

**(2005) 06 GAU CK 0009**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No. 5817 and 6187 of 2004

Col. Jagmohan Singh and Others

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

**Date of Decision :** 23-06-2005

**Acts Referred:**

Armed Forces (Special Powers) Act, 1958 — Section 3, 4, 5, 6  
Commissions of Inquiry Act, 1952 — Section 2, 3, 3(2), 5(1), 5(4)  
Constitution of India, 1950 — Article 21, 22(2), 226

**Citation :** AIR 2006 Guw 33 : (2005) 3 GLT 418

**Hon'ble Judges :** D. Biswas, J

**Bench :** Single Bench

**Advocate :** A.K. Phukan, T. Prasad, M.R. Barbhuiya, M. Jha, S. Nath and R.K. Adhikary, for the Appellant; D.K. Mishra, H. Roy, K. Goswami, S. Jadhav, N. Dutta, B. Bhuyan, P.N. Choudhury, Colin Gonsalves and P. Ramesh Kumar, for the Respondent

## Judgement

D. Biswas, J.

1. Writ Petition (C) No. 5817 of 2004 and Writ Petition (C) No. 6187 of 2004 being relatable to the same issue are proposed to be disposed of by this common judgment and order.

2. Writ Petition (C) No. 5817 of 2004 has been filed by Col. Jagmohan Singh, Commandant of 17th Assam Rifles challenging the competence of the State of Manipur to appoint a Commission of Inquiry by the Notification No. 8/1(1)/2004/H(Pt-2) D/-12th July, 2004 with prayer for other consequential reliefs. Writ Petition (C) No. 6187 of 2004 has been filed by JC-172262F Nb Digambar Dutta of 17th Battalion Assam Rifles and three others also challenging the aforesaid notification.

3. In Writ Petition (C) No. 5817 of 2004, an order was passed on 19-8-2004 observing that it would be open for the Commission to examine the petitioners on commission in camera. In Writ Petition (C) No. 6187 of 2004, while issuing

Rule by the order dated 28-8-2004, a learned Single Judge of this Court provided that the Commission may proceed with the enquiry, but shall not publish the report or any other material without prior leave of the Court and the findings of the Commission shall be subject to final decision in this writ petition,

4. Mr. A.K. Phukan, learned senior counsel assisted by Mr. T. Prasad, learned Counsel for the petitioners; Mr. D.K. Mishra, learned senior counsel assisted by Mr. S. Jadav, learned Counsel for the Respondent No. 1; Mr. N. Dutta, learned senior counsel assisted by Miss. B. Bhuyan, learned Counsel for the Respondent No. 2; Mr. P. N. Choudhury, learned Central Government Standing Counsel for the Respondent No. 3 and Mr. Colin Gonsalves, learned senior counsel assisted by Mr. P. Ramesh Kumar, learned Counsel for the Respondents Nos. 4 and 5 argued at length in support of their respective contentions.

5. The controversy in both the writ petitions relate to the competence of the Government of Manipur in appointing the Commission of Inquiry headed by Shri C. Upendra Singh, a retired District and Sessions Judge to make "an enquiry into a definite matter of public importance, namely the alleged killing of Km. Th. Monorama Devi". The notification is quoted below :

**GOVERNMENT OF MANIPUR SECRETARIAT : HOME DEPARTMENT NOTIFICATION**

Imphal, the 12th July, 2004 No. 8/1(1)/2004-H(Pt.-2) : Whereas, in a joint representation dated 11-7-2004 submitted by (i) Shri Thangjam Dolendro Mettei, younger brother of Km. Th. Monorama Devi alias Henthoi, (ii) Smt. Sagolsem Khomdonbi Devi, General Secretary, Bamonkampu Secretary, All Bamonkampu Development Association (Youth Centre, Irilbung) and (iv) Shri Wahengbam Inao Luwang, Secretary Purierombia Youth Club, Bamonkampu, Imphal it has been reported that Kumari Thangjam Manorama Devi alias Henthoi (30 yrs.) d/o. of (L) Th. Birahari Singh of Bamon Kampu Mayai Leikai, BPO-Irilbung, P.S. Irilbung of Imphal East District, Manipur was arrested by the personnel of 17th Assam Rifles on 11-7-2004 at 03.30 hrs. from her residence at Bamonkampu 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. Monorama 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 "No Claim Certificate" stating that "Troops of Assam Rifles had apprehended Th. Monorama Devi from her house at 3.30 a.m. on 11th July, 2004 and searched the house in presence 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 Custodial Killing of Th. Manorama Devi, Bamonkampu by 17th Assam Rifles has also alleged that Km. Th. Manorama Devi was killed in custody by the 17th Assam Rifles Personnel after arrested 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 enquiry into a definite matter of public importance, namely the alleged killing of Km. Th. Monorama Devi;

6. Now, therefore, in exercise of 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 Sessions Judge, Manipur.

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

a) to enquire into the facts and circumstances leading to the death of Km. Th. Monorama Devi on 11-7-2004.

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 recurrence of such incident in future.

8. The Commission shall submit its report to the State Government as soon as possible but not later than 1 (one) month from the date of issue of this Notification.

9. The headquarters of the Commission shall be at Imphal.

10. The State Government is of the opinion that, having regard to the nature of the enquiry to be made and other circumstances of the case, all the provisions of Sub-section 2 of Section 3, Sub-section (4) and Sub-section (5) of Section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952) should be made applicable to the said Commission and the Governor of Manipur, in exercise of the powers conferred by Sub-section (1) of the said Section 5, is hereby pleased to direct that all the provisions of the said Sub-sections (2), (3), (4) and (5) of that Section shall apply to the Commission.

By Orders & in the name of the Governor Sd/- (Saichhuana) i/e. Chief Secretary, Manipur.

6. Mr. A.K. Phukan, learned senior counsel appearing for the writ petitioners submitted that the entire State of Manipur has been declared as disturbed area by the Governor of Manipur by the notification dated 31st May, 2004 in exercise of powers conferred by Section 3 of the Armed Forces (Special Powers) Act, 1958

for a period of one year with effect from June, 2004. The personnel of 17th, Assam Rifles have been deployed in the State of Manipur to act in aid of civil power for the purpose of containing the unlawful activities of certain terrorist organizations and its members undermining the sovereignty and security of the nation. During the course of action Km. Th. Monorama Devi, a cadre of banned outfit PLA died in custody of 17th Assam Rifles Personnel. The Government of Manipur appointed a Commission to make an enquiry into the circumstances leading to her death and to fix responsibility. The terms of reference to the Commission suggest that the Commission has been virtually asked to enquire into the working, conduct and jurisdiction of the Assam Rifles deployed in the State of Manipur to combat insurgency. According to Shri Phukan, the State of Manipur had no jurisdiction to appoint the Commission as it cannot be said to be the appropriate Government as defined in Section 2(a) of the Commission of Inquiry Act, 1952. Elaborating the contention, Mr. Phukan submitted that the Commission summoned the Assam Rifles personnel to appear before it and to produce documents claiming itself a "Commission of Judicial Inquiry". The coercive measures taken by the Commission publishing summons in the newspapers would show that there is infringement in the working and conduct of the armed forces of the Union deployed in the State of Manipur. The encroachment is definite and direct, and not incidental. Shri Phukan submitted that the subject-matter of enquiry ex-facie relatable to Entry-2A of List-I of the Seventh Schedule and, therefore, it is the Central Government and not the State of Manipur which is competent to appoint a Commission in the matter.

7. Shri D.K. Mishra, learned senior counsel appearing for the State of Manipur argued that the allegations made by the brother and mother of the deceased, General Secretary of Bamonkampu Development Welfare Association, Secretary of All Bamonkampu Development Association (Youth Centre) Irilbung and Secretary of Pureiromba Youth Club, Bamonkampu, Imphal would show that Km. Th. Monorama Devi was in good health while arrested, and she was killed while, in custody of the Assam Rifles. The arrest and death of Km. Th. Monorama Devi in custody paralysed the normal civil life in the State of Manipur because of a series of bandhs and strikes creating an unprecedented law and order situation which eventually led the Union Government to constitute a Commission to report on the wide-spread demand for withdrawal of the Assam Forces (Special Powers) Act, 1958. Shri Mishra argued that the materials collected by the Commission would reveal that the deceased was raped and killed in custody. The situation in the State of Manipur deteriorated and there was a total failure of public order. Under the circumstances, the State of Manipur appointed the Commission of Inquiry by the notification dated 12th July, 2004. The terms of reference of the Commission would indicate that it was restricted to the facts and circumstances leading to the death of Km. Th. Monorama Devi on 11-7--2004; identification of the person/persons responsible for the death; and other matters incidental thereto. The terms of reference, according to Shri Mishra, cannot be related to Enquiry-2A of List-I of the Seventh Schedule. Shri Mishra submitted that "public

order" in Entry-1 of List II is a State subject and the State of Manipur having legislative competence to make laws on "public order" acted within its" jurisdiction in appointing the Commission to address the above terms of reference. Incidental encroachment by the Commission, during the course of enquiry, over the activities of the Armed Forces will not oust the jurisdiction of the State. The State of Manipur in matters relatable to "public order" is the appropriate Government as defined in Section 2(a)(ii) of the Act of 1952.

8. Mr. N. Dutta, learned senior counsel appearing for the Commission submitted that the Commission appointed by the State Government was allowed by this Court by the order dated 28-8-2004 to proceed with the enquiry and not to publish the report without leave of this Court. Accordingly, the Commission proceeded with the enquiry and submitted its" report to the State of Manipur. The report of the Commission is a property of the Court as the Commission proceeded with the enquiry under orders of this Court passed under Article 226 of the Constitution, and the facts unearth are materials before the Court for consideration and direction for initiation of appropriate action against those who have been found responsible for causing death of Km. Th. Monorama Devi.

9. Mr. P.N. Choudhury, learned Central Government Standing Counsel supporting the affidavit filed by the Union of India argued that the State of Manipur have no powers to appoint a Commission to enquire into the activities of the armed forces deployed in a disturbed area in aid of civil power. Shri Choudhury relied upon the notification dated 31st May, 2004 issued by the Governor of Manipur in exercise of the powers conferred by Section 3 of the Armed Forces (Special Powers) Act, 1958 declaring the State of Manipur as a disturbed area, and argued that the Assam Rifles personnel deployed in the State of Manipur in aid of civil power is answerable to the Central Government for its activities as the control thereof is not vested with the Central Government. According to Shri Choudhury, the terms of reference to the Commission are matters in exclusive control of the Union and, therefore, the Central Government alone had the powers under the Act of 1952 to appoint a Commission.

10. Mr. Colin Gonsalves, learned senior counsel appearing for the respondents Nos. 4 and 5, brother and mother of the deceased, argued that the forces of the Union deployed in a disturbed area to act in aid of civil power have to perform its duties within the parameters of Sections 4 and 5 of the Armed Forces (Special Powers) Act, 1958 as interpreted by the Apex Court in Naga People's Movement of Human Rights Vs. Union of India (UOI), and various other judgments, Relying upon the decisions in Naosam Ningol Chandam Ongbi Nungshitombi Devi Vs. Rishang Keishing, Chief Minister of Manipur and Others, The Civil Liberties & Human Rights Organisation (CLAHRO) v. P. L. Kukrery, G.O.C. "M" Sector, Assam, Rifles, reported in (1988) 2 GLR 137; Smti Luithukla v. Rishang Keishing, reported in (1988) 2 GLR 159 : AIR 1989 NOC 182 ; Raj Kishor Roy Vs. Kamleshwar Pandey and Another, and in Shri S.K. Zutshi and Another Vs. Shri Bimal Debnath and Another, Mr. Gonsalves argued at

length to show that the dispute relates to maintenance of public order in the State of Manipur and, therefore, the State having legislative competence in relation to "public order" was competent to appoint the Commission. Mr. Gonsalves pointed out that the house of the deceased Km. Th. Monorama Devi was raided at night without informing the local people and without the presence of any lady constable. No effort was at all made by the raiding party to obtain the services of a lady constable. She was taken to custody at gun point and moved from one place to other, raped and murdered by shooting from a close range. Recalling the aftermath turmoil that followed engulfing the entire State of Manipur, Mr. Gonsalves submitted that the State Government being responsible for maintenance of "public order" could not be a mute spectator to the happenings and had to appoint the Commission of inquiry in exercise of powers conferred u/s 3 of the Commission of Inquiry Act, 1952. Mr. Gonsalves submitted that the terms of reference are inseparably connected with the "maintenance of public order" and, therefore, any incidental encroachment into the functioning of the members of the armed forces by the Commission during the course of enquiry cannot take away the matter out of the jurisdiction of the State Government vested in it u/s 2(a)(ii) of the Act of 1952.

11. The submissions and counter submissions of the learned Counsel for the parties recapitulated above in brief go to suggest that the core question to be answered by this Court in these two writ petitions is whether the State of Manipur in relation to the dispute at hand is the appropriate Government within the meaning of Section 2(a)(ii) of the Act of 1952.

12. Before the above question is addressed, we may refer to the facts and circumstances which led to the arrest and death of Km. Th. Monorama Devi as enumerated in Writ Petition (C) No. 5817 of 2004. On the night of 10th July, 2004, in pursuance of intelligence report that the deceased, a member of the banned organization PLA, having PLA No. 1262 and a self styled Corporal was in the vicinity of the area of Baman Kampu Mayie Lekal of Imphal. One of the arrested members of the PLA also revealed during the course of interrogation that the deceased has been working for the banned organization having assigned code sign B-82. A series of information and intelligence report revealed that Km. Th. Monorarna Devi was involved in heinous crimes against the people of the State of Manipur. The Company Commander of the Assam Rifles columns stationed at Sinjamei mounted an operation to pre-empt any threat that might emanate from terrorist activities. The operation was undertaken in pursuance of the specific information that the deceased was in regular radio contact and in possession of valuable intelligence materials- At about 12.15 a.m. of 11th July, 2004, a mobile vehicle check post was informed by an intelligence source that the deceased was at her residence at Banian Kampu Mayie Lekai. Immediately, an operation was launched and at about 3 a.m. the house of the deceased was cordoned, and after being satisfied about her identity, Km. Th. Monorama Devi was arrested for the purpose of being handed over to the nearest police station along with incriminating documents. A call was made to the police control room

to arrange a lady constable. The S. I. of Imphal West Police Station, on being contacted, told that some paper works are required to be completed, and further told that a lady constable could be provided by the Superintendent of Police only. During the raid, the deceased produced a radio set and a hand grenade from her possession which were seized by the Assam Rifles Personnel. The deceased also informed that there was an AK-47 Rifle in the possession of another lady cadre, namely SS Lt. Ruby living in the general area of Singamei. The patrol party immediately made a hot chase and arrived at Singamei at about 3.20 a.m. when the deceased informed that the lady cadre was in fact staying at Nambol. The patrol party proceeded to Nambol where the deceased again told that there was a mistake and SS Lt. Ruby would be available at Tuliha. Thereafter, the patrol party proceeded to Tuliha where the deceased informed that she was not sure about the exact location. By then, it was about 4.45 a.m. and day light broke-in. The deceased told the patrol party that Lt. Ruby would be available at a separate location away from her house in the direction of Yaripok about 4 k.m. away. On their way to Yaripok, the deceased requested to allow her to respond to the call of nature. The vehicle was stopped and the patrol party took position at a distance of 30-35 metres away from her. By then it was 5.30 a.m. All of a sudden the deceased started to flee through the nearby hedge. The guard commander commanded her to stop and fired a shot in the air as a warning. The other members of the guard fired towards her legs. In consequence, she sustained bullet injuries and died.

13. The features available from above statements made in the writ petition are of great significance. It is evident that the raid was conducted without presence of a lady constable; though the house was cordoned off, no attempt was made to contact the Superintendent of Police to provide the services of a lady constable: the arrested person was not handed over to nearest police station: she was interrogated after arrest and moved from place to place in search of another lady cadre and there was no FIR pending against Km. Th. Monorama Devi at the time of her arrest.

14. We may now refer to the provisions of the relevant Acts and the Constitution. Clause (a) of Section 2 of the Act of 1952 read as follows :

2. Definitions.-- In this Act, unless the context otherwise requires --

(a) appropriate Government" means --(i) the Central Government, in relation to a Commission appointed by it to make an enquiry 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.

15. Entry-2A of List I of the Seventh Schedule of the Constitution :

2A. 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.

16. Entry-1 of List-II of the Seventh Schedule :

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.

17. The definition of appropriate Government in Section 2(a) quoted above shows that the Central Government is the appropriate Government for appointment of a Commission to make an enquiry into any matter relatable to any of the entries in List-I or List-II or List-III in the Seventh Schedule. The State Government is, however, empowered to appoint a Commission to make enquiry into any matter relatable to the entries in List-II or list-III in the Seventh Schedule. As per Entry-I of List-II, the State Legislature is vested with the legislative powers relating to public order excluding the use of any naval, military or air force or any other armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in aid of the civil power. The exclusion part shows that the use of the armed forces of the Union in aid of the civil power shall be subject to the control of the Union Government. Entry-2A of List-I empowers the Parliament to make laws on deployment of the armed forces of the Union in any State in aid of civil power; powers, jurisdiction, privileges and liabilities of the members of such forces on deployment subject to control of the Union Government. The two entries in List-I and List-II read together make it abundantly clear that in relation to a Commission to make an enquiry into any matter relating to the armed forces on deployment in a State in aid of civil power, it is the Union Government which is the appropriate Government to make such appointment. In the instant case, the State of Manipur has been declared as a disturbed area by the Notification dated 31st May, 2004 issued by the Governor of Manipur in exercise of powers conferred by Section 3 of the Armed Forces (Special Powers) Act, 1958. The 17th Assam Rifles Battalion was deployed in the State of Manipur to combat and contain various insurgent groups in the State of Manipur. They have been deployed to act in aid of civil power, subject to control of the Union. While discharging their duties on deployment, if they commit any excess constituting a definite matter of public importance; the Central Government would be the appropriate authority to invoke powers u/s 3 of the Commission of Inquiry Act, 1952. The State Government apparently does have the powers to appoint a Commission to make an enquiry into the allegations of excesses committed by the members of the armed forces. The terms of reference to the Commission appointed by the notification dated 12th July, 2004, appear to be in relation to the facts and circumstances leading to the death of Km. Th. Monorama Devi on 11-7-2004 while in custody of 17th Assam Rifles personnel; to identify the persons

responsible for her death and to find put any matters incidental thereto etc. The terms of reference de hors the recital part of the impugned notification at the first look, suggest that the matter relates to "public order" as defined in Entry-I of List-II. But the notification shows that definite allegations were made by the brother of the deceased and other organizations against the 17th Assam Rifles personnel on duty on 11-7-2004 of illegal search and arrest of the deceased from her residence and of causing her death in custody. The allegations made in the representations relate to the alleged excesses committed by the 17th Assam Rifles personnel on 11-7-2004 acting in a disturbed area in aid of civil power and, therefore, the appropriate Government in the instant case would be the Central Government to which the members of the Assam Rifles are accountable for such alleged excesses. In support of this contention, the decision in Naga People Movement of Human Rights : AIR 1998 SC 431 (supra) may be relied upon. The Supreme Court rejected the contention advanced on behalf of the writ petitioners that during the course of such deployment, the supervision and control over the use of armed forces has to be with the civil authorities of the State concerned or that the State concerned will have the exclusive power to determine the purpose, the time period and the areas within which the armed forces should be requested to act in aid of civil power. It is further held that Entry-I of the State List shows that the State Legislature does not have any legislative power with respect to the use of the armed forces of the Union in aid of civil power for the purpose of maintaining public order in the State and the competence to make a law in that regard vests exclusively in Parliament. This observation of the Apex Court shows that the State Legislature do not have legislative power with respect to the use of the armed forces deployed in the State in aid of civil power. This otherwise postulates that the State of Manipur cannot be construed as the appropriate Government to appoint a Commission to make enquiry of the alleged excesses committed by the Assam Rifles personnel. The argument advanced by Shri D.K. Mishra, learned senior counsel relying upon the decision in Kartar Singh v. State of Punjab reported in that legislative competence to make law in relation to "public order" is with the State Legislature and, therefore, appointment of the Commission by the State of Manipur in respect of matters pertaining to public order has to be held to be valid notwithstanding any incidental trenching beyond its competence. Such incidental encroachment, according to Mr. Mishra, is not forbidden in law and, therefore, the Doctrine of Pith and Substance would come into play validating the notification issued by the State of Manipur. This argument, on the face of the decision of the Hon'ble Supreme Court, as discussed above, and in view of the exception in Entry-I of List-II cannot be sustained. The decision in Border Security Force (B.S.F.) Vs. State of Meghalaya and Others, relied upon by the respondents was delivered on a different context as the BSF in that case was not acting in aid of civil power when they opened fire on the crowd. This decision cited at the Bar cannot be relied upon as an authority for validating the notification issued by the State Government, particularly in view of the fact that in the instant case the Assam Rifles personnel were acting in a disturbed area in

aid of civil power.

18. It may be mentioned here that Section 4 of the Act of 1958 provides for the special powers of the Armed forces. Section 5F provides for the manner in which the arrested person is to be dealt with. Section 6 provides for the protection to the persons acting under the Act. Section 4(c) empowers a commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces to arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest. Section 4(d) authorizes such officer to enter and search without warrant any premises to make any such arrest or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary.

19. The special features emerging from the statements made in the writ petition noted in paragraph 13 of this judgment clearly indicate that the members of the 17th Assam Rifles might be within their right to go for search and arrest within the limits of Section 4 of the Act of 1958, However, the manner and method adopted were contrary to the provisions of law. There was gross violation of the provisions of Section 5 which provide that any person arrested and taken into custody under this Act shall 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. Had the provisions of Section 5 of the Act of 1958 were complied with by the members of the Assam Rifles after arrest of Km. Th. Monorama Devi, the unfortunate incident leading to her death could have been averted. The 17th Assam Rifles Personnel acted beyond their competence in not handing over of the arrested person to the nearest police station without least possible delay, which is a must, and instead they proceeded to interrogate Km. Th. Monorama Devi and detained her for a longer time than necessary. This observation is based on the three judgments delivered by the Division Bench of this Court, discussed hereinbelow.

20. In Naosam Ningol Chandam Ongbi Nungshitombi Devi Vs. Rishang Keishing, Chief Minister of Manipur and Others, held that there is no ambiguity in Section 5 of the Act which requires in clear terms that any person arrested under the Act of 1958 has to be made over to the nearest police station without delay. The Division Bench further held that the Section does not permit the arresting armed force to keep the arrested person in custody for the purpose of interrogation, or to be fully satisfied whether the concerned person was really involved in the matter which had led to his (her) arrest. This satisfaction, according to the Division Bench, has to precede the arrest, and not to follow it. The Division Bench further opined that after a person is arrested on the requirements of Clause (c) of Section 4 being fulfilled, no necessity of his further interrogation to

find out his probable involvement is left. It is because of this that Section 5 requires his immediate handing over to the police with a report of the circumstances occasioning the arrest. Any power given beyond the provisions of Section 5 would amount to giving untrammelled power of arrest to the armed forces beyond what is permitted by Section 4(c).

21. In *Civil Liberties and Human Rights Organisation* (1988) 2 GLR 137 (supra), a Division Bench of this Court while dealing with the question relating to delay in handing over of the arrested person by the Assam Rifles personnel, observed that Section 5 contemplates that any person arrested and taken into custody shall be made over to the nearest police station with least possible delay together with the report of the circumstances occasioning the arrest. Taking exceptions to the delay of 5 days in handing over the arrested person, the Division Bench relying upon the Apex Court's judgment in *Peoples' Union for Democratic Rights Vs. State of Bihar and Others*, directed payment of compensation to the persons who were kept in custody for five days or more after their arrest. The direction was given taking into consideration the argument that detention for a period of five days was in violation of Articles 21 and 22(2) of the Constitution.

22. In *Smt. Luithukla* AIR 1989 NOC 182 (supra), a Division Bench of this Court relying upon the decision of the Apex Court in *Sebastian M. Hongray v. Union of India*, reported in AIR 1984 SC 1026 directed payment of compensation to the wife of the person missing after arrest. The Division Bench clarified that the civil authorities and the armed forces on deployment in aid of civil powers have to work hand in glove and the armed forces deployed in a disturbed area do not really supplant the ordinary machinery for maintaining law and order or for that matter public order, but they supplement the ordinary law enforcing machinery.

23. The Hon'ble Supreme Court dealt with extensively the provisions of the Armed Forces (Special Powers) Act, 1958 and other provisions of law relevant for the issue at hand in *Naga People's Movement of Human Rights* AIR 1998 SC 431 (supra). The Attorney General of India placed before the Apex Court in the form of lists of "Dos and Don'ts" issued by the Army Headquarters from time to time. The list provides amongst others the following instructions that "before launching any raid/search, definite information about the activity to be obtained from the local civil authorities; as far as possible co-opt representative of local civil administration during the raid, before opening fire against any suspect or person to ascertain that it is essential for maintenance of public order, to hand over the arrested persons to the nearest police station with least possible delay." The list of don'ts inter alia provide that "no person be kept under custody for any period longer than the bare necessity for handing over to the nearest police station; not to use any force after having arrested a person except when he is trying to escape, not to interrogate the person arrested by the members of the armed force; to act in closest possible communication with civil authorities; maintain intercommunication if possible by telephone/radio; avoid indiscriminate firing".

Considering the above list which is quoted in brief, the Supreme Court in para 58 of the judgment observed that the instructions given by the Army headquarters have to be treated as binding instructions which are required to be followed by the members of the armed forces exercising powers under the Central Act and a serious note should be taken of any violation of the instructions, and the persons found responsible for such violation should be suitably punished under the Army Act, 1950. In para 61 of the judgment, the Supreme Court held as follows :

61. In order that the people may feel assured that there is an effective check against misuse or abuse of powers by the members of the armed forces it is necessary that a complaint containing an allegation about misuse or abuse of the powers conferred under the Central Act should be thoroughly inquired into and, if it is found that there is substance in the allegation, the victim should be suitably compensated by the State and the requisite sanction u/s 6 of the Central Act should be granted for institution of prosecution and/or a civil suit or other proceedings against the person/persons responsible for such violation.

24. In the representations submitted before the State of Manipur, it was pointed out that the 17th Assam Rifles personnel committed excess in contravention of the provisions of Sections 4 and 5 of the Act of 1958. Prima facie, the allegations in the representations and the statements made in the writ petition disclose violation of the requirements of the above two sections vis-a-vis the instructions issued by the Army Headquarters from time to time. This, however, does not mean vesting of powers with the State of Manipur to appoint a Commission to make an enquiry in respect of such violations, The powers for appointing a Commission has to be traced out from the legislative competence in terms of Section 2(a) of the Act of 1952 read with Entry-2A of the Union List and Entry-1 of the State List. It is, therefore, clear that the Notification dated 12th July, 2004 appointing the Commission by the State of Manipur was beyond its competence.

25. In the given situation, it becomes imperative to determine as to what would be the status of the Commission and the report submitted by it to the State Government, This question was put to Shri N. Dutta, learned Senior Counsel for the Commission. In reply, Shri Dutta pointed out that the jurisdiction of this Court under Article 226 is wide enough and the matter at hand is of immense public importance, Excesses committed by the armed forces of the Union in violation of law cannot be overlooked by a Constitutional Court on the ground that the Commission was appointed by the State of Manipur and not the Central Government. Shri Dutta pointed out that the Habeas Corpus petitions under Article 226 are often entertained by the Courts in relation to arrest and wrongful detention by the Armed Forces in disturbed areas, and in appropriate cases directions have been given to compensate and/or to impose suitable punishment. Shri Dutta further submitted that by the interim orders dated 19-8-2004 and 28-8-2004, this Court permitted the Commission to proceed with the enquiry and, therefore, the report submitted by the Commission has to be treated as a material made available in pursuance of the direction given by this Court under

Article 226 for consideration, and the Court on being satisfied that the report merits follow-up action, may issue suitable directions to the concerned authorities. Supplementing the above contention, Shri Gonsalves, learned senior counsel for the respondents Nos. 4 and 5 submitted that a Constitutional Court cannot remain oblivious to the facts and circumstances which rattled the State of Manipur over the issue, Shri Gonsalves submitted that the pleadings on record suggest flagrant violations of the provisions of law, particularly the provisions in Article 21 and 22(2) by the Assam Rifles personnel in raiding the house of Km. Th. Monorama Devi, in her arrest and her subsequent liquidation after rape. Therefore, this Court cannot be oblivious of its Constitutional obligation to take a serious note of the matter and to pass appropriate orders to bring the offenders to book. This would, according to Shri Gonsalves, restore the faith of the people of the State of Manipur as a whole. Mr. Mishra, the learned senior counsel for the State of Manipur also supported the views expressed by Shri Dutta and Shri Gonsalves, the learned senior counsel.

26. I have considered in depth the submissions made above, in my considered opinion, the report submitted by the Commission cannot be treated as a report within the meaning of Section 3 of the Act of 1952. This does not mean that the materials collected and the report prepared on consideration thereof would go in vain. The report may be treated as a report by a fact-finding Committee/Body appointed by the State of Manipur. However, the interim directions given by the learned Judges of this Court under Article 226 permitting the Commission to proceed with the enquiry attributes some amount of legality to the report inasmuch as the report can be assumed to have been prepared under direction of the Court. Therefore, it is a valuable document available for consideration and initiation of appropriate action against those found guilty.

27. The Commission in the given situation is obviously a fact finding body. It has collected facts through evidence and on consideration thereof submitted its report. The recommendations are to be taken care of by the appropriate Government. The State of Manipur is not the appropriate Government having any administrative control over the armed forces deployed in the State. On the other hand, the members of the Armed Forces are entitled to protections as per provisions of Section 6 of the Act of 1958 which provide that no prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government. The Central Government being the appropriate Government and having absolute control over the armed forces deployed in a disturbed area has to deal with the report and take follow-up action as may be necessary in accordance with the provisions of law. Since the subject-matter of dispute is a definite matter of public importance, the Union Government is required to take appropriate decision without least possible delay.

28. In the result, both the writ petitions are disposed of with direction to the State of Manipur to hand over the report to the Union Government in the Ministry of Home Affairs without delay. The Union Home Ministry, represented by the

Secretary, will examine the report and pass orders/take appropriate action against the 17th Assam Rifles personnel, if any, indicted in the report without loss of time. The Union Home Ministry shall also take an immediate decision about publication of the report in tune with the citizens' right to information. The people of Manipur seek justice and it should be done forthwith to restore their confidence in the Constitution and the laws.

No costs.