners would not be able to provide a stable Government was not a factor therefor. The learned Single Judge, thus concluded that bad governance and/or corruption cannot be the ground for extending Governor's Rule in view of the related observations made in *S.R. Bommai, supra*. The impugned notification dated 17.9.2010 was thus interfered with the observation that NCP led alliance *prima facie* has the majority in the House since 23.8.2010 and that the only democratic solution to the current impasse was to direct a floor test to prove their majority therein. The operative directions followed. The observation with regard to the majority of the NCP led alliance since 23.8.2010 tantamounts to predetermination of the issue to a substantial extent.

82. On a totality of the considerations detailed hereinabove and the conclusions based thereon, we are of the unhesitant opinion that the impugned notifications dated 1.4.2010 and 17.9.2010 are valid and do not call for any interference in the exercise of this Court's power of judicial review. The learned Single Judge on

the aforementioned counts, according to us, proceeded on a wrong premise. The impugned judgment and order therefore is unsustainable in law and on facts and is thus interfered with. The operative directions as well as the floor test said to have been conducted on 25.11.2010 at 10 A.M. pursuant to the directions contained in the impugned judgment and order are thus adjudged to be non est. The other authorities cited at the Bar in view of the determinations made herein, do not call for any detailed reference. The debate on the consequence of the invalidation of the notification dated 17.9.2010 and the legality or otherwise of the operative directions contained in the impugned judgment and order also do not call for any discussion.

83. The pleadings on the conduct of the floor test on 25.11.2010 prompt us to comment that the same was held in haste having regard to the circumstances in which the appeal was heard for admission on 24.11.2010 and the declaration made in open Court before its rising that the order on the interim relief would be passed in course of the day. Such an order indeed was passed and signed on 24.11.2010. The fact that for the closure of the office, a certified copy thereof could not be obtained by the parties, in our view, in the face of the communications made by the learned Counsel for the Appellant, to the concerned authorities cannot be a wholly acceptable justification to conduct the floor test. As by the interim order dated 24.11.2010, the operation of the impugned judgment and order had been kept in abeyance till the next date i.e. 1.10.2010, it was expected of the Respondents as well as all concerned authorities to act with reasonable restraint. However, having disposed of the appeal on merits we do not wish either to dilate in this regard or comment further. These parting lines are only to indicate that the steps taken by the Respondents and other authorities to conduct the floor test on 25.11.2010, the interim order notwithstanding, have the potential of being viewed to be in conscious and deliberate non-compliance of the direction of the interim restraint contained therein.

84. The appeal is allowed. The impugned judgment and order dated 16.11.2010 is set aside. The Respondents would however take immediate steps for a fresh assessment of the prevailing situation, cause the proceedings of the Commission to be expedited as permissible in law and ensure that an appropriate decision is taken in the matter of installation of the democratic institution of the Council as contemplated by the Rules without undue delay. In the facts and circumstances, we leave the parties to bear their own costs.