

(2010) 08 GAU CK 0043

In the Gauhati High Court

Case No : Writ Appeal No's. 560, 561, 611 and 612 of 2005 and 135 of 2006

Col. Jagmohan Singh and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Armed Forces (Special Powers) Act, 1958 — Section 3, 4, 5, 6
Army Rules, 1954 — Rule 177
Commissions of Inquiry Act, 1952 — Section 2, 3, 6
Constitution of India, 1950 — Article 246, 246(1)
Government of India Act, 1935 — Section 100, 107(1)
Penal Code, 1860 (IPC) — Section 302, 307, 34
Prevention of Terrorism Act, 2002 — Section 18

Citation : (2010) 4 GLT 1014

Hon'ble Judges : B.D. Agarwal, J; Amitava Roy, J

Bench : Division Bench

Advocate : G. Gonsalves and D.K. Mishra and S. Bhattacharjee, for the Appellant; R. Sarma, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—These appeals on varying counts lay challenge to the common judgment and order dated 22.03.2005 rendered in W.P.(C) No. 5817/2004 and W.P.(C) No. 6187/2004. The Appellants in Writ Appeal No. 560/2005 and Writ Appeal No. 561/2005 are respectively the writ Petitioners in W.P.(C) No. 5817/2004 and W.P.(C) No. 6187/2004. Whereas, the Respondent Nos. 4 and 5 in W.P.(C) No. 6187/2004 are the Appellants in Writ Appeal No. 135/2006, the State of Manipur, Respondents in these writ proceedings figure as the Appellant in Writ Appeal No. 611/2005 and 612/2005.

2. The principal assailment in the aforementioned writ petitions had been against the competence and authority of the State of Manipur to appoint a Commission under the Commission of Inquiry's Act, 1952 (hereinafter for short referred to as the Act, 1952) for making an enquiry into the alleged killing of KM.TH. Monoroma

Devi (for the sake of brevity referred to as Monoroma Devi/deceased) vide Notification No. 8/1 (1)/2004-H(Pt-II) dated 12.07.2004 of the Govt. of Manipur Secretariat (Home Department). By the judgment and order impeached, the learned Single Judge held that the State of Manipur was not the appropriate Government having administrative control over the armed forces deployed in the State and entitled to the protection amongst Ors. of Section 6 of the Armed Forces (Special Powers) Act, 1958 (hereinafter for short referred to as the Act, 1958). Having held so, the report submitted by the Commission was not construed to be one as comprehended in Section 3 of the Act, 1952. This, notwithstanding the report was adjudged to be one by a fact finding Committee/Body appointed by the State of Manipur and was directed to be laid with the Union Government for scrutiny thereof and appropriate order(s)/action against the concerned personnel of the 17th Assam Rifles, if so indicated therein. Being aggrieved from their respective perspectives, the parties have donned the gauntlet for redress.

3. We have heard Mr. C. Gonsalves, Senior Advocate for the Appellants in Writ Appeal No. 135/2006, Mr. D.K. Mishra, Senior Advocate for the Appellants in Writ Appeal No. 611/2005 and Writ Appeal No. 612/2005 and Mr. S. Bhattacharjee, learned Advocate for the Appellants in Writ Appeal No. 560/2005 and Writ Appeal No. 561/2005. Mr. R. Sarma, learned Asstt. Solicitor General of India represented the Central Government in the appeals.

4. A fascicule of the essential facts is indispensable to lay the factual backdrop. The pleadings in both the writ petitions are identical. The writ Petitioners" were the personnel of different ranks with the 17th Assam Rifles detailed at the relevant time at Katihalmabi, Imphal in the State of Naimpur. From time to time, the Government of India being aware of the secessionist activities of certain unlawful terrorist organizations and its members in the State had issued Gazette Notification banning the same in order to safeguard the sovereignty and security of the nation. By notifications, inter alia being No. 71 dated 17.12.2001 and No. 1022 dated 13.11.2003 such subversive activities of the Memti extremist organizations including the People's Liberation Army and its political wing were documented.

The People's Liberation Army generally known as PLA had also been designated as a terrorist organization by Section 18 read with the Schedule to the Prevention of Terrorism Act of 2002. According to the writ Petitioners, the exhaustive data base developed and maintained by the 17th Assam Rifles (hereinafter for short referred to as the Assam Rifles) on the various underground organizations operating in the entire Imphal Valley and the other areas coupled with various intelligence reports indicated that Monoroma Devi @ Henthoi was a long serving member of the banned organization, PLA and a dreaded terrorist being engaged amongst Ors. in the activity of eliminating high profile targets and occasioning large casualties.

On receiving such information from a reliable intelligence source in the night of

10.07.2004 that she was lodged in the vicinity in the area Ban Kampu Mayyie Lekaei of Imphal, the Company Commanders of Assam Rifles stationed at Sinjami were alerted and an operation was ordered to nab her. Accordingly, at about 12.50 a.m. in the morning of 11.07.2004 a Mobile Vehicle Check Post was set up in the general area of Sanjmai which recorded an intelligence input that S.S. Corporal Hanthoi was at her residence at Kampu Mayyie Lekaei. Immediately two Tata Mini Trucks were sent on different routes and two armoured gypsies were dispatched to the house of the cadre and at about 3 a.m. on 11.07.2004 a cordon was thrown around her house. The door of the house on being knocked, it was opened by Mr. Sailendra Singh, the younger brother of cadre, whereupon the house was searched and S.S. Corporal Hinthoi @ Monoroma Devi arrested from there to be handed over to the local police. According to the Petitioners, certain incriminating materials were also recovered from her. They averred that an arrest memo was duly prepared and witnessed as per the standard operative procedure as prescribed by the higher authority and a "no damage claim certificate" was also obtained being signed and witnessed by the family members present. A copy thereof was also furnished to them.

5. At about 3.30 a.m. the personnel on operation decided to proceed towards the concerned police station to hand over the arrested lady cadre with the incriminating documents and accordingly a call was made to the control room thereof to arrange for a lady constable. According to the writ Petitioners, at that point of time, the arrested cadre informed the patrol party that if she was not handed over to the police, she would deliver a radio set and hand grenade which were at her disposal. Following a dialogue with her mother, the latter went inside the house with two members of the patrol party and handed over to them one Singapore made Kenwood radio set and one Chinese made fragmentation type hand grenade both kept in a white cloth bag. A seizure memo was prepared duly signed and witnessed.

6. It was at that stage that S.S. Corporal Monoroma Hanthoi further revealed that there was a AK-47 Rifle in the possession of Anr. lady cadre, namely S.S. Rubi living in the general area of Sinjamai. On being led by her, the patrol party, according to the writ Petitioners moved from place to place, but in vain. By that time it was about 4.45 a.m. and there was sufficient daylight, so much so, that the movement of the patrol party alongwith the arrested cadre was in the clear view of the members of the public present on the road. While the patrol party moved towards Waripok as suggested by Monoroma Devi, the latter requested for a temporary reprieve to ease herself. The request was acceded to and the patrol party took position at about 30-35 meters away from her to allow her the required privacy. The writ Petitioners have asserted that it was then all of a sudden that Monoroma Devi started to flee through a gap in the nearby hedge. As inspite of repeated orders of the guard commander to stop, she defied the instructions, he (guard commander) fired a shot in the air to warn her and instinctively the other members of the patrol party fired at her legs following which she suffered bullet injuries to which she eventually succumbed.

7. The writ Petitioners averred that on the vicious and hostile propaganda that was unleashed against the Assam Rifles thereafter at the behest of the underground elements and their sympathisers alleging rape and killing of Monorama Devi, a mass public hysteria was whipped up in the State of Manipur and more particularly in Imphal thus posing a serious threat to the lives of its personnel.

Meanwhile, however the Commission was appointed by the Notification dated 12.07.2004 and it issued summons to the Petitioners to appear before it. The writ Petitioners also averred about serious threat to the lives of the personnel who had participated in the operation as well as their families from the terrorist organizations. Situated thus, though from time to time, prayers were made with the Commission to conduct its proceedings in camera and also to guard against disclosure of their identities, the same remained unheeded. Being so placed, the Petitioners sought to invoke the writ jurisdiction of this Court seeking to annul the proceedings of the Commission, inter alia on the ground that the State of Manipur was not the appropriate authority to constitute the same in view of Section 2(a)(i) of the Act. 1952. They also challenged the proceedings of the Commission to be wanting in jurisdiction in the teeth of their protection u/s 6 of the Act, 1958 sans the prior sanction of the Central Government. They also referred to a Army Court of Inquiry constituted on 12.07.2004 on the same incident and complained that inspite of necessary summons, neither the family members of the deceased, nor any other civil witness did respond thereto. The writ Petitioners also stated that the forensic report was awaited by the Army Court of Inquiry.

8. While the writ petitions were pending, Smti. Thangjam Ongbi Khumanld Devi and Shri Thangjam Dolendro Singh, the mother and the brother of the deceased filed interim application in W.P.(C) No. 6187/2004 seeking their impleadment as Respondents therein. In the said application they alleged that at about 3.30 a.m. on 11.07.2004 some personnel of 17th Assam Rifles had entered into the house of the deceased situated at Ban Kampu Mayyie Lekaei and arrested her. They admitted of the issuance of an arrest memo to the family members of the deceased, but alleged that she was thereafter killed by the personnel of the Assam Rifles and her dead body was abandoned near Kelrao Wangkhem along Ngariyan Yairapok Road.

9. They further averred that on 12.07.2004 the applicant No. 2 lodged a written report with the Officer-in-Charge, Irilbong Police Station about the arrest and murder of Monorama Devi on which Irilbong Police Station FIR No. 30(7)/2004 case u/s 302/34 IPC was registered. The applicants also referred to the formation of the People's Action Committee on 12.07.2004 in deference to the sentiments of the local populace expressing condemnation over the episode and also apprehension of lack of safety and security due to the illegal acts committed by the Assam Rifles. The Applicants justified the constitution of the Commission by the State of Manipur vide the impugned notification dated 12.07.2004 and

also referred to the order of this Court passed in W.P.(C) No. 5817/2004 permitting it (Commission) to further its proceedings. In this background, applicants expressed their desire to contest the challenge to the constitution of the Commission and its proceedings being vitally interested in the issues.

10. This Court by the order dated 18.05.2005 after hearing the parties allowed the prayer and directed their impleadment as Respondent Nos. 4 and 5 in W.P.(C) No. 6187/2004. These Respondents however did not file additional pleadings.

11. The Respondent-State in its exhaustive counter justified the constitution of the Commission and the terms of reference outlining the contour of its fact finding pursuit. While admitting that at the relevant time, the entire State of Manipur had been declared to be "disturbed area" it however categorically pleaded that the Armed Forces present thereat had not been detailed in aid of the civil authority and that the Assam Rifles do not share any information with the State Government.

The answering Respondent in details with reference to the relevant judicial pronouncements set out the constraints on the exercise of the special powers of the Armed/Security Forces in course of their counter insurgency operations in a disturbed area and in terms of the Act, 1958. While admitting that after the incident, in which Monoroma Devi had died, the Assam Rifles had lodged an FIR with the Irilbong Police Station to the effect that she was shot at her legs while fleeing and that she succumbed to the injuries, the answering Respondent also referred to a different version laid by the younger brother of the deceased alongwith other leaders of the local organizations in a memorandum submitted with the State Government on 11.07.2004 alleging that she had been killed while in the custody of the Assam Rifles and that the "no claim certificate" had been extracted from the family members at gun point. It was further averred that in the face of large-scale protests and demonstration that followed, which threatened to snowball into a serious crisis, if prompt appropriate action was not taken, the State Government, in response to its commitment of protecting the rights and liberties of the citizens decided to have the facts and circumstances leading to the death of Monoroma Devi enquired by the Commission.

12. The answering deponent clarified that thereby it did not seek to enquire into the powers and functions of the Assam Rifles, but such a course was construed to be unavoidably warranted having regard to the public importance of the issue before taking remedial steps as necessary. The state dismissed the Petitioners' plea that the uproar over the incident was at the behest of the underground factions and also stressed upon the steps taken by it for providing adequate security to the personnel of the Assam Rifles who were required to appear before the Commission as well as in general. The security measures taken by the State Government at the venue of the Commission and other strategic places were also detailed in the affidavit.

The answering Respondent expressed ignorance about the day-to-day

proceedings of the Army Court Inquiry said to be in progress. It asserted that having regard to the purpose of the enquiry, the Commission had been validly constituted under the Act, 1952 and that the same by no means could be repudiated as an encroachment on the power of the Union Government. It also asserted that as the enquiry by the Commission is not a legal proceeding within the meaning of Section 6 of the Act, 1958, no prior sanction of the Central Government was essential and therefore the impugned notification dated 12.07.2004 was valid.

13. In its affidavit the Respondent No. 3, the Union of India affirmed about the constitution of a Court of Inquiry by the Commander, 9th Sector of the Assam Rifles under Rule 177 of the Army Rules, 1954 to enquire into the incident of alleged custodial death of Monoroma Devi. While pointing out that the Court of Inquiry was constituted on 12-07-2004 it was further averred that during the course thereof, it revealed from the report of the Central Forensic Science Laboratory, Kolkata being C.F.S.L. EE/04(M.A.N.I) dated 09-08-2004 that traces of semen had been detected on the petticoat supposedly worn by the deceased at the time of her death. As the said disclosure seemed to suggest commission of rape on the deceased before her death, the Army Court of Inquiry decided to subject all the personnel of the Assam Rifles taking part on the operation on 11.07.2004 to blood tests and to compare their DNA profiles with that extracted from the traces of semen to ascertain the truth or otherwise of the allegation of sexual abuse on the deceased by the members of the patrol party. The answering Respondent asserted that pursuant to the said orders of the Court of Inquiry, blood samples of all the concerned personnel of the Assam Rifles were taken by the civil doctors at the Regional Institute of Medical Science (RIMS), Imphal and were concealed and forwarded to the C.F.S.L., Kolkata for DNA profile and further comparison with the semen stain found on the petticoat stated to be worn by the deceased at the time of her death. The answering Respondent also disclosed that in this regard the Army Court of Inquiry reportedly requested the Manipur State Forensic Laboratory, Civil Police and the State Bureaucracy for allowing C.F.S.L., Kolkata to arrange for comparison of the DNA profile of the semen stain and those extracted from the blood samples of the Assam Rifles personnel but to no avail.

The Union of India, through its counter, however endorsed the writ Petitioners' plea of lack of competence and jurisdiction of the State of Manipur to constitute the Commission to enquire into the act/conduct of the Assam Rifles personnel who were at the relevant time acting as members of the armed forces in aid of civil authority. By order dated 24.05.006 passed by the learned Single Judge in Review Petition No. 95/2005, the observation made in paragraph 25 of the impugned judgment and order recording the concurrence of Mr. Misra, with the views expressed by Shri Dutta and Shri Gonzalvis was expunged.

14. Mr. Gonsalves, has persuasively argued with reference to Entry 2 and 2A of the Union List as well as Entry 1 and 2 of the State List that having regard to the

acts of criminality perpetrated by a phalanx of the Assam Rifles personnel, the same could by no means be comprehended to be within their duties as such in the aid of civil power and therefore the State of Manipur was wholly within its power and jurisdiction to appoint the Commission to probe into the facts leading to the unfortunate incident involving the deceased. As the acts complained were visibly beyond the official duties envisaged by the personnel of the Assam Rifles, dischargeable in the aid of civil power as contemplated in Entry 2A of the Union List, but assuredly come within the domain of police surveillance, the State of Manipur, in view of the width and amplitude of the purview of Entry 2 of the State List was authorized to constitute the Commission and prescribe the terms of reference as outlined in the Notification dated 12.07.2004, he urged.

15. The learned Senior Counsel insisted that as the alleged acts of rape and murder of Monorama Devi by the culpable personnel of the Assam Rifles are wholly unrelated to the deployment of any armed force of the Union or the powers, jurisdiction, privilege and liabilities of the members thereof, in course of such detailment, but instead are gory instances of individual excesses, the challenge to the lack of the jurisdiction of the State of Manipur to constitute the Commission for enquiring into the facts relatable to the incident is obviously misconceived. While asserting that the proceedings of the Commission unerringly establish that Monorama Devi had been raped and shot at from a close range by some personnel of the Assam Rifles acting with prior concert, the learned Senior Counsel urged that the offending acts were palpably illegal and inhuman besides being in defilement of basic human dignity and right. The learned Senior Counsel, in particular contended that in the operation claimed to have been undertaken by the Assam Rifles, they had as well consciously flouted the imperatives to be observed as laid-down in plethora of decisions by the Apex Court and this Court to ensure fairness in the process in recognition to the basic human rights. To reinforce his arguments Mr. Gonsalves, placed reliance on the decision of the Apex Court in *Naga People's Movement of Human Rights Vs. Union of India (UOI)*, :*Naga People's Movement of Human Rights v. Union of India (UOI)* and of this Court in *Border Security Force (B.S.F.) Vs. State of Meghalaya and Others*,

Mr. Mishra, appearing for the State while generally subscribing to the pleas advanced on behalf of the Appellants in Writ Appeal No. 135/2006 has maintained that the Commission was appointed primarily to enquire into the facts leading to the incident and the terms of reference clearly demonstrate that the impugned Notification does not trench upon the areas covered by Entry 2 or 2(A) of the Union List. The learned Senior Counsel while admitting that as required u/s 3 of the Act, 1958 a notification had been issued by the State Government declaring areas mentioned therein to be disturbed areas has urged that deployment of any armed force in aid of civil power ipso facto does not denude it {State Government} of its power and responsibility vis-a-vis public order. Mr. Mishra contended that having regard to the groundswell of the seething protests and demonstrations from all sections of the society demanding

uproar for determining the actual state-of-affairs, the State Government, in response to its solemn commitment for transparent governance decided to institute a fact-finding enquiry and hence constituted the Commission vide the impugned notification.

16. As the progression of events following the incident manifested tell tale signs of fast deterioration in public order, this initiative was taken to ascertain the correct facts. Mr. Mishra, has urged that as an armed force of the Union on deployment, has to essentially act in co-ordination with the State Police, the civil power of the State therefore does not cease to exist and thus in a given fact situation necessitating its intervention in the interest of public order and tranquility, it cannot afford to remain a mute spectator.

The learned Senior Counsel with particular reference to the words "with respect to" applied in Article 246 of the Constitution of India and the "Trenching Doctrine" has urged that the respective powers of the parliament and the State legislature to enact laws on the listed entries have to be adjudged on the measure of the canon of "pith and substance" and thus viewed the impugned decision of the Government is unassailable. Mr. Mishra, added that the limited use of the proceedings of the Commission as contemplated by the Act, 1952 or the mere possibility of the State not taking any action on the report thereof eventually does not signify absence of its power to constitute such Commission in matters of public order. With reference amongst Ors. to the progress report of the criminal cases registered on the information alleged as well as an extract of the report of the Sarkaria Commission, on the deployment of Union Armed Forces in a State for public order duties, Mr. Mishra insisted that the impugned decision of the State Government was indispensably warranted in the facts and circumstances in order to maintain public order and therefore having regard to the scheme of the Act, 1952, the impugned notification is valid. The following decisions were cited to buttress his arguments:

1988 (2) GLR 159 : Kehar Singh and Others Vs. State (Delhi Administration), : Kehar Singh and Ors. v. State (Delhi Administration) (1977) 4 SCC 596 [1]: Naga People's Movement of Human Rights Vs. Union of India (UOI), : Naga People's Movement of Human Rights v. Union of India AIR 1947 PC 60 : AIR 1941 47 (Privy Council) : M.M.R.M Chettiar Firm v. S.R.M.S.L. Chettiar Firm and Ors. (1994) 3 SCC 569 : Union of India (UOI) and Others Vs. Shah Goverdhan L. Kabra Teachers College, : Union of India Vs. Piedade Fernades, : Union of India (UOI) and Others Vs. State of Manipur and Others, : Union of India and Ors. v. State of Manipur and Ors.

17. The learned Asstt. Solicitor General has dismissed the State Government's plea of emerging issue of public order as a justification for the constitution of the Commission contending that the notification declaring the State of Manipur to be a disturbed area since 1980 belied the same. As the Assam Rifles had been admittedly deployed in aid of civil power, having regard to Entry 2A of the Union List and Section 2(a)(i) and (ii) of the Act, 1952, the Commission could not have

been constituted by the State Government with the terms of reference as engrafted in the notification dated 12.07.2004. Mr. Sarma, pointed out that the omission on the part of the State Government to request the Central Government to appoint a Commission to enquire into the incident or to obtain sanction for the prosecution of the concerned personnel of the Assam Rifles demonstrated lack of application on its part as well as collateral considerations informing the impugned decision. Referring to the affidavit-in-opposition filed by the Union of India, Mr. Sarma, argued that not only no cooperation was extended to further the Court of Inquiry on the incident, a parallel process was initiated, though bereft of any power to do so. Not only the decision to constitute a Commission in the attendant facts and circumstances lacks authority, there being no basis whatsoever for the satisfaction necessary as a condition precedent obligated by Section 3 of Act, 1952, the impugned notification is wanting in bona fide as well, he urged.

18. Mr. Bhattacharjee appearing for the Appellants in Writ Appeal No. 560/2005 and 561/2005 has reiterated that the deployment of the 17th Assam Rifles having been made in Manipur at the instance of the State Government following a declaration that its territories were a disturbed area, has maintained that the impugned notification has the potential of permitting a roving enquiry into the activities of its personnel within the scope of such deployment and is thus clearly beyond the power and authority of the State Government According to him, the impugned notification amounts to substantial inroads in the prohibited area curved out by Entry 2A of the Union List and therefore the impugned decision as well as the proceedings of the Commission with its report are non est in law and on facts. He further urged blatant violation of the procedure prescribed by the Act 1952 in the conduct of the Commission.

19. Mr. Bhattacharjee in order to brace up his pleas recited reliance on the decision of the Apex Court in Bharat Hydro Power Corpn. Ltd. and Others Vs. State of Assam and Another, : Hindustan Lever and Another Vs. State of Maharashtra and Another, : I.T.C. Limited Vs. The Agricultural Produce Market Committee and Others, : ITC Ltd. v. Agriculture Produce Market Committee and Ors.

20. Mr. Mishra, in reply pointed out that the affidavit-in-opposition filed on behalf of the Respondent No. 3 not having been affirmed by a person duly authorized by the concerned department, the contents thereof ought not to be taken cognizance of.

21. The contentious pleadings and the competing arguments have been duly taken note of. The cardinal issue pertains to the legality or otherwise of the constitution of the Commission vide the notification dated 12.07.2004. That at the relevant time the entire State of Manipur had been declared to be a disturbed area u/s 3 of the 1958 Act is a matter of record and stands amply demonstrated by a series of notifications to that effect laid in course of the arguments. The 17th Assam Rifles stood deployed in Manipur at that time and had admittedly

partaken in the operation in course of which Manorama Devi was arrested from her residence at Bamon Kampu Mayai Leikai in the wee hours of 11.07.2004. That she was found dead later in the morning with several bullet injuries on her body is also not in dispute. Whereas, the Assam Rifles plead that the deployed personnel on the operation had to open fire as Manorama Devi attempted to flee inspite of their repeated cautions taking advantage of the relaxation accorded to her to ease herself as requested, her family members alleged brutal rape on her by them (Assam Rifles personnel) and cold blooded murder by mercilessly shooting her from a close range. The First Information Reports lodged by Nb. Sub Digambar Dutt of 17th Assam Rifles C/o.99 A.P.AO, one of the writ Petitioners in W.P.(C) No. 6187/2004 and Shri Thangjam Dolendro Meitei, the brother of the deceased and registered respectively as FIR No. 29(7)/04 IBG PS u/s 307 IPC, 10/13 UA(P) Act. and 5 Expl. Sub. Act read with 6(1-A) IWT Acts and FIR No. 30(7)/04 Irilbung P.S. u/s 302/34 IPC reveal the basic facts.

22. Noticeably, however, the FIR submitted by the brother of the deceased at the earliest point of time, did not allege commission of rape on the deceased. Be that as it may, the incident seems to have stirred up intense adverse public opinion to rock the entire State with series of animated protests and demonstrations sweeping the nook and corner thereof. The State Government pleading it to be the guardian of public peace and tranquillity has sought to justify the constitution of the Commission only for inquiring into the facts leading to the episode for causing necessary steps to be taken, if any, in accordance with law. The writ Petitioners, personnel of the aforementioned unit of the Assam Rifles have questioned the competence of the State Government in appointing the Commission and detailing the terms of reference for its inquiry. The radix of the impugment assuredly is entrenched in Entry-2 and 2-A of List-I and Entry-1 and Entry-2 of List-II of the Seventh Schedule to the Constitution of India as well as the definition of "appropriate government" provided in Section 2(a)(i) and (ii) of the Act, 1952. The formidable significance and the determinative bearing thereof vindicate their ready reference. Extracts of these entries and the definition of "appropriate Government" would thus be apt:

List - Union List

2. Naval, military and air forces; any other armed forces of the Union....

2.A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment....

List-II State List

1. Public order (but not including [the use of any naval, military or Air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).

2. Police (including railway and village police) subject to the provisions of entry 2A of List-I.

ACT 1952

2(a) "appropriate Government" - means

(i) the Central Government in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List-I or List-II or List-III in the Seventh Schedule to the Constitution; and

(ii) the State Government in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List-II or List-III in the Seventh Schedule to the Constitution.

23. Section 3 of the Act, 1952 empowers the "appropriate Government", if it is of the opinion that it is necessary so to do to appoint, by notification in the Official Gazette, a commission of Inquiry into any definite matter of public importance and perform such functions within such time as may be specified. The section discloses that such an appointment would be mandatory if backed by a resolution to that effect by the Parliament or as the case may be by, the Legislature of the State, though otherwise discretionary subject to the satisfaction to that effect to be entertained by the appropriate Government. Considering the contours of the present adjudication, reference to the other provisions of this enactment is in essential.

24. The Act, 1958, which is a legislation to enable certain special powers to be conferred upon members of the armed forces in the disturbed areas in the State as referred to in the preamble thereof it also authorizes the Governor of State or the Administrator of that Union Territory or the Central Government, as the case may be, to declare by notification in the Official Gazette, the whole or such part of such State or Union Territory to be a disturbed area if he is of the opinion, that the same is in such a disturbed or dangerous condition that the use of armed forces in aid of civil power is necessary.

Whereas, Section 4 enumerates the special powers of the armed forces deployed in a disturbed area, Section 5 mandates that any person arrested and taken into custody has to be made over to the officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest. Section 6, affords protection to persons acting under the Act so much so, that no prosecution, suit or other legal proceeding can be instituted against them, except with the previous sanction of the Central Government in respect of anything done or purported to be done in exercise of the powers conferred by the statute.

25. Reference to the contents of the impugned notification would complete the preface. Expedient it would be to quote the relevant excerpts thereof:

GOVERNMENT OF MANIPUR

SECRETARIATE HOME DEPARTMENT

NOTIFICATION

Imphal, the 12th July, 2004,

No. 8/I(I)/2004-H(P-2): Whereas, in a join representation dated 11.07.2004, submitted by (i) Shri Thangjam Dolendro Meetei, younger brother of Km. Th. Mohorama Devi @ Henthoi, (ii) Smt. Saglsem Homdonbi Devi, General Secretary, Bamonkampu Development Association (Youth Centre, Irilbung) and (iv) Shri Wahengbam Inao Luwang, Secretary Pureiromba Youth Club, Bamonkampu, Imphal, it has been reported that Kumari Thangjam Monorama Devi @ Henthoi (30 yrs) D/o. of (L) Th. Birahari Singh of Mamon Kampu Mayai Leikai, BPO-Irilbung, P.S. - Irilbung of Imphal East District, Manipur was arrested by the personnel of 17th Assam Rifles on 11.07.2004 at 0330 hrs. from her residence at Bamonkampur Mayai Leikai after giving arrest memo and was later found dead in the same morning at Yaipharok Maring village;

2. Whereas, it is alleged in the said joint representation that Km. Th. Manorama Devi was healthy at the time when she was arrested by the personnel of 17th Assam Rifles by issuing Arrest Memo and that she was killed while in their custody;

3. Whereas, it is also alleged in the said representation that the personnel of 17th Assam Rifles forcibly made the family members to sign at gun point a "Claim Certificate" stating that "Troops of Assam Rifles has apprehended Th. Monorama Devi from her house at 3.30 a.m. on 11th July, 2004 and searched the house in present of family members and the undersigned don't have any claim against them. It is further stated that Security Force personnel haven't misbehaved with women folk or not damaged any property";

4. Whereas, the People's Action Committee Against the Brutal Custody Killing of Th. Monorama Devi, Bamonkampu By 17th Assam Rifles has also alleged that Km. Th. Monorama Devi was killed in custody by the 17th Assam Rifles personnel after arresting her from her residence at Bamonkampu Mayai Leikai, Imphal East District;

5. Whereas, the State Government considers that the matter involved is of "public importance" and is of the opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an inquiry into a definite matter of public importance, namely, the alleged killing of Km. Th. Monorama Devi;

6. Now, therefore, in exercise of the powers conferred by Section 3 of the Commissions of Inquiry Act 1952 (60 of 1952), the Governor of Manipur is hereby pleased to appoint a Commission of Inquiry to be presided over by Shri C. Upendra Singh. (Retd.) District and Session Judge, Manipur.

7. The terms of reference of the Commission shall be as follows:

- a) to inquire into the facts and circumstances leading to the death of Km. Th. Monorama Devi on 11.07.2004;
- b) to identify responsibilities on the person/persons responsible for the death of Km. Th. Monorama Devi;
- c) to find out any matters incidental thereto;
- d) to recommend measures for preventing the recurrence of such incidents.

26. The State Government as the notification divulges comprehended "public importance", as the impelling necessity for the appointment of the Commission of Enquiry for the purpose of making an inquiry into alleged killing of Km. Th. Manorama Devi. The terms of reference as the notification reveal were to i) inquire into the facts and circumstances leading to the death of Km. Th. Manorama Devi on 11.07.2004, ii) to identify responsibilities on the person/persons responsible for her death, iii) to find out any matter incidental thereto and iv) to recommend measures for preventing the recurrence of such incident.

The scope of the probe by the Commission principally was thus to investigate the facts and circumstances leading to the death of Km. Th. Monorama Devi and to identify the responsibilities of the person/persons involved in the incident. This assumes significance in view of the persistent plea of the State Government that the purpose of the Commission was only to ascertain the facts leading to the death of Km. Th. Monorama Devi.

27. As the scope of the inquiry has a vital bearing on the validity or otherwise of the constitution of the Commission in the present context, the underlying import and the notion of "appropriate Government" as defined under the Act, 1952 demands a correct discernment.

Section 2(a) of the Act, 1952, defines appropriate Government to mean the Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List-I, List-II or List-III in the Seventh Schedule to the Constitution of India and the State Government into any matter relatable to any of the entries enumerated in List-II or List-III. Palpably therefore, the Central Government is empowered to appoint a Commission for any matter relatable to any of the entries enumerated in either of the three lists. The State Government is endowed with the power only if the inquiry is into any matter relatable to any of the entries in List-II or List-III. In other words, it would be impermissible for the State Government to appoint a Commission for making inquiry into any matter relatable to any of the entries enumerated in List-I. The entries in the legislature lists relevant for the present debate have been referred to hereinabove. There is no dissension at the Bar that the analogy of the doctrine of "pith and substance" invocable in the inter play of such entries in the list, is applicable to identify the "appropriate Government" under the Act, 1952. A little dilation on this proposition qua the authorities cited is warranted at this juncture.

The competence of the Provincial Legislature to enact the Madras Agriculturists Relief Act, 1938, in terms of Section 100 and 107(1) of the Government of India Act, 1935 and the related Lists arose for scrutiny in *ALSPPL Subrahmanyam Chettiar* (Supra) before the Federal Court. His Lordship Gwyer C.J., while observing that the Act was an attempt to deal with the problems of rural indebtedness as well as delineation of the legislative powers between the Federal and the Provincial Legislatures devised by the scheme of the 1935 Act, propounded that the principles laid down by the Judicial Committee in a long series of decisions for the interpretation of the British North America Act, 1867 were acceptable as a guide for the interpretation of the similar provisions of the Government of India Act, 1935. His Lordship concluded thus-

it must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in Anr. list and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its "pith and substance", or its "true nature and character", for the purpose of determining whether it is legislation with respect to matters in this list or in that.

28. Lordship Sulaiman, J., in his supplementary view on the doctrine of "pith and substance" observed that though every effort had been made to make the three lists as comprehensive and exhaustive as well as exclusive as possible, in view of the large number of items in the three lists, it is almost impossible to prevent a certain amount of overlapping. His Lordship remarked that absolutely sharp and distinct lines of demarcation are not always possible and rigid and inflexible watertight compartments cannot be ensured. A hard and fast rule of exclusion derived from the strict literal language of Section 100 therefore was quite impracticable and unworkable, he added.

29. Referring to the decision of the Federal Court in AIR 1941 16 (Federal Court) , dealing with Canadian cases, his Lordship recalled that one must look to the true nature and character" and to the "pith and substance" of the legislation. His Lordship ruled that having regard to the successive pronouncements of the Privy Council, it is unreasonable to assume that the Parliament contemplated from the words "with respect to" in the Act, 1935, that any overstepping beyond the limit, howsoever small or insignificant and any encroachment upon the field of List-I, howsoever unimportant, should make the Act wholly void. While emphasising that incidental encroachment is not really forbidden, His Lordship underlined the necessity first to ascertain whether the enactment impugned is "with respect to" any of the matters in List-II and if not to construe it as incompetent. It was held that so long as it can be shown that all the provisions contained therein fall within List-II or List-III, the Provincial Legislature was

deemed to be competent *prima facie* unless the law could be demonstrated to be in respect of any matter in List-I or was void on account of any repugnancy.

30. The Privy Council in *Prafulla Kumar Mukherjee and Ors.* (supra), was amongst Ors. seized with the question as to whether Bengal Money-lenders Act, 1940, incidentally trenching upon the matters reserved for the Federal Legislature u/s 100 of the Government of India Act, 1935 and if so the effect thereof. Their Lordships too while tracing the genesis to the British North America Act and the Australian Commonwealth Act, reiterated the practical experience of the non-feasibility of a clear cut and absolute demarcation of powers of Legislatures to prevent overlapping thereof. While propounding the theory of "pith and substance" or the true nature and character of the enactment for the purpose of ascertain whether it is a legislation "with respect to" matters in the list earmarked for the legislature involved, the Privy Council also indicated the reliefs and adjudged the permissible extent of the invasion into the other legislative domain as a relevant factor to determine the validity or otherwise of the enactment.

31. The same view, however, with reference to Article 246 of the Constitution of India resounded in *Kartar Singh* (supra). Their Lordships while dwelling on the principles to be applied for construing the entries in the legislative lists, held that those must not be construed in a narrow and pedantic sense and that widest amplitude must be accorded to the language thereof. Their Lordships observed that sometimes the entries in different lists or the same list may be found to overlap or to be in direct conflict with each other. In such an eventuality it is the duty of the Court to find out the true intent and purpose and to examine the particular legislation in its "pith and substance" to determine whether it fits in one or other of the lists.

It was held that the doctrine of "pith and Substance" was applied while the legislation with regard to the particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list, is also touching on a subject in Anr. list. Their Lordships propounded that if on a scrutiny of the enactment in question it is found that it is in substance one on a matter assigned to the legislature enacting it then it is as a whole valid, notwithstanding any incidental entrenchment upon matters beyond its competence i.e. on a theme included in the list belonging to other legislature. Incidental encroachment by a legislature beyond its domain and upon Anr. legislative sphere was thus held to be not totally forbidden.

32. Apart from a wholesome reiteration of the above dictum, the Apex Court in *Union of India and Ors. v. Shah Goverdhan L. Kabra Teachers College* (supra), elucidated that the rule of widest construction notwithstanding, the same would not enable the legislature to enact a law relating to matter which has no rational connection with the subject matter of an entry. Their Lordships cautioned against extension of the meaning of the words beyond their reasonable connotation in anxiety to preserve the power the legislature. It was reiterated that the doctrine

of "pith and substance" signified that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it could not be held to be invalid, merely because it incidentally encroached on matters assigned to Anr. legislature. Their Lordships added that when a law is impugned as being ultra-vires of the legislative competence, the true character of the legislation needs to be ascertained and the question of the intrusion into the territory of Anr. legislation is to be measured not by the degree but by the substance thereof.

33. That in the cases of apparent conflict in legislative jurisdictions, a resolution thereof by a reconciliation of the dissenting entries is to be the judicial endeavour had been highlighted by the Apex Court in *ITC Ltd. v. Agricultural Produce Market Committee* (supra). Their Lordships therein enounced that only when such resolution was not possible that the Courts should be called upon to decide the question of legislative competence.

34. In affirmation of the above view, the Apex Court in *Bharat Hydro Power Corporation Ltd. Anr.* (supra), expounded that for applying the principle of "pith and substance" regard ought to be had to, viz, i) to the enactment as a whole, ii) its main objects, and iii) the scope and effect of its provisions.

35. In the same premise, the Apex Court in *Special Reference No. 1 OF 2001, IN RE* (supra), held that Entries in the lists in the Seventh Schedule to the Constitution of India themselves do not empower legislation, but only outline the fields thereof. It was propounded that an entry nevertheless cannot be interpreted so as to cancel or obliterate Anr. or render it otiose and that in case of apparent conflict it ought to be the duty of the Court to iron out the crease and resolve the same so as occasion a workable harmony.

36. In elaboration, the Apex Court while recalling its above comprehension in *Welfare Assocn. A.R.P., Maharashtra and Another Vs. Ranjit P. Gohil and Others*, , propounded that express words employed in an entry would necessary include incidental and ancillary matters so as to make the legislation effective and, therefore, the scheme of the enactment under scrutiny, its object and purpose, its true nature and character and the pith and substance thereof are to be analysed.

37. The preponderant and irrefutable judicial exposition of this profound tenet of legislative dichotomy ratifies incidental transition beyond the topical domains otherwise constitutionally prescribed, if the quintessence of the legislation assailed is substantially lodged within such confines. The trespass or the divagation has to be necessarily incidental and not substantial, casual and not deliberate. An endeavour in such an event for a reconciliation to accomplish harmonized existence appears to be a solemn imperative, unless the repugnancy is irreconcilable to the degree of mutual mutilation. In this pursuit, the scheme of the enactment as a whole, its principal objects, nature and character thereof, scope and effect of its provisions and the nexus thereof with the goal that it

seeks to subserve must be objectively analysed. Not only, the legislative topics demand a liberal construction with encompassing amplitude, the inbuilt restrictions ought not to be enlarged to decimate the purport and the intended utility thereof.

38. While responding to the challenge to the vires of the Act, 1952 in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, their Lordships while negating the same, enunciated that a Commission has no power of adjudication in the sense of passing an order which can be enforced *proprio vigore* and is only entrusted to investigate and record its findings and recommendations on the matters covered by the terms of reference. Their Lordships observed that the inquiry or the report cannot be looked upon as a judicial inquiry/report. It was however, held that as such an inquiry would necessarily involve investigation into facts, it is ancillary that the Commission should express its own view for the consideration of the appropriate Government in order to enable it to take such measures as it may think fit to do. It was iterated as well, that the statements made by any person before the Commission of Inquiry u/s 6 of the Act, 1952 is wholly inadmissible in evidence in any future proceedings, civil or criminal. Their Lordships rejected the contention that the conduct of individual or company cannot possibly be a matter of public importance to warrant the constitution of a Commission otherwise allowed under the Act.

39. While dwelling on Entry 94 of List-I and Entry-45 of List-III to the Seventh Schedule of the Constitution of India and interpreting the words "for the purpose of", their Lordships held that the scope of the inquiry so contemplated was not unnecessarily limited to the particular or specific matters enumerated in any of the entries in the list, but would extend to inquiries into collateral matters which may be necessary for the purpose, legislative or otherwise relatable thereto.

40. Entry-2 and 2A of the Union List and Entry No. 1 and 2 of the State List when viewed in adjacancy project that though the State Legislature is authorized to enact laws on public order, such an empowerment is truncated if the theme relates to the use of naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the Civil Power. A State Legislature thus though can legislate on public order to permit and sustain constitutional governance within its territorial limits, it is prohibited from undertaking that enterprise if the topic has a nexus to the deployment of naval, military and armed forces or other armed forces of the Union or any contingent or Unit thereof in any State in the aid of Civil Power. The necessary incidences of such deployment, namely, powers, jurisdictions, privileges and liabilities of the members of such forces as Entry-2 A of List-I testifies are also within the exclusive preserve of the Parliament. This notwithstanding, having regard to the judicially recognized philosophy of schematic harmony of the legislative prerogatives founded on the doctrine of "pith and substance", the State Legislature retains its dominion to enact laws with respect to the residuary realm

of public order for a secured administration of its provisional democratic polity. An incidental, peripheral or limbic overreach on to the otherwise segregated thematic terrain reserved for the Parliament would not be an anathema, if its law essentially is one embedded within the permitted frontiers. No unwarranted and fancied enlargement of the restrictions and the territorial inhibitions dissentient to the avowed dictum of "pith and substance" is either comprehensible or sanctionable.

41. In course of an exhaustive and dialectical analysis of the provisions of the Act, 1958, the vires whereof had been assailed, the Apex Court in *Naga People's Movement of Human Rights Vs. Union of India (UOI)*, , had ruled that though Entry-1 of the State List qualified the State Legislature to legislate on issues with respect to maintenance of public order, the field encompassing the use of armed forces in the aid of Civil Power had been carved out there from to be entrusted exclusively to the Parliament. Their Lordship propounded that the expression "in aid of the civil power" in Entry-1 of the State List and Entry 2-A of the Union List imply that the deployment of the armed forces of the Union would be for the purpose of enabling the civil power in the State to deal with the situation affecting maintenance of public order necessitating the detailment. Elaborating that the word "aid" postulates the continued existence of the authority to be aided, their Lordships enunciated that it signified that even after the deployment of the armed forces, the civil power would continue to function. Their Lordships held that the Act, 1958 was not a law for maintenance of public order under Entry-1 of the State List.

42. It was authoritatively stated that the power to make a law providing for deployment of the armed forces of the Union in aid of civil power in the State did not comprehend a prerogative to enact a legislation so as to enable the armed forces of the Union to supplant or act as a substitute of the civil power in the State. Their Lordships concluded that a conjoint reading of Entry-2-A of the Union List and Entry-1 of the State List would be that in the event of deployment of the armed forces of the Union in the aid of the civil power in a State, it would operate in the State concerned in cooperation with the civil administration so that the situation which had necessitated the deployment is effectively dealt with and normalcy is restored.

43. With special reference to Sections 4 and 5 of the Act, 1958, their Lordships pronounced that the statute did not envisage supplantation or substitution of the civil power of the State by the armed forces and that it only enables it (armed forces) to assist the civil power of the State in dealing with the disturbed conditions affecting the maintenance of public order in the disturbed area. It was further clarified that conferment of the power on the Central Government u/s 3 of the Act, 1958, to declare an area in a State to be a disturbed area did not signify taking over of the State administration by the army or by other armed forces of the Union and it was thus desirable that the State Government should be consulted and its co-operation ought to be taken while making such a

declaration. It was held that declaration of any area to be a disturbed area would necessarily be attendant upon an existing grave situation of law and order thereat. It was observed in that context that a situation of internal disturbance involving the local population, however, would require a different approach.

Their Lordships also detailed the items of "Do"s and Don"ts" issued by the Army Headquarters and to be adhered to by the armed forces providing aid to the civil authority. As would be apparent therefrom the same required in emphatic terms an express coordination between the armed forces and the local civil administration before and during any operation by the former under the enactment. In conclusion their Lordships reiterated that the expression "in aid of civil power" in Entry-2A of List-I and Entry-1 of List-II signified that the deployment of the armed forces would be for the purpose of enabling the civil power in the State to deal with the situation affecting maintenance of public order necessitating the detailment and that the word "aid" postulates continued existence of the authority to be aided. While reaffirming that the statute did not contemplate effacement of the civil power of the State by the armed forces of the Union, the Apex Court emphasised upon the use of minimal force for effective action thereunder and delivery of the person arrested to the officer in-charge of the nearest police station with the least possible delay so as to facilitate his production before the nearest Magistrate within 24 hours excluding the time taken for the journey from the place of arrest to the Court. Directions were also issued to strictly follow the instructions contained in the list of "Do"s and Don"t" issued by the army authorities and for suitable amendment to bring them in alignment with the guidelines contained in the judgment.

44. The Apex Court in *Romesh Thappar Vs. The State of Madras*, , enunciated that public order was an expression of wide connotation and signifies a state of tranquility prevailing, among the members of a political society as a result of the internal regulations enforced by the Government. A clear distinction was outlined between public order and security of a state.

The differentiation between law and order, public order and the security of State was highlighted in *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, . Their Lordships concluded with reference to Article 246(1) of the Constitution of India that the ambit of the field of legislation with respect to "public order" under Entry-I of List-II has to be confined to situations of lesser gravity having a bearing within the boundaries of a State and activities of a more serious nature which threaten the security and integrity of the country as a whole would fall within the realm of Entry-I of the Union list relating to defence of India and in any event under the residuary power conferred on the Parliament.

45. The decision of the Apex Court in *Kehar Singh and Ors.* (supra), has also been introduced to hint at the limited use of the statements made by a witness before a commission under the Act, 1952 in any other civil or criminal proceeding.

46. This Court in *Smti. Luithukla v. Rishang Keishing and Ors.* (1988) 2 GLR 59, in clear terms proclaimed that the armed forces deployed under the Act, 1958, though extensively empowered thereby, their authority is to be confined within its limits and is never intended to supplant the ordinary machinery for maintaining law and order or for that matter public order. The armed forces are really applied to supplement the working of ordinary law enforcing machinery it held. It was emphasised as well that the armed forces under the aforementioned enactment must act in cooperation with the district administration and not as an independent body and though entitled to some free play as far as their operational activities are concerned, they must take the civil authorities into confidence and work in harmony.

47. The appointment of commission by the State of Manipur under the Act, 1952, amongst Ors. to ascertain whether the army had picked up Shri Y. Sanamacha Singh from his house in the mid night of February 12, 1993, was assailed in *Union of India and Ors. v. State of Manipur and Ors.* (supra), on the ground that it was beyond its competence having regard to the Entry-2 and 2-A of List-I and Entry-1 of List-II of the Seventh Schedule to the Constitution of India. It was contended that the subject matter of the inquiry was located in Entry-2 and 2-A of List-I and that the Central Government was the only appropriate authority to constitute the Commission of Inquiry. The contextual facts reveal the stand of the State Government to the effect that the object and purpose of the commission was not to inquire into the powers, function, liabilities and jurisdiction of the armed forces, who had been detailed to act in aid of civil Administration, but only to probe on the disappearance of Shri Y. Sanamacha Singh and ascertain his whereabouts. That the disappearance of Shri Y. Sanamacha Singh had created a serious law and order problem in the State and had assumed a matter of public importance relating to public order, was also mentioned.

48. On a scrutiny of the terms of the reference, this Court concluded that the State Government did not intend the Commission to make an inquiry about the powers and functions of the members of the forces of the Union or other jurisdictional privileges and, therefore, held that the decision impugned fell within the purview of public order as enumerated in Entry-1 of List-II of the Seventh Schedule to the Constitution of India. It was held, having regard to the public importance generated by the disappearance of Shri Sanamacha Singh and the resultant deterioration in the law and order of the State that the decision of the State Government to constitute the Commission did not suffer from any illegality or error.

49. Following an incident of firing on a crowd in the West Garo Hill District of Meghalaya, a one man Inquiry Commission was constituted by the State Government to report on the causes and nature of the disturbances and the circumstances leading to such armed intervention. In the writ proceeding initiated by the Border Security Forces challenging the competence of the State

Government to appoint such a Commission, the pleadings disclosed that the firing was resorted to not in the invitation of the civil authorities and was on the individual accord of the officer concerned. The challenge as in the instant appeal was founded on Entry-2 and 2-A of List-I of Entry-1 of List-II in the Seventh Schedule to the Constitution of India.

50. This Court noticing, amongst Ors. , that the Border Security Forces had not, at the relevant time, been deployed in aid of civil power or at the invitation of the civil authorities, recorded the failure on the part of the writ Petitioners to cite the law emasculating the State to appoint a Commission as done. This Court rejected the plea of harassment and humiliation at the hands of the state authorities and trivialization of the morale and confidence of the members thereof as an argument in despair.

51. Hon''ble Hansaria, J. (as he was then) in endorsement of the above, reaffirmed the basal ordainment on legislative competence that if the enactment is within the general scope of affirmative words of empowerment and does not violate any express condition or restriction by which the power is limited, it is not for any Court of justice to inquire further, or to enlarge those conditions and restrictions. His Lordship elucidated that if any Commission of Inquiry, though relatable to disruption of public order, does not require any inquiry into the matter covered by the exclusionary part of Entry-1, no further restriction can be imposed on the power of the State Government. Judged in the contextual facts, it was held that the precept of "pith and substance" being relatable to disruption of public order, the incidental encroachment on the working of the armed forces would not introduce any infirmity in the impugned notification.

52. The deployment of the Assam Rifles in the State of Manipur thus obviously did not spell excision of the civil power of the State administration for all practical purposes. As a corollary, the State Government not only retained its dominion and authority to attend to the immediate demands of public order emerging within its territory limits, but was essentially obliged to respond thereto under the scheme of constitutional Governance.

53. The subsisting disturbed and volatile existence of its territories or a part thereof warranting declaration of disturbed area(s) necessitating the deployment of armed forces in aid of civil power, ipso facto, cannot and ought not denote denudation of the power of the concerned State Government to envision and adopt initiatives to effectively quell a surfacing public order if imminent on the anvil. The declaration of a disturbed area on a conscious evaluation of the sustained state of affairs in the locality concerned therefore cannot be construed to preclude a State Government to visualize and enforce steps to successfully thwart a perceptible law and order situation or meet the exigencies of public order writ large on the progression of contemporaneous events. Such a tumult in the public conscience and temperament as a cause of the entropy snowballing, gradually and tangibly to a law and order situation threatening to dislodge the normal rhythm of societal existence, even if directly or remotely relatable to any

action of the deployed armed forces could not have been ignored by the civil administration to shy away from adopting essential measures to restore normalcy and confidence of the teeming masses, which indeed is the sacrosanct commitment under the national charter.

54. The uncontroverted pleaded averments of the State of Manipur is that the incident of the death of Th. Km. Manorama Devi spurred immediate large scale protests all over the State demanding action against the persons responsible therefor. The State Government on an assessment of the situation that was increasingly getting volatile though mindful of the authority of the Assam Rifles under the Act in executing its operation within the bounds of its duties as well as of its constitutional obligation to protect the rights and liberty of the citizens as well as the sentiment of the public at large genuinely regarded it necessary to be apprised of the facts leading to the episode to decide its future course of action in accordance with law.

The State in its counter has clarified that as the livid outrages of the various cross-sections of the society suggested large scale disturbance with minatory reverberations, it was considered unavoidable to ascertain through a fact finding inquiry the actual state of affairs pertaining to the incident without, however, compromising with the security of the State or adversely affecting the morale of the Assam Rifles. The State Government clarified that in doing so it sought to maintain a balance between the public demand and the security imperatives and that by the constitution of the Commission, it did not intend to inquire into the powers and functions of the Assam Rifles.

55. Reading between the lines, the impugned notification dated 12.07.2004 does not portray any disaccord with the above assertions. There is no denial of the fact that the incident had raked up seething public indignation triggering a tempestuous upheaval in the entire State with intimidating consequences threatening to throw out of gear the normal tempo of human life. Though political mileage has been alleged by the Union of India and the Assam Rifles to be the impelling factor for the appointment of the Commission, no convincing material is available in endorsement thereof. There is nothing to indicate either that the State Government was visibly in error in evaluating the attendant hostile situation necessitating such a step or had misdirected itself on irrelevant and collateral considerations to permit itself to be directed to do so. Though, it is considered inessential having regard to the issues seeking adjudication to conclusively comment on the authenticity or otherwise of the charge of alleged rape and murder of Th. Km. Manorama Devi, the same if established can by no means be within the scope of the deployment of the armed forces in the State of Manipur on any count. It is in this perspective that the arguments based on the disclosures in the Commission have not been attended to for deductions therefrom.

56. Be that as may, having regard to the above determination touching upon the various aspects bearing on the legality and/or validity of the appointment of

Commission by the State of Manipur, we are of the unhesitant opinion that it had been within its prerogative authority and dominion under the Act, 1952 and that therefore, the impugned notification dated 12.07.2004 is sustainable in law and on facts. Having regard to the reasons cited hereinabove and the satisfaction of the State Government calling for the constitution of the Commission, this Court in the exercise of its power of judicial review and in absence of any unimpeachable and overwhelming evidence to the contrary, is disinclined to adjudge it to be vitiated in law or in defiance of logic or motivated by extraneous considerations warranting interference therewith. The omission on the part of the State Government in the facts and circumstances of the case to request the Central Government to appoint a Commission for sanction for prosecution of the erring personnel of the Assam Rifles by itself does not invalidate the impugned decision.

Noticeably, the State's plea that the Assam Rifles don't share any information with its Government has remained unrefuted. In the backdrop of the constitutional accountability of the State Government to administer its affairs inconformity with the rule of law signifying maintenance of public order, peace, amity and tranquility within its frontiers and the limited purpose for which the Commission had been constituted as is demonstrable by the materials on record, the impugned notification dated 12.07.2004 is unassailable. The State's plea that the inquiry entrusted to the Commission pertains to issue of immense public importance therefore commends for acceptance.

57. Besides, as the reports of the police investigation into the aforementioned case reveal, the progress thereof remains stalled for the non-cooperation of the Assam Rifles. Apparently, therefore, even after the lapse of six years the police investigation in the criminal case is not complete. The latest report produced in course of the arguments disclose that meanwhile the 17th Assam Rifles has moved out from the State of Manipur, which as well has resulted in the letup in the investigation.

58. The proceedings of the Court of Inquiry said to have been initiated by the Assam Rifles in the above factual premise could not have posed an insuperable bar for the appointment of the Commission. Noticeably, as permitted by this Court, the Commission meanwhile has completed its probe and has submitted its report. In any view of the matter, the proceeding before the Commission being not one contemplated u/s 6 of the Act, 1958, no previous sanction of the Central Government was necessary as well. The impugned decision of the State Government to constitute the Commission with the terms of reference as outlined in the impugned memorandum dated 12.07.2004 is thus not subversive of the schematic dichotomy approved by the constitutional framework of legislative powers.

59. In the wake of the above determinations made hereinabove, we are in respectful disagreement with the view expressed in the impugned judgment and order qua the permissibility of the Government of Manipur to constitute the

Commission vide the notification dated 12.07.2004. Consequentially the resultant considerations and the premise of the operative directions cannot be sustained. The impugned judgment and order is thus interfered with. The impugned notification dated 12.07.2004 is hereby adjudged legal and valid. The State of Manipur is left at liberty, if so advised, to deal with the report submitted by the Commission strictly in accordance with the provisions of the Act, 1952 and other relevant provisions of law pertaining thereto.

60. In the result, the Writ Appeal No. 135/2006 (Gau), Writ Appeal No. 611/2005 (Gau) and Writ Appeal No. 612/2005 (Gau) are allowed and W.A. No. 560/2005 (Gau) and Writ Appeal No. 561/2005 (Gau) are dismissed. The parties, however are left to bear their own costs.