
(2007) 04 GAU CK 0015
In the Gauhati High Court

Jatan Kumar Thaosen and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

COMPANIES ACT, 1956 — Section 186
Constitution of India, 1950 — Article 163, 172, 32, 356, 83
Government of India Act, 1935 — Section 243E, 243U, 52, 91

Citation : (2009) 4 GLR 556 : (2007) 3 GLT 42

Hon'ble Judges : D. Biswas, Acting C.J.; A. Hazarika, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D. Biswas, Acting C.J.

1. The petitioner in PIL No. 1/2007 is a resident of N.C. Hills District. He was a member of the Assam Public Service Commission and also the Principal Secretary of the N.C. Hills Autonomous Council. He filed this petition in the capacity of Advisor of Jadikhe Naisho Hoshom, the Apex Body of Dimasa Society, a predominant tribe of the District. In this Public Interest Litigation he has challenged the notification dated 15.12.2006 issued by the Commissioner and Secretary to the Government of Assam extending the term of the District Council for a period of six months. PIL No. 85 of 2006 is also directed against the said notification with a prayer for interim stay. The petitioner No. 1 in this petition is All Dimasa Students Union actively associated with all developmental works in the District of N.C. Hills. The petitioner No. 2 is the President of All Dimasa Students Union. During the pendency of the proceedings, the petitioners in PIL No. 85/2006 made an oral submission for withdrawal of the PIL. This oral submission was rejected by a Division Bench of this Court vide order dated 5.1.2007. Thereafter, an application was filed by the President of the student body praying for permission to withdraw from the PIL. The prayer for withdrawal was made as they feel satisfied in view of the notification dated 2.1.2007 issued

by the Governor of Assam assuming powers vested in or exercisable by the District Council. By the order dated 9.2.2007 passed in Misc. Case No. 68/2007, permission was granted to withdraw the names of the applicant Nos. 1 and 2 from PIL No. 85/2006. On such withdrawal, the petition did not abate since by the order dated 5.1.2007, intervenor namely--Mohit Hojai was transposed as the petitioner in this PIL.

2. While admitting the Public Interest Litigation No. 85/2006, by the order dated 20.12.2006, this Court held that the petitioners have been able to make out a prima facie case for suspending the operation of the notification dated 15th December, 2006 and, accordingly, it was ordered that the operation of the impugned notification shall remain suspended until further orders with liberty to the respondents to seek modification of this order for reasons to be shown. Thereafter, the Respondent No. 4, the Chief Executive Member of the N.C. Hills Autonomous Council, filed Misc. Case No. 313/2007 for vacating the interim order dated 20.12.2006. During the course of the proceedings, it has been agreed by the learned Counsel for the parties that the application for vacating the interim order shall be heard along with the public interest litigations. It may be mentioned here that the State has not filed any affidavit in this case. It was submitted at the Bar that the miscellaneous application filed for vacating the interim order shall be treated as affidavit on behalf of the respondents. Accordingly,, we have heard at length Shri A.K. Bhattacharjee, Shri P.K. Goswami, learned senior counsel for the petitioners and Mr. A.M. Mazumdar and Shri P. Pathak, learned senior counsel for the respondents. We have also heard Ms. B. Goyal, learned State Counsel.

3. Before the submission of the learned Counsels are taken for consideration, it would be relevant to place on record that the petitioner in PIL No. 85/2006 had sought permission of the Court to withdraw the PIL. The Court by the order dated 5.1.2007 refused to grant any permission to the petitioner to withdraw the PIL. The Court also ordered that the intervenor shall stand transposed as the petitioner in this PIL. The original petitioner, namely All Dimasa Students' Union (ADSU), Haflong and another however did not pursue the petition. The intervenor has been represented by Shri P.K. Goswami, learned senior counsel. It may further be mentioned here that no affidavit has been filed by the respondents in the cases at hand. Mr. A.M. Mazumdar, learned senior counsel appearing for the Respondent No. 5 submitted that the Miscellaneous Application No. 232/2007 filed by them for vacating the interim order dated 20.12.2006 shall be treated as an affidavit in this petition on behalf of the respondents. Similarly, Mr. P. Pathak, learned senior counsel appearing for the Respondent No. 4 submitted that the Miscellaneous Application No. 131/2007 filed by them for vacating the interim order shall also be treated as an affidavit in this petition.

4. We may now refer to the submission advanced by the learned Counsel for the petitioners. Mr. A.K. Bhattacharjee, learned senior counsel for the petitioner in PIL No. 1/2007 submitted that the delimitation process has been going on since

1990, two general elections were also held in the meantime and, therefore, delimitation could not have been a ground for stalling the election process. Mr. Bhattacharjee further argued that the notification for delimitation was simultaneously issued along with the notification for extension of the term of the Council and, this itself, was indicative of the element of malice in law in the impugned action. Mr. Bhattacharjee further submitted that the provisions in para-2 (6A) of the Sixth Schedule to the Constitution requires satisfaction on the part of the Governor about the existence of circumstances rendering the holding of election impracticable, meaning thereby that the Governor has to satisfy that holding of the election is not at all possible. Referring to the impugned notification, the learned Counsel argued that such satisfaction in absolute term has to be recorded while extending the term of the Council. According to the learned Counsel, the words "may not be practicable" incorporated in the notification indicate that holding of the election was impossible. Therefore, the learned Counsel argued that going by the provisions of the Constitution, the notification cannot be sustained in law. The learned Counsel, however, submitted that the powers of judicial review of a decision of the Governor taken in exercise of discretionary powers are limited and the Court cannot examine the adequacy of the materials on which the satisfaction is drawn and the Court is authorized to interfere with such a decision if it is found that it has been rendered on consideration of irrelevant materials. Mr. P.K. Goswami, learned senior counsel for the interposed petitioner in PIL No. 85/2006 argued in the same vein highlighting various provisions of law in order to justify that ongoing process of delimitation is not a relevant factor for stalling the election. The learned Counsel also argued that the discretionary powers of the Governor could be exercised only when the Governor was satisfied that it was impossible to hold the election. In the absence of such a finding, the Court would interfere and strike down the decision.

5. Mr. A.M. Mazumdar and Mr. P. Pathak, learned senior counsel for the Respondents No. 5 and 4 respectively argued that the delimitation became a must in view of the displacement of a large number of ethnic people from their ancestral villages due to ethnic violence that took place in the year 2003 resulting into loss of lives and property. These people are scattered and living in different places where they have set-up new villages. It was in this context, to fulfill the very objects of the provisions of the Sixth Schedule, delimitation became absolutely necessary before holding of the election in order to ensure proper representation of different ethnic groups to the Council. According to them, the Governor had considered the matter, and decided to act in his discretion. Therefore, the Court may not disturb the decision of the Governor as the extension is a necessity of the moment to ensure and enforce the rights of self-governance, a constitutional promise to the people of the hill areas. Mr. P. Pathak, learned Counsel referred to the provisions of Section 20BA in order to show that the Governor while exercising the powers under the first two proviso to Para-2(6A) is required to act in his sole discretion and, therefore, any decision

taken by the Governor in exercise of discretionary powers based on subjective satisfaction is beyond the scope of judicial review. Mr. Pathak also questioned the locus of the petitioners in PIL No. 1/2007. Both the learned Counsel further submitted that the interim order dated 20.12.2006 passed in PIL No. 85 of 2006 could not have been passed by this Court which amounted to interference with the discretionary powers of the Governor and, that too, before appreciation of the factual background of the case. The learned Counsel submitted that the second limb of the interim order directing the Governor to act in a particular manner was beyond the jurisdiction of the Court.

6. After having recapitulated the submissions advanced by the learned Counsel for the parties, we may now refer to the impugned notification dated 15th December, 2006 issued by the Governor extending the term of the Council. The notification reads as follows:

Government of Assam Hill Areas Department Orders by the Governor Notification
No. HAD.23/2006/46 Dated Dispur,
the 15th December, 2006

Whereas, the term of the present North Cachar Hills Autonomous Council will expire on 20th December, 2006 on the completion of 5 years of the Council.

Whereas, it has become difficult to hold the general election to the council of the N.C. Hills Autonomous Council, in time within the above mentioned date due to the process of delimitation of the existing constituencies of N.C. Hills Autonomous Council, being ordered vide this Department Notification No. HAD.96/2006/41 dated Dispur, the 15th December, 2006 and as a result of which the election of the new members to the N.C. Hills Autonomous Council may not be practicable within the stipulated date as above.

Now therefore, the Governor of Assam is pleased to extend the term of the present North Cachar Hills Autonomous Council by 6 (six) months or date of the first meeting of the newly elected council after the delimitation exercise, whichever is earlier, in exercise of powers under Rule 4 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951, read with sub paragraph (6 A) of paragraph 2 of the Sixth Schedule of the Constitution of India, by which date the first meeting of the newly elected North Cachar Hills Autonomous Council will Sit.

Sd/- (K.K. Mittal) Commissioner & Secretary to the Government of Assam, Hill Areas Department.

7. It would appear from the above notification that the Governor has taken note of the process of delimitation of the existing constituencies as a factor for which the Governor was of the view that the election to the N.C. Hills Autonomous Council may not be practicable within the stipulated date. The Governor has also referred to the notification No. HAD.96/2006/41 dated Dispur, the 15th

December, 2006 in forming the opinion as contemplated in the first proviso to Para-2(6A) of the Sixth Schedule. Therefore, the impugned notification will have to be read with reference to the notification No. HAD.96/2006/41, The excerpt relevant for the issue at hand is quoted below:

No.HAD.96/2006/41 Dated Dispur, the 15th

December, 2006

Whereas there has been demands for delimitation of the existing constituencies of N.C. Hills Autonomous Council submitted by the Council through a Bill which has been followed by a Resolution adopted in the Executive Committee of the council, wherein they have raised the issues of displacement of large number of people consequent to the ethnic clashes that took place in the district and which affected some of the villages under various constituencies of Haflong, Mahur, Langting, Harangajao, Dauthuhaja, Kharthong, Hatikhali Diyungmukh and Garampani.

Whereas there has been similar demands for delimitation of constituencies received from political parties and other non political organizations of N.C. Hills which have represented for delimitation of the existing constituencies in N.C. Hills Autonomous Council.

Now, therefore the Governor of Assam is pleased to order for delimitation of the Council's constituencies in exercise of powers under Rule 4 of Assam Autonomous Districts (Constitution of District Councils) Rules, 1951, read with the provision under Sub-Para (6)(b) of Para 2 of the Sixth Schedule of the Constitution of India and constitute a committee headed by Shri Biren Dutta, IAS, Commissioner & Secretary, Government of Assam, Labour and Employment, Urban Development Department and 2 (two) members to be nominated by the Chairman, North Cachar Hill Autonomous Council (within 3 days from the date of notification, in case the members are not nominated within the stipulated time, then the Delimitation Committee will go ahead with the exercise of delimitation process to avoid any further delay) to go into details of the delimitation process in N.C. Hills Autonomous Council to be assisted by Shri Unnat Kr. Baruah, ACS, Additional-Deputy Commissioner, N.C. Hills who will be the Member Secretary of the committee.

8. From the notification of delimitation, it would appear that a demand for delimitation of the existing constituencies was footed through resolution adopted in the Executive Council on the ground of displacement of large number of people consequent to ethnic clashes that took place in the District affecting a large number of villages in different constituencies named therein. This was done obviously to allow them to participate in the election process. The resolution was preceded by a Bill namely--Constitution of North Cachar Hills Autonomous District Council (34th Amendment) Bill, 2005. The statement of object and reasons indicate that many new villages have been set-up by the displaced ethnic groups which are to be included in different constituencies of the Council.

This Bill providing for amendment of Appendix-II of the Assam Autonomous Districts (Constitution of District Council), Rules, 1951 was passed by the Executive Committee of the District Council in the year 2005. That apart, similar demands for delimitation were also received from political parties and other non-political organizations of N.C. Hills. It was in that context, the Governor was pleased to issue the notification in exercise of his powers under Rule 4 of Assam Autonomous Districts (Constitution of District Council) Rules, 1951 read with sub-para (6)(b) of Para-2 of the Sixth Schedule constituting a committee for the purpose of delimitation of constituencies on various terms and conditions embodied therein. Therefore, both the notifications read together suggest that there has been ethnic clashes resulting in displacement of large number of villagers resulting in demand from various circles for delimitation. Consequent thereupon, the Executive Committee had passed the Bill amending the relevant Rules suggesting delimitation for effective representation of the people.

9. It would be apposite at this stage to refer to the provisions of law relating to the discretionary powers of the Governor under the Sixth Schedule and also the scope and ambit of powers of this Court in judicial review of such decision by the Governor. Para 2(6A) of the Sixth Schedule provides that the members of the District Council shall hold office for a term of five years, unless the District Council is sooner dissolved as provided in para-16 and a member is nominated to hold office at the pleasure of the Governor. First proviso to this paragraph empowers the Governor to extend the said period for a period not exceeding one year at a time. The period could be extended by the Governor while a proclamation of emergency is in operation or if circumstance exists which, in the opinion of the Governor render the holding of the election impracticable. By the Constitution (Amendment) Act, 1995 (42 of 1995), para-20BA was inserted. This newly inserted paragraph makes it obligatory on the part of the Governor to consult the Council of Ministers and the North Cachar. Hills Autonomous Council or the Karbi Anglong Autonomous Council, as the case may be, before the Governor acts in his discretion while exercising powers specified therein. This Section in clear terms excludes the first two proviso to sub-paragraph (6A). This exclusion means that while exercising powers under the first proviso of sub-paragraph (6A) of Para-2, the Governor is to act in his sole discretion. The power to extend the term of the Council is, therefore, discretionary and could be exercised by the Governor in his discretion provided he is of the opinion that the circumstances exist which render the holding of the election impracticable.

10. In this connection, it would be for relevance to refer to certain observation recorded by this Court in D. Uphing Maslai and Anr. v. State of Assam and Anr. reported in 2001 (2) GLT 299:

8. Article 163 of the Constitution speaks of the Governor "acting in his discretion". It provides that Council of Ministers with the Chief Minister at the head is to aid and advise the Governor in exercise of his function save and except where the Governor is required by or under the Constitution to act in his

discretion. Clause (2) of Article 163 empowers the Governor to decide whether any matter is or is not within the ambit of the discretionary powers of the Governor, and the decision thereon taken by the Governor shall be final. It further provides that the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion. The provisions of this clause provide for finality of the orders passed by the Governor in his discretion. The provisions in the Sixth Schedule of the Constitution will, therefore, have to be read in the context of the provisions of Article 163 and the scheme behind the Schedule.

11. The aforesaid paragraph clarifies the position of the Governor so far his position under the Sixth Schedule is concerned. In case of exercise of powers under the first and second provisos to sub-paragraph (6A) of para-graph-2, the Governor is also exempted from consulting the Council of Ministers and the concerned District Council. Therefore, any order passed by the Governor under the first proviso cannot be subjected to judicial review except for determining whether the Governor has acted in his discretion after having formed an opinion as required under the first proviso. In the instant case, as discussed above, the Governor appears to have considered the materials available before him before he had formed the opinion as required under the first proviso and took the decision to extend the term of the Council by six months.

12. In *Prakanta Warisa and Ors. v. State of Assam and Ors.* reported in 2001 (3) GLT 500, the members of the Council approached the Court challenging the notification issued by the Governor in exercise of powers under Sub-paragraph (2) of paragraph-16 assuming to himself all the functions and powers vested in and exercisable by the Council. They in-fact intended an extension of the term as the election could not be held within time. This Court dismissed the writ petition. The observations recorded in that judgment, relevant for the case at hand, are quoted below:

9. Section 91(1) of the Government of India Act, 1935 deals with the expression "excluded area" and "partially excluded area." The expression means such areas as His Majesty may by order in Council declare to be "excluded areas" or "partially excluded areas". The point of distinction between "excluded area" and "partially excluded area" as highlighted by Mr. Lahiri, learned Senior Counsel, is that while both classes of areas are excluded from the competence of provincial and federal legislature, the administration of "excluded area" is vested with the Governor acting in his discretion, while the "partially excluded area" is vested in the Council of Ministers subject, however, to the Governor exercising his individual judgment. Clause (e) of Sub-section (1) of Section 52 provides that the Governor in exercise of his functions shall have special responsibilities in securing peace and good governance of areas. Therefore, the concept of administration of the "partially excluded areas" by the Governor in his discretion was ingrained in the Government of India Act of 1935. The above provisions of the Act of 1935, which provides for autonomy and self governance, is the basis

for incorporation of the Sixth Schedule. The argument was advanced to show that the provisions in the Sixth Schedule aim at devolution of powers to the people of the tribal areas for administration by their elected representatives.

There cannot be any dispute that all efforts be made to ensure that the representatives of the people of the tribal areas run the affairs of the District Council. Assumption of powers by the Governor in exercise of sub-para (2) of Paragraph 16 of the Sixth Schedule is an exception only on compelling circumstances. Paragraph 2(6A) of the Sixth Schedule provides for extension only when circumstances exist which in the opinion of the Governor render holding of the election impracticable. To appreciate better, we may read hereinbelow sub-para (6A) of Paragraph 2 of the Sixth Schedule:

(6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor.

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate.

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces.

10. The Constitutional provision quoted above clearly shows that the Governor is empowered to extend the term of the Council for a period not exceeding one year when circumstances exist in which holding of election is rendered impracticable. It is clear from the first proviso that the Governor is to act in his discretion to form an opinion as to whether holding of election of a District Council is impracticable before the Governor decides to extend the term of the office. The word "may" incorporated in sub-para (6A) quoted above clearly shows that the extension of term is discretionary even when the Governor is of the opinion that the holding of election is not practicable.

13. The provisions of law, as discussed in the aforesaid judgment, make clear the position of the Governor in respect of Sixth Schedule vis-a-vis the scope and ambit of judicial review of the Court. A detail argument has been made by the learned Counsel for the petitioners and the intervenor with regard to the wording of the impugned notification i.e., "as a result of which the election of the new members to the N.C. Hills Autonomous Council may not be practicable within the stipulated date as above". According to the learned Counsel, the phrase "may not be practicable" indicate that holding of the election was not impossible. It was argued that the word "impracticable" as set in the first proviso to

paragraph-2(6A) visualize a situation where election cannot be held. The word--"impracticability" has various meanings as per Black's Law Dictionary as well as Stround's Judicial Dictionary. We may, therefore, refer to the decisions relied upon at the Bar to find out the correct import of the word--"impracticable" with reference to the context at hand. In *Union of India and Others Vs. Harjeet Singh Sandhu etc.*, , the Hon'ble Supreme Court while interpreting the words--"impracticable" appearing in Rule 14(2) of the Army Rules, 1954 held that the term "impracticable" would mean impermissible or legally impossible or not practicable. However, the Apex Court declared that reference to the dictionary to find out the true meaning of a word not defined in the Act is permissible only in the context in which the word has been used in the statute. Therefore, element of flexibility is there and this has to be with reference to the context in which it is used. Reference has also been made of the decision of the Calcutta High Court in *Bengal and Assam Investors Ltd. v. J.K. Eastern Industries Pvt. Ltd.* reported in AIR 1985 cal 658, wherein the true meaning to the word "impracticable" appearing in Section 186 of the Companies Act, 1956 was sought to be given. The Calcutta High Court was of the view that the word used in Section 186 has to be given a practical meaning i.e., it has to be understood from the business point of view. Both the decisions relied upon by the petitioners appear to admit some amount of flexibility with regard to the meaning of the word--"impracticable". This position stands clarified in para-32 of the judgment of the Apex Court in *Harjeet Singh Sandhu (supra)*, which reads as below:

32. In the Words and Phrases (Permanent Edn. Vol. 20, pp 460-61) it is stated that the term "impossible" may sometimes be synonymous with "impracticable", "impracticable" means "not practicable", incapable of being performed or accomplished by the means employed or at command; "impracticable" is defined as incapable of being effected from lack of adequate means, impossible of performance, nor feasible; "impracticable" means impossible or unreasonably difficult of performance, and in a much stronger term than "expedient". In the Law Lexicon (P. Ramanatha Aiyar, 2nd Edn., p. 889) one of the meanings assigned to impracticable is " "not possible" or "not feasible"; at any rate it means sometimes very much more than "not reasonably practicable"." In the New Oxford Dictionary of English (1998), at p. 918), impracticable (of a course of action) is defined to mean "impossible in practice to do or carry out". The same dictionary states the usage of the term in these words--"Although there is considerable overlap, impracticable are not used in exactly the same way. Impracticable means "impossible to carry out" and is normally used for a specific procedure or course of action,?Impractical, on the other hand, tends to be used in more general senses, often to mean simply "unrealistic" or "not sensible".

14. The Constitution has not defined the word "impracticable". Therefore, meaning thereof will have to be attributed from the "administrative" point of view. If the Governor on the aftermath of wide spread ethnic violence considering the plight of the displaced persons as well as the demands from various quarters including political parties was of the view that it would not be

realistic or sensible to hold the election on the basis of the circumstances prevailing in the District. Such a decision taken in exercise of the discretionary powers obviously cannot be tinkered with on the ground that the words "may not be practicable" employed in the impugned notification do not indicate a situation rendering holding of the election totally impossible. Once the Governor decides in exercise of his discretion that it would not be feasible to hold the election and the decision is based upon some relevant factors, that would be the end of the matter. Adequacy of the reasons cannot be a ground for finding fault with the decision taken in exercise of discretionary powers.

15. A number of decisions have been cited on behalf of the petitioners to show that the delimitation and revision of electoral roll cannot be a ground for stalling the process of election. (Ref. : Inderjit Barua and Ors. v. Election Commission of India AIR 1984 SC 1912 & Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, . Article 83(2) of the Constitution provides that the House of the People, unless sooner dissolved shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the house. This period of five years could be extended by the Parliament while a proclamation of emergency is in operation for a period not exceeding one year at a time. The power of extension of the tenure of the house of the people has been left with the elected representative of the Parliament and not with the President. Similarly, the Legislative Assembly of every State, as provided in Article 172, is to continue for five years from the date appointed for its first meeting and no longer. The said period could be extended by the Parliament by law for a period not exceeding one year only when a proclamation of emergency is in operation. The power of extension has not been given either to the President or the Governor of the State. Article 243E deals with the duration of the Panchayats, etc. It provides that every Panchayat, unless sooner dissolved under law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer. Similarly, so far duration of the municipalities is concerned, Article 243-U provides that every municipality, unless sooner dissolved under any law for the time being force, shall continue for five years from the date appointed for its first meeting and no longer. It would therefore appear that there is no provision for extension of the tenure of the Parliament as well as the State Assemblies except while emergency is in operation and that is also by the Parliament by law. The positions of Panchayats and Municipalities are more stringent since there is no provision for extension of the term. These decisions do not have any application to the case at hand. As because, the powers given to the Governor under the Sixth Schedule is an extra-ordinary powers identifiable with the powers of the Parliament. The Governor is the sole judge to decide whether the term of a District Council should be extended or not. This may also be evident from the decision in Satyeswar Daolagupu and Ors. v. The Secretary to the Govt. of Assam and Ors. reported in AIR 1974 Gau 20.

16. In Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and

Others, relied upon by Shri A.K. Bhattacharjee, learned senior counsel, the Supreme Court mandated that it is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to ensure that new municipality is constituted in time and election to the municipality is completed before expiry of five years. This observation was made while the Hon''ble Supreme Court was dealing with a prayer for a Writ of Mandamus for holding election for constituting the Municipal Corporation of the State of Ahmedabad before expiry or dissolution. This judgment has been rendered by the Hon''ble Supreme Court in interpretation of the provisions of Article 243U and 243E. The Supreme Court, however, in para-21 of the Judgment observed that going by the provisions contained in Article 243U it is clear that the period of five years fixed thereunder to constitute the municipality is mandatory in nature and has to be followed in all respects. The Supreme Court, however, made an exception with regard to man made calamities, such as rioting or breakdown of law and order, or natural calamities which could distract the authorities from holding elections to the municipality. This decision of the Hon''ble Supreme Court has relevance to the extent that even though the term of a Council could be extended by the Governor, the authorities shall endeavour to hold election before expiry of the term of the elected Council. Election could be delayed only to overcome prevailing adverse situation arising from rioting or breakdown of law and order or natural calamities. This decision of the Hon''ble Supreme Court has been rendered in respect of the Municipalities and Panchayats having a term of five years fixed by the Constitution. In *State of Rajasthan and Others Vs. Union of India and Others*, , in para-144, it has been declared that the existence of the satisfaction of the President in exercise of powers under Article 356 can always be challenged on the ground that it is mala fide or based on wholly extraneous and irrelevant grounds. Going by the ratio of this judgment, it can safely be said that the satisfaction of the Governor in extending the term of the Council under Para-2(6A) of the Sixth Schedule is also amenable to judicial review only for ascertaining whether the decision is based on wholly extraneous and irrelevant grounds. If some grounds are there, which are relevant to the issue before the Governor, the Court would cease to enquire further. The decision cannot be questioned on the ground of inadequacy.

17. The decision in *Khudiram Das Vs. The State of West Bengal and Others*, was rendered in a Writ of Habeas Corpus under Article 32. It is declared by the Supreme Court that the subjective satisfaction arrived at by the authority would be bad where it is based on the application of wrong test or a misconstruction of a statute. It is further held that the Court has a duty to examine what are the basis facts and materials which actually and in-fact weighed with the detaining authority in reaching the requisite satisfaction. We have also considered the decision in *S.R. Bommai and others Vs. Union of India and others etc. etc.*, . The ratio available in this judgment is identical with the ratio in *State of Rajasthan and Others Vs. Union of India and Others*, . The Supreme Court observed that one of the conclusions which may safely be drawn is that the exercise of power

by the President under Article 356 to issue Proclamation is subject to the judicial review at least to the extent of examining whether the conditions precedent to the issuance of the Proclamation have been satisfied or not. Similar view is also available in *Rameshwar Prasad and Others Vs. Union of India (UOI) and Another, .* From the observations of the Hon''ble Supreme Court in paras--139, 140 and 141, it would appear that the Courts, in exercise of judicial review, may examine the question whether the Governor's report is based upon relevant materials or not. In *Pu Myllai Hlychho and Others Vs. State of Mizoram and Others, ,* the Hon''ble Supreme Court dealt with the powers of the Governor under the Sixth Schedule. It was a case from the State of Mizoram relating to the nomination of members to the MADC. The Hon''ble Supreme Court is of the view that the power to be exercised by the Governor under para 2(1) is governed by the provisions of para-20BB i.e. the power of nomination is the discretionary power of the Governor, whereas the powers under para-2(6A) is to be exercised under advice of the Council of Ministers. The position of the Governor in the State of Assam in respect of powers under para-2(6A) is different from that given to the Governor of the State of Mizoram.

18. From the decisions referred to above, the extent of power of judicial review of the decision of the Governor rendered in exercise of his discretionary powers under para 2(6A) read with para-20-BA make it clear that the Governor is to act in his sole discretion and the decision taken by the Governor is subject to judicial review only for ascertaining as to whether the Governor has applied his mind to the factors having some nexus to the issue before the decision was taken. The powers of the Governor under Para-2(6A) read with para-20-BA stand on a different footing so far the question relating to extension of the term of office of the Council is concerned. It cannot be equated with the term of Parliament, State Legislatures, Municipalities and the Panchayats. On this background, it is considered necessary to review the office file to ascertain whether the Governor had exercised his discretionary powers upon consideration of factors relevant to the issue.

19. We may now refer to the relevant office file which was placed before the Governor. It would appear from pages-10 and 11 of the note sheet that the Executive Committee as well as the MLA from Haflong made a request for extension of the term of the Council for a period of six months mainly on the ground that the constituencies need delimitation to provide for better democratic representation and for holding of the election within the extended term. Office notes at Pages 16 and 17, it indicate the concern of the various authorities for holding the election vis-a-vis extension of term of the Council by six months for completing the process of delimitation with a view to increase the number of elected members from 23 to 28. The note at Page-21 indicates the requirement of early poll as well as the constraints thereon. It further indicates that the Advocate General, Assam in his advice had mentioned that if the de-limitation exercise is to be taken up, then as an exception the term of the Council can be extended for a period of six months or till the next date on which the first

meeting of the new Council is held, which ever is earlier. Page 23 of the note sheet contains an extract from the minutes of the Cabinet meeting held on 2.11.2006 approving the process of delimitation in respect of N.C. Hills Autonomous Council. The copy of the process of the meeting of the Executive Committee held on 9.9.2006 also indicate ethnic clashes resulting into severe disruption of developmental activities as a ground for extension of the term of the Executive Committee. The office file also contains a letter dated 14.8.2006 from the Minister, In-Charge, Hill Areas Department to the Chief Minister suggesting extension of the present term atleast for three to six months for holding the next election complying with all norms and procedures of Sixth Schedule. He suggested revision of the voter list for better representation on various grounds. The letter dated 18th September, 2006 written by the Chief Executive Member to the Commissioner and Secretary, Government of Assam (Page 37 of the office file) indicate that during the ethnic violence in the District, people of some of the villages have been displaced which call for their resettlement and inclusion of their names in the voter list for effective representation. It also mentions of wide spread drought condition prevailing in the Council areas. The extract of the proceeding of the Executive Committee meeting held on 15th September, 2006 indicate that consequent upon ethnic clashes that took place in the District adversely affecting some of the villages in the Constitutencies of Half long, Mahur, Langting, Harangajao, Dautuhaja, Kharthong, Hatikhali, Diyungmukh and Garampani, large number of people residing therein have been displaced. They are scattered and residing temporarily in other areas.

20. The office notes as well as various documents available in the office file indicate the reasons for completion of delimitation and revision of the electoral roll before the election so that the villagers displaced during ethnic violence are ensured of their right to take part in the electoral process. The materials available in the office file indicate that the process of delimitation which though started in the year 1999 is not yet complete. The delimitation initiated in 1999 is undoubtedly a routine affair and it cannot be a ground for stalling the election. But the situation that arose out of widespread ethnic violence resulting into loss of lives and property followed by displacement created an urgency for delimitation not only to mitigate the grievances of various ethnic groups, but also to ensure effective participation of the ethnic groups. Therefore, the process of delimitation which has been relied upon by the Governor while extending the term of the Council is not a routine process of delimitation. The grounds relied upon in the impugned notifications do not appear to be wholly irrelevant. On the face of record, it appears that the Governor having gone through the materials placed before him thought it proper to extend the term of the Council for a period of six months to facilitate completion of the process of delimitation before election.

21. The materials relied upon, as discussed hereinbefore, cannot be said to be totally irrelevant for the purpose of extension of the term of the Council. Since

the Governor has acted in his discretion after forming an opinion that delimitation and revision of roll were a necessity, it would be beyond the scope of judicial review to question the adequacy of the materials on which the opinion was formed. Once the Court is satisfied that the Governor has acted in his discretion, the Court shall not embark upon a search for adequacy of reasons. No interference with the impugned notifications is called for.

22. We have also considered the argument advanced on the question of maintainability of the petitions vis-a-vis locus of the petitioners. We have considered the decisions in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, ; *Chaitanya Kumar and Others Vs. State of Karnataka and Others*, ; *Janata Dal Vs. H.S. Chowdhary and Others*, ; *BALCO Employees Union (Regd.) Vs. Union of India and Others*, & *Dr. B. Singh Vs. Union of India (UOI) and Others*, . Irrespective of the locus of the petitioners, we find that some element of public interest is there in the petitions. However, as we have decided not to interfere with the impugned notifications, we are not going to render any detail discussion on the question of locus.

23. In the result, we dismiss both the petitions and dispose of the connected miscellaneous cases with the direction that the respondent authorities will make all efforts to hold the election within the extended period without further extension of the term of the Council on the ground of delimitation and ethnic violence which rocked the District sometime past. Consequently, the interim order dated 20.12.2006 passed in P.I.L. No. 85 of 2006 stands merged with this order.

24. The orders passed by the Governor in pursuance of the interim order will, therefore, become nonest. No costs.