

**(1993) 07 GAU CK 0010**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 2473 of 1992**

Jayanta Rongpi

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

**Date of Decision :** 09-07-1993

**Acts Referred:**

Constitution of India, 1950 — Schedule 6 Para 16(1), Schedule 6 Para 16(1), Schedule 6 Para 16(1)(b), Schedule 6 Para 16(1)(b), Schedule 6 Para 16(2)

**Citation :** (1994) 1 GLJ 229

**Hon'ble Judges :** U.L.Bhat, C.J. and R.K.Manisana Singh, J

**Bench :** Division Bench

**Advocate :** S.N.Bhuyan, A.S.Bhattacharjee, S.A.Laskar, J.P.Bhattacharjee, H.Roy, H.K.Sharma, D.N.Choudhary, B.D.Das, B.L.Singh, Advocates appearing for Parties

## **Judgement**

U.L. Bhat, C.J.—Petitioner, erstwhile Chief Executive Member (CEM) of the Karbi Anglong District Council (for short, the Council), filed the writ petition on 16.11.1992 and the same was amended subsequently. The relief claimed in the amended writ petition is to quash Annexure 21 Notification dated 9.11.1992 issued by the Government of Assam, Annexure 22 Notification dated 9.11.92 issued by the Government of Assam and Annexures 27, 28 and 29 Notifications dated 27.11.1992 issued by the Government. On behalf of respondents 1 to 4, Deputy Secretary to the Government of Assam in the Hill Areas Department has filed an affidavit dated 17.12.92. Fifth respondent filed a counter affidavit dated 24.2.93. Petitioner filed reply affidavits dated 22.12.92 and 22.2.1993.

2. On 9.11.1992 petitioner filed Civil Rule No. 2407 of 1992 seeking a direction to the respondents to issue notice to the Council giving sufficient Opportunity in the event of any action to dissolve the Council under paragraph 16 of the Sixth Schedule to the Constitution of India. Rule was issued on that day. The Court further directed that "till return of notice no action shall be taken in respect of Kai bi Anglong District Council". However, on the same day the Government issued two Notifications to remain in force for six months one "dissolving" the

Council and assuming with immediate effect administration of the district purportedly under paragraph 16 (2) of the Sixth Schedule to the Constitution and the other appointing the Deputy Commissioner of the district to exercise all the functions and powers exercisable by the Council, the Executive Committee, Chief Executive Member, Chairman, Deputy Chairman, "Executive Members and Deputy Executive Members of the Council subject to such directions as may be issued by the Governor from time to time and designating him as the Administrator. Though the Notification bear the date 9.11.1992, they were published in the Gazette only on 13.11.1992. On the same day the petitioner filed an application in Civil Rule No. 2407 of 1992 stating that police officers forcibly entered the Council office and removed the name plates of the Chief Executive Member and Executive Members and obstructed them from entering the office. The Court passed an order stating that if the Council has not been dissolved by the competent authority, the Deputy Commissioner shall take necessary steps for allowing the members to function in accordance with law. The Court also directed that if the earlier order dated 9.11.1992 cannot be complied with by the Deputy Commissioner, he shall make a report to the Court immediately. The Deputy Commissioner on 16.11.1992 sent a WT message to the Deputy Registrar of the Court informing about the Governor's order dated 9.11.1992 and further order of the same date appointing the Administrator.

3. On 17.11.1992 petitioner filed the present writ petition to quash the two orders dated 9.11.1992 and seeking direction to the respondents to allow him and other Members of the Council to function as such. The Court on that day called for the records and directed the Administrator not to take any major policy decision and further directed that the members of the Council occupying quarters shall not be evicted. Rule was issued on 19.11.1992.

4. While so, on 27.11.1992, the Governor issued Notification withdrawing the earlier Notification dated 9.11.1992 issued under paragraph 16 (2) of the Sixth Schedule to the Constitution with immediate effect. On the same day Governor issued a fresh Notification under paragraph 16 (2) of the Sixth Schedule assuming to himself with immediate effect the administration, "functions and powers of the Council for a period of six months from 27.11.1992 and declaring that all functions and powers vested in the statutory authorities shall be exercised by such person or authority as may be appointed in this behalf. On the same day another Notification was issued appointing the Deputy Commissioner to discharge such powers and functions as Administrator. The Deputy Commissioner purported to take charge on 28.11.1992. On 30.11.1992, the petitioner filed an application to amend the writ petition seeking to quash these orders and the amendment was allowed. At that stage the learned Single Judge referred the matter to the Division Bench. During the pendency of the writ petition, by Notification dated 7.5.1993 the Governor extended the period of assumption to a further period of six months from 9.5.1993. By corrigendum Notification dated 4.6.1993, the Notifications dated 27.11.1992 were amended giving retrospective effect to those Notifications from 9.11.1992. Though at the

stage of hearing the prayer for interim relief, respondents did not make available all the records concerned, they have now been made available. By order dated 21.1.1993, all the applications for interim relief were disposed of

5. Learned counsel for the petitioner urged the following contentions before us :

(i) The order of "dissolution" of the Council passed on 9.11.1992 is really an order passed under paragraph 16 (1) of the Sixth Schedule and since the conditions precedent for exercise of such power were not satisfied the order is void. The order passed on the same day appointing Administrator being an ancillary order is also void.

(ii) Since the order dated 9.11.1992 "dissolved" the Council and dissolution is an irreversible process, there was no scope for withdrawing this order and passing a fresh order on 27.11.1992 under paragraph 16 (2) of the Sixth Schedule and hence the orders passed on 27.11.1992 are illegal,

(iii) These orders are vitiated since they were issued in contravention of the Assam Rules of Executive Business.

(iv) The orders passed on 9.11.1992 and 27.11.1992 are vitiated by malice.

(v) The grounds stated in the impugned orders are wholly irrelevant and extraneous to the exercise of power under paragraph 16 of the Sixth Schedule and there was total nonapplication of mind on the part of the authority concerned and hence the orders are illegal.

6. We will now refer to the provisions of the Sixth Schedule having a bearing on the controversies in this case. Article 244 (2) of the Constitution states that the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. Article 275 (1) of the Constitution relates, inter alia, to payment out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam in respect of the administration of the tribal areas specified in Part I of the Table appended to paragraph 20 of the Sixth Schedule and the scheme of development as may be undertaken in such areas.

7. Sixth Schedule to the Constitution contains provisions as to the administration of tribal areas in the State of Assam and certain other States. Paragraph 2 deals, inter alia, with constitution of District Councils for each autonomous district. The administration of autonomous district shall be vested in the Council. The elected members of the Council shall hold office for period of five years from the date appointed for the first meeting of the Council after the general election to the Council, unless it is sooner dissolved under paragraph 16. There is also a provision for nomination of members. The nominated member shall hold office at the pleasure of the Governor. The Council may make rules with the approval of the Governor with regard to the matters specified in subparagraph (6) of paragraph 2 and may also make rules regulating formation of subordinate local Councils or Boards etc. Powers of the Council to make laws are provided in

paragraphs. Certain other powers of the Council are dealt with in paragraphs 6 to 11. Paragraph 14 empowers the Governor, inter alia, to appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts or to inquire into and report from time to time on the administration of autonomous districts in the State generally and in particular in regard to matters set out in subparagraph (1). The report together with the recommendation of the Governor with respect thereto shall be laid before the State Legislature. Paragraph 15 confers on the Governor power to annul or suspend acts or resolutions of the Council. Paragraph 20 describes the tribal areas. The area under the jurisdiction of Karbi Anglong District Council is a tribal area under paragraph 20.

8. We are concerned in this case with the interpretation and application of the provisions in paragraph 16 of the Sixth Schedule. The heading of the paragraph is "Dissolution of a District or a Regional Council". Paragraph contains three subparagraphs, which read as follows

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

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

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

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

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

(2) If at any time the Governor is satisfied that a situation has arisen in W

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

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

(3) Every order made under subparagraph (2) of this paragraph with the reasons therefore shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the order, unless, before the expiry of that period it has been approved by the State Legislature."

9. Subparagraphs (1) and (2) of paragraph 16 deal with different situations and confer different kinds of power on the Governor. The power under the two subparagraphs is to be exercised by the Governor" by public notification. Power under subparagraph (1) is to be exercised on the recommendation of a Commission appointed under paragraph 14. The order to be passed under subparagraph (1) may by public notification :

(i) dissolve the District Council on the recommendation of the Commission appointed under paragraph 14, and

(ii) (a) direct fresh general election to be held immediately, in which case Governor may take action to assume the administration of the district or place the administration under the Commission appointed under paragraph 14 or any other suitable body, pending reconstitution of the Council on election, or

(b) assume the administration of the district or place the administration under the Commission appointed under paragraph 14 or any other suitable body for a period of not exceeding twelve months. Assumption of administration of the district under clause (b) is subject to previous approval of the State Legislature and no such action shall be taken without giving the District Council an opportunity of placing its views before the State Legislature.

10. The Governor can by public notification act under subparagraph (2) of paragraph 16 if satisfied that a situation has arisen in which the administration of an autonomous district cannot be carried on in accordance with the provisions of the Sixth Schedule. The language is reminiscent of the language in Article 356. The action to be taken under subparagraph (2) is to consist of

(i) assumption to himself all or any of the functions or powers vested in or exercisable by the District Council for a period not exceeding six months, and

(ii) declaration that such functions and powers shall be exercisable by such person or authority as may be specified in this behalf" for a period not exceeding six months.

(iii) The Governor may by further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.

The order made under subparagraph (2) with the reasons therefore shall be placed before the State Legislature and shall cease to operate at the expiration of

thirty days from the date on which the State Legislature first sits after the issue of the order, unless it has been approved by the State Legislature earlier.

11. A close study of the provisions of paragraph 16 reveals that the actions to be taken under subparagraphs (?) and (2) are of different nature and amplitude and the procedure to be followed and the consequences following are also different. Subparagraph (1) contemplates dissolution to be followed by fresh general election either immediately or within twelve months. In either case, alternative arrangement may be made in regard to the administration of the area pending fresh election, but the period cannot exceed twelve months. For dissolution of the Council, the precondition is the recommendation of the Commission appointed under paragraph 14. The precondition for assumption of administration of the area is the previous approval of the Legislature and an opportunity to the District Council of placing its views before the Legislature. The recommendation of the Commission and the satisfaction of the Governor must be based on relevant grounds having nexus with the matters in regard to which the Commission was appointed. The action to be taken under subparagraph (2) is not dissolution; it is what may be regarded as "suspension" of the District Council for a period, the initial period being not exceeding six months, but with an option to extend the period by six months at a time. The subjective satisfaction contemplated under subparagraph (2) is that the administration cannot be carried on in accordance with the provisions of the Sixth Schedule. Under subparagraph (2) there is no dissolution and no assumption of the administration of the area. There is only assumption of the functions and powers of the Council and making arrangement for exercise of such powers and functions by a person or authority.

12. Point No. (i) : It is the petitioner's contention that by the first order dated 9.11.1992 the Council was dissolved and administration of the District Council was assumed under subparagraph (1) of paragraph 16, though reference is made erroneously to subparagraph (2), and because the preconditions of Commission's recommendation for dissolution and of opportunity of placing its views before and prior approval of the Legislature in regard to assumption of administration of the district did not exist, the order is illegal and void. The consequential order appointing the Administrator will also fail as it is only ancillary. The answer of the learned Advocate General representing the respondents is that the order was really one under subparagraph (2) of paragraph 16, namely assumption of powers and function on requisite satisfaction, and the order is really not one dissolving the Council and assuming administration of the area under subparagraph (1) of paragraph 16 and, hence, the preconditions mentioned in subparagraph (1) are inapplicable and, therefore, there is no defect in the order.

13. The first order passed on 9.11.1992 and published in the Gazette on 13.11.1992 bears the No. HAD. 58/9083. The preamble to the order is divided into five paragraphs. The first four paragraphs refer to the grounds which led to

the invocation of power under paragraph 16. The fifth paragraph states that the Governor was satisfied that a situation had arisen in which the administration of the autonomous district cannot be carried on in accordance with the provisions of the Sixth Schedule to the Constitution. The operative portion of the order reads as follows :

"Now therefore in exercise of the powers conferred on the Governor  
vide para 16 (2) of the Sixth Schedule to the Constitution of India, do  
hereby order dissolution of the Karbi Anglong District Council and  
order as follows :

(a) to assume to himself, with immediate effect, the administration of the said District and all functions and powers vested in or exercisable by the Karbi Anglong Autonomous District Council;

(b) to declare that all functions and powers vested in or exercisable by the aforesaid District Council, the Executive Committee, Chief Executive Member, Chairman, Deputy Chairman, Executive Members and Deputy Executive Members of the aforesaid District Council, under the Sixth Schedule or any law in force in the said District shall, subject to his superintendence, direction and control, be exercised by such person or authority as the Governor may by Notification appoint in this behalf, and that the existing Executive Committee, Chief Executive Member, Chairman, Deputy Chairman, Executive Members and Deputy Executive Members of the said District Council, shall during the period of assumption of the administration of the District Council by the Governor himself under this order, cease to exercise all or any of the functions and powers aforesaid;

(c) to direct that during the period of operation of this order (i) no sitting of the District Council shall, unless so directed by the Governor be called, held or convened at any time during the said period, (ii) all references in the Sixth Schedule or in any laws, rules, regulations or orders to the "District Council" shall in relation to the said District so far as it relates to the functions and powers vested in or exercisable by the District Council be construed, unless the context otherwise required, as references to the "Governor of Assam" and references in any laws, Rules, Regulations or Orders in force in that District to the "Executive Committee" "Chief Executive Member", "Chairman" "Deputy Chairman", "Executive Member" or "Deputy Executive Member" be constructed unless the context otherwise requires, as references to such person or authority referred to in paragraph (b) of this order.

This order shall take immediate effect and shall, unless terminated earlier or extended further, remain in force for a period of six months." (emphasis supplied)

14. Petitioner relies on the following circumstances to contend that the order was really one under paragraph 16 (1) :

(a) The order refers to "dissolution of the Council" which is contemplated by

subparagraph (1) and not by subparagraph (2) of paragraph 16

(b) The order contains assumption of the administration of the district as contemplated in clause (b) of subparagraph (1), besides the functions and powers of the Council.

According to the respondents, the following features would show that the order was really under paragraph 16 S2) (a) :

(a) The order specifically refers to paragraph 16 (2) as the source of power.

(b) The order contains assumption of the functions and powers vested in the Council as contemplated in sub paragraph (2).

(c) The order contains a declaration that such functions and powers be exercised by such person, authority as the Governor may appoint in this behalf.

(d) The order states that during the period of assumption of the administration, the Executive Committee, Chief Executive Member, Chairman, Deputy Chairman, Executive Members and Deputy Executive Members shall cease to exercise any of the functions and powers, thereby indicating a temporary state of affairs, and

(e) The order states that during the period of operation of the order no sitting of the District Council shall be held, unless so directed by the Governor, indicating a state of suspended animation of the Council.

(f) The order states that it shall remain in force for six months as contemplated in sub section (2).

Learned counsel also referred to the subsequent conduct of the various authorities to throw light on the nature of the order. Learned Advocate General referred to the relevant files and placed them before us.

15. We have examined the files placed before us by the learned Advocate General, File No. HAD. 63/91 relates to the proposal for appointment of Commission evidently under paragraph 14 of the Sixth Schedule. The file was started in early 1991 and the Commission of Enquiry was constituted only by Notification dated 9.1.1992. Apparently Commission could not function for want of staff and funds.

16. File No. HAD. 58/90 shows that a Study Committee consisting of four Ministers, two Members of Legislative Assembly and a Member Secretary submitted report to Government in November, 1990 recommending "supersession" of the Council under paragraph 16(2) of the Sixth Schedule. It is obvious that "supersession", as commonly understood, is outside the purview of paragraph 16 (2). Ultimately, a notification dated 26.11.90 was issued under paragraph 16 (2) of the Sixth Schedule relating to assumption by the Governor of the administration of the district and all functions and powers vested in the Council. The notification was not implemented evidently in view of filing of Civil Rule No. 2184 of 1990. The then Governor, as the State was under President's

Rule, by order dated 30.11.1990 revoked the Notification as in his opinion it was not based on justifiable grounds and was mala fide. This order is seen at page 2C. The file contains no further notes or entries for nearly two years.

17. At page 22 of the file No. HAD. 58/90 there is a note dated 9.11.1992 of Commissioner and Secretary to the Government referring to the talk he had with the Minister, HAD and instruction issued by the Minister to the effect that

" .. the .Council functioning, which was in a unhappy state of affairs, required to be taken over and Deputy Commissioner appointed as Administrator."

The note also states that notification, which has been approved by Chief Minister and the Minister may be issued under paragraph 16 (2). The impugned notification dated 9.11.1992 was issued accordingly and published in the Gazette on 13.11.1992. The file also shows that the Chief Minister approved the draft notification and the draft notification is on the same terms as the impugned Notification.

18. In affidavit dated 17.12.1992 Deputy Secretary to the Government stated that by the impugned Notification dated 9.11.92 the Council has been dissolved. The State Government, a few days later, put forward a case that there was a mistake in the Notification dated 9.11.1992 inasmuch as it wrongly referred to "dissolution" which cannot be effected under paragraph 16 (2) of the Sixth Schedule. Therefore, two Notifications were issued on 27.11.1992, one withdrawing the impugned Notification dated 9.11.1992 and the other assuming the powers and functions of the Council under paragraph 16 (2) of the Sixth Schedule.

19. File No. HAD 58/90 clearly spells out that the instruction issued by the Minister concerned to the Commissioner and Secretary to Government was that the functions of the Council are to be "taken over" and Deputy Commissioner appointed Administrator. This action would clearly fall under subparagraph (2) of paragraph 16 of the Sixth Schedule and not subparagraph (1) of paragraph 16 of Sixth Schedule. While preparing the draft notification for the approval of the Chief Minister, the word "dissolution" was incorporated. It cannot be that the draftsman deliberately intended to violate the instruction issued by the Minister and the Commissioner. The incorporation of the word "dissolution" must necessarily have been by mistake or misapprehension. Chief Minister also must have approved the draft Notification in view of the specific reference contained therein to paragraph 16 (2) of the Sixth Schedule. The decision of the Minister was to "take over" and to appoint Administrator. "Take over" cannot mean "dissolution" of the Council, but can only mean assumption of the powers and functions vested in the Council.

20. The impugned order specifically refers to paragraph 16 (2) as the source of power. Except the part of the sentence regarding dissolution of the Council and assumption of administration of the district, the entire notification is consistent with subparagraph (2) of paragraph 16. The impugned notification viewed in this

light and considered in the background of the instructions of the Minister, must be regarded in substance as a Notification under subparagraph (2) of paragraph 16 of the Sixth Schedule, even though the word "dissolution" was erroneously used therein. The fact that the impugned Notification refers to six months as the period would provide additional support to this conclusion. We therefore hold that the Notification dated 9.11.1992 was in effect and substance an action taken under paragraph 16 (2) of the Sixth Schedule and not under paragraph 16 (1) of the Sixth Schedule. There is no dispute that the precondition for dissolution contemplated in paragraph 16 (1), namely, recommendation of the Commission appointed under paragraph 14, and precondition for assumption of administration of the area, namely prior approval of the Legislature of the State with opportunity for the Council to place its views before the Legislature, were not satisfied in the instant case. However, these preconditions do not apply to any action taken under sub subparagraph (2) of paragraph 16. We therefore hold that the impugned Notification dated 9.11.92 was in effect and substance assumption by the Governor of all the functions and powers vested in the Council under paragraph 16 (2) of the Sixth Schedule and is not void on account of absence of preconditions contemplated in paragraph 16 (1), Point No. (i) is answered accordingly.

21. Point No (ii) : Petitioner contends that the dissolution of the Council effected by the Notification dated 9.11.92 is an irreversible act and cannot be withdrawn as purportedly done by the Notification dated 27.11.1992 and, therefore, it must follow that the second Notification dated 27.11.1992 assuming powers and functions of the Council under paragraph 16 (2) of the Sixth Schedule is illegal. This question really does not arise in view of our finding that the Notification dated 9.11.1992 did not in effect and substance dissolve the Council under paragraph 16 (1) of the Sixth Schedule but only assumes the powers and functions of the Council under paragraph 16 (2). Irreversibility may be an attribute of action taken under paragraph 16 (1) of the Sixth Schedule, but action taken under paragraph 16 (2) of the Sixth Schedule is temporary and by its very nature reversible. The point is answered against the petitioner.

22. Point No. (iii): It is contended by the petitioner that the Notifications dated 9.11.1992 and 27.11.1992 under paragraph 16 of the Sixth Schedule to the Constitution were issued in contravention of the Assam Rules of Executive Business (for short the Rules). Subrule (1) of Rule 31 requires that matters enumerated therein should be submitted to the Chief Minister before issuing orders. Subclause (j) of clause (xv) refers to proposal for dissolution of District Council or Regional Council. Subrule (2) requires that the matters enumerated therein should be submitted by the Secretary of the Department with the approval of the Chief Minister to the Governor before issuing orders. Subclause (c) of clause (iii) relates to proposal for dissolution of District Council or Regional Council.

23. Rules of Executive Business do not require that any proposal for taking action

under paragraph 16 (2) of the Sixth Schedule should be placed before the Governor before issuing orders. We have held that the impugned Notification dated 9.11.1992 really does not amount to dissolution, but amounts only to action under paragraph 16 (2) of the Sixth Schedule. Order under paragraph 16(2) of the Sixth Schedule is not required to be placed before the Governor. It was placed before the Chief Minister who duly approved it. Same is the position regarding the orders issued on 27.11.1992. It is therefore clear that there was no contravention of any provision of Assam Rules of Executive Business. The point is answered against the petitioner.

24. Point No (iv) : It is contended that the Notifications dated 9.11.1992 and 27.11.1992 issued in exercise of the power under paragraph 16 of the Sixth Schedule to the Constitution were really issued to effectuate the purposes contemplated therein, but for the purpose of gaining political advantage by removing the Council under the control of a rival political party, namely the Autonomous State Demand Committee (ASDC), for which the petitioner is the Secretary General, that the action is vitiated by malice and amounts to colourable exercise of power. In this connection specific allegations are made in the writ petition against fifth respondent, the Minister incharge of Hill Areas Department and also against Shri Samsing Hanse, Minister incharge of Hill Areas Department in the former Ministry headed by the Assam Gana Parishad, a regional political party who is alleged to have pressurised the ruling Congress (I) Party into dissolving the Council as a condition for he and his followers joining the Congress (I) party. The petition also contains allegations regarding certain assurances said to have been given by the High Command of the State Congress (I) party to Shri Samsing Hanse and the local Congress (I) supporters, in pursuance of which the impugned action was taken. Learned Advocate General contended that these allegations cannot be looked into since neither Shri Samsing Hanse nor the Congress (I) party has been impleaded as respondent. Learned Advocate General prayed that these allegations may be struck off or in any event, ignored. To repeated questions put by the Court, learned counsel for the petitioner stated that petitioner does not propose to implead any more persons as respondents.

25. The writ petition contains detailed allegations against Shri Samsing Hanse and the Congress (I) party. The contention of malice and colourable exercise of power is based on allegations made against Shri Samsing Hanse and the Congress (I) party. If the petitioner was serious about these allegations, he should have impleaded them as respondents. We are of the opinion that these allegations cannot be looked into. We may also notice (hat the allegations made against the fifth respondent have been denied by him effectively either by averments in his own affidavit or by adopting the affidavit filed on behalf of respondents 1 to 4. If we ignore the averment made in the writ petition against Shri Samsing Hanse and the Congress (I) party, nothing else remains on the basis of which the contention of malice can be accepted. The point is answered against the petitioner.

26. Point No. (v) : Preliminary paragraphs 1 to 4 in the Notification dated 9.11.1992 refer to the grounds on the basis of which the Governor arrived at the requisite satisfaction. Grounds in paragraphs 1 and 2 of the Notification dated 9.11.1992 are repeated in paragraphs 1 and 2 of the Notification dated 27.11.1992. The grounds in paragraphs 3 and 4 of the earlier Notification are not seen stated as ground in the later Notification. Paragraphs 3 to 16 of the Notification dated 27.11.1992 also refer to grounds of satisfaction of the Governor and these grounds are not seen referred to in the earlier Notification. According to the petitioner all these grounds are factually nonexistent and even assuming them to be existent, they are wholly irrelevant and extraneous to the purpose for which action can be taken under paragraph 16 (2) of the Sixth Schedule to the Constitution. Learned Advocate General rebutted this contention and submitted that the grounds are factually true and all the grounds are relevant for the purpose contemplated in paragraph 16 (2) of the Sixth Schedule to the Constitution.

27. The note dated 9.11.92 in file No. HAD. 58/90 assumes great importance in this connection. In the first paragraph of the note, the Commissioner and Secretary wrote as follows.

?Minister, Hill Areas today discussed the question of nonsurrender of over 10 crores of rupees sanctioned to KA District Council during 1991 92 financial year, despite issue of repeated reminders. It was also noted that as per terms and conditions of entrustment. District Councils are required to surrender unspent sanctioned amounts by 11th March of each year of the concerned financial year. Minister in this connection also had referred to the disrespect threatened against the National Flag by the KA District Council authorities who had intimated the Deputy Commissioner, Diphu about this intention to raise the National Flag on the occasion of 15th August '92 (Independence Day) at the office of the Deputy Commissioner, Karbi Anglong itself." (emphasis supplied)

The above passage refers only to two grounds, namely, nonsurrender of over Rs. 10 crores and the proposed hoisting of the National Flag in the office of the Deputy Commissioner. It was on the basis of these two grounds that the Minister instructed the Commissioner that the Council was required to be taken over and Deputy Commissioner appointed Administrator. These two grounds are covered by paragraphs 1&2 and 15&16 of the Notification dated 27.11.92. The second ground is not mentioned in the Notification dated 27.11.1992.

28. Paragraphs 1 to 4 of the Notification dated 9.11.1992 refer the grounds relating to nonrefund of unutilised balance fund sanctioned during 199192 totaling Rs. 10.12 crores approximately and deposit by the Council of the unutilised balance into a PL Account in violation of the terms and conditions of sanction of funds and utilisation by the Council of these funds to meet its expenses in disregard of the norms and purposes for which the funds were placed at the disposal of the Council for meeting expenditure against specified purposes. Three grounds can be spelt out from paragraphs 1 to 4 of the

Notification.

29. The note in file No. HAD. 58/90 shows that Legal Remembrancer on 25.11.92 pointed out the incongruity in the Notification dated 9.11.1992 and suggested cancellation of the Notification and simultaneous issue of fresh notification containing fresh grounds, if any, in addition to the grounds mentioned earlier in accordance with paragraph 16 (2) of the Sixth Schedule. He also suggested that draft notification may be shown to him before finalisation, obviously to prevent any mistakes being committed by Hill Areas Department in issuing a fresh Notification. A draft notification was accordingly placed before him on the same day by the Commissioner and the same was approved by him as well as the Minister, Hill Areas Department. The matter was placed before the Cabinet which on 26.11.1992 approved the decision to take over the powers and functions of the Council under paragraph 16 P) of the Sixth Schedule to the Constitution in view of the maladministration" of the Council and consequent three Notifications were issued on 27.11.1992, one withdrawing the earlier Notification No. HAD 58/90/83 dated 9.11.1992, another taking over the administration of the Council invoking the power under paragraph 16 (2) of the Sixth Schedule and the other appointing the Deputy Commissioner of the district as the Administrator of the Council. Paragraphs 1 to 16 of the second Notification refer to the grounds for taking action under paragraph 16 (2) of the Sixth Schedule. The ground relating to deposit of unutilised balance into PL Account and meeting expenses of the Council out of these funds was omitted and several new grounds were added.

30. We are of opinion that only those grounds referred to in the Commissioner's note dated 9.11.1992 can be looked into to decide whether the Notification dated 9.11.1992 and 27.11.1992 are vitiated on account of irrelevancy and extraneous nature of the grounds and nonapplication of mind. The one additional ground mentioned in the Notification dated 9.11.1992 and the several additional grounds mentioned in the Notification dated 27.11.1992 were clearly the result of afterthought and incorporated with a view to lend support and strength to the respective Notifications. We will however refer to all the grounds mentioned in the two Notifications.

31. Paragraphs 1 and 2 of the two Notifications : A fund of Rs. 10.12 crores was sanctioned by the State Government to the Council for the year 1991-92. It is alleged that in violation of the terms and conditions by which subjects were entrusted to the Council as per Memorandum dated 14.11.1979, the Council declined to refund the unspent balance of the fund in spite of specific request to that effect in Memoranda dated 25.5.1992, 17.6.1992, 7.7.1992 and 21.7.1992. Sixth Schedule to the Constitution enumerates the subjects to be dealt with by the Council. Paragraph 6 (2) of the Sixth Schedule states that the Governor may, with the consent of any District Council, entrust either conditionally or unconditionally to the Council or to its officers certain additional functions referred to therein. A copy of the Memorandum dated 14.11.1979 is seen in Annexure 17. Under this Memorandum State Government is to pay to the Council

as administrative charge a fixed amount for meeting the expenditure incurred by the Council for implementation of the entrusted functions. The Memorandum also states that any plan funds left unutilised at the close of the financial year should be refunded to the Treasury by the 15th of March of every year and cannot be carried over to the next financial year. The Memorandum also states that State Government will make adequate funds available every six months as advance to the Council in order to enable it to finance the expenditure on the schemes transferred to it in regard to which the Council should submit separate detailed accounts every month to the Accountant General in adjustment of the advance so drawn.

32. Petitioner contends that during the past several years, fifty to sixty per cent of the money was being sanctioned in the fourth week of March and since it could not be spent by the end of March petitioner's predecessor devised a system by which the money would be kept in the Personal Ledger Account (PL Account), which includes other funds of the Council and the same would be shown on paper as withdrawn by the Secretaries of the Departments before 31st of March and kept in the same account to be spent later for the purposes earmarked. During the year 198990 the Council headed by the petitioner continued this practice as per separate resolution passed during the year and this practice was followed in the subsequent years including the year 199192 as per resolutions and copies of resolutions were sent to the Government. During all these years the unspent fund was kept in the PL Account and carried over and utilised subsequently for the earmarked purposes and accounts were being sent to the State Government which had not raised any objection till now. The petition contains a specific allegation that during the year 199192 also fifty to sixty percent of the fund was released only in the fourth week of March, 1992 and was dealt with by the Council as per the existing practice. Petitioner also pleaded his inability to produce documentary evidence in support of his plea since he has no access to the records. Counter affidavit filed on behalf of respondents 1 to 4 does not traverse these allegations except to state that the Council ought to have refunded the unspent money and the same cannot be carried forward without the approval of the Governments Along with his reply affidavit petitioner has filed a few document to show release of part of the fund late 11 March, 1992.

33. In the absence of rebuttal in the counter affidavit of the specific averment made in the petition and referred to above, we have to take it that the petitioner's averments are true. It follows that the bulk of the fund for the year 199192 was release 1 only in the fourth week of March, ? 1992 and the question of spending the money during the financial year and refunding the unspent fund by 15th of March, 1992 would not arise at all. This deadly establishes total nonapplication of mind on the part of the State Government in regard to these grounds.

33A. Paragraphs 3 and 4 of the Notification dated 9.11.1992 : The ground mentioned is that in violation of the terms and conditions of sanction of funds the

Council deposited the unutilised balance into a PL Account and has been meting its exposes out of the said amount in complete disregard of the norms and purposes for which the funds were placed at the disposal of the Council for meeting expenditure against specified purposes. We have already indicated that this ground was given up while issuing the Notification dated 27.11.1992 and therefore can be safely ignored.

34. Paragraph 3 of the Notification dated 27.11.1992 : It is alleged that the Council in violation of the terms and conditions of entrustment have not submitted monthly accounts to the Accountant General for audit as required under paragraph 4 (7) of the Sixth Schedule and failed to meet audit objections raised by the Comptroller and Auditor General of India. The writ petition denies the factual basis of this ground and avers that accounts and clarifications were being submitted to the appropriate authority by the Principal Secretary of the Council through the Finance and Accounts Officer and there was no lapse on the part of the Council in this behalf. Respondents have not placed before us relevant records to support the factual basis of the ground. Thus the ground cannot be deemed to exist.

35. Paragraphs 4 and 5 of the Notification dated 27.11.1992 : Government of India by various messages since 12.5.1992, the last of which was on 7.8.1992, requested the Hill Areas Department of the State Government to submit published documenter materials on the performance of the Council as required by the Secretary of the Parliament for information of the Members of Parliament and the Department in turn by various messages, the last of which was on 10.8.1992 requested the Council to submit performance reports and materials thereof for furnishing the same to the Government of India and the Council failed to submit such reports and materials. In reply petitioner stated that the Hill Areas Department is the nodal agency for canalising communications with the State Government and Government of India and no negative inference can be drawn against the Council for its alleged failure and that the Council has been from time to time submitting all relevant documents regarding the performance to the Hill Areas Department and there has been no failure on the part of the Council to carry out its constitutional obligations. It is also pointed out that the Secretary of the Parliament sought information to answer the question raised in the Parliament by the petitioner himself. Respondents have not denied the averments of the petitioner that the Council has been from time to time submitting all relevant records, documents regarding performance to the Hill Areas Department of the State Government.

We are therefore inclined to agree with the submission of the petitioner that this ground is nonexistent.

36. Paragraphs 6 to 9 of the Notification dated 27.11.1992 : As per order dated 16.8.1989. 35 lots of logs were ordered to be settled at royalty plus 25% monopoly cost plus cost of operation in favour of Cooperative Farming Society formed by the cadres of the Autonomous State Demand Committee and by letter

dated 17.11.1989, 75 lots of timbers were allotted to Farming Cooperative Society Centre at royalty payment with 20% monopoly plus operation cost contrary to the suggestion made by the DFO for sale of the logs at higher competitive prices, resulting in loss of Rs. 5,33,286 89. The Farming Cooperative Society did not pay any amount to the Council and there was loss of Rs. 5,55,246.89 and all the logs got damaged. This is stated as a ground. The writ petition avers that this matter has been referred to the Commission constituted under paragraph 14 of the Sixth Schedule and the Commission has not made any enquiry or recommendation. In the counter affidavit of respondents 1 to 4 it is stated that the "Study Committee" under paragraph 14 of the Sixth Schedule was constituted for a different purpose and the terms of reference do not relate to financial mismanagement, corruption, maladministration etc. It is argued for the petitioner that the Council is not bound to follow the suggestion given by DFO and had taken a decision on a consideration of all relevant facts and circumstances. Respondents have not placed before us any materials to show that the Council was bound to follow the suggestion made by the DFO or that there was in fact any loss as suggested in the Notification. This ground also must be held to be nonexistent.

37. Paragraphs 10 to 12 of the Notification dated 27.11.1992 : Government of Assam revised the rates of royalty on forest produce with effect from 1.7.1992 as per Notification dated 30.6.1992. The Principal Secretary of the Council referred the notification to the petitioner for consequential revision of royalty by the Council but the petitioner declined to do so. The Council thereby would suffer a loss of Rs. 1.00 lakh per day amounting to Rs. 3.65 crores a year. This would be a substantial loss to the Council since forest revenue contributes 90 percent to the Council budget. This is stated as another ground.

38. In the writ petition it is stated that the Council is not bound to revise the royalty rate for forest produce merely because the State Government has revised the same. Nevertheless, the Council adopted the revised rates for forest produce, such as, sand and stone. For bamboo, the Council fixed royalty which is very much higher than the royalty fixed by the State Government for supply to the Hindustan Paper Corporation Ltd. The Government order was passed only on 30.6.1992. The Council called for a report of Senior Forest Officers in view of the differences in conditions in the district and outside and called for various particulars. Since the petitioner assumed charge no new coupes and lease of timbers had been granted and efficient management has yielded higher income in the year. Respondents have not been able to show any provision of Sixth Schedule or any law which makes it obligatory for the Council to follow the revision of royalty made by the State Government. Respondents have also failed to place before us materials to show that loss as alleged would be caused.

38A. Paragraphs 13 and 14 of the Notification dated 27.11.1992 : The Council allotted 723 logs from 135 trees to M/s MTT Corporation. The logs were damaged during the pendency of criminal cases. The Corporation requested the Council on

4.4.1988 to replace the logs by equal quantity of similar logs or to give standing trees yielding equivalent quantity of timber. The petitioner, instead of sanctioning 723 logs out of 135 trees, sanctioned 723 trees without specifying the quantity and number of logs for a period of three years, though the mistake was brought to his notice by the Principal Secretary and thereby caused loss of revenue to the Council. This is stated to be another ground.

39. In the writ petition it is stated that the allotment was made by the petitioner's predecessor and the successor was bound to honour the previous commitment as the allottee had already deposited the money. Allotment has been made as per measurements under the Rules and no loss has been caused. In the counter affidavit of respondents 1 to 4 it is stated that the allotment was granted for the period 1980-82 by the petitioner's predecessor and during the period of the lease DFO seized 723 logs and initiated criminal cases and during the pendency of the cases the logs were damaged and the allottee claimed compensation. The petitioner allotted 723 trees to the Corporation on 5.2.1991 and also granted royalty concession to the Corporation. Petitioner has made available a copy of the order passed by him on 5.2.1991 on the appeal filed by the Corporation. The order states that seizure of logs by DFO was not justified and was in defiance of the direction of the Council and for the ends of justice it was necessary to compensate the Corporation. Accordingly 723 trees was decided to be settled on the Corporation on payment of Government valuation after deducting royalty paid earlier. The averments in the petition and the copy of the order dated 5.2.1991 would clearly show that there was some justification for the petitioner in making allotment. The ground has been incorporated in the Notification without application of mind to the relevant materials.

40. Paragraphs 15 and 16 of the Notification dated 27.11.1992 : Deputy Commissioners of Karbi Anglong and North Cachar Hills Districts reported that Autonomous State Demand Committee and Karbi Students Association decided to organise parallel Independence Day celebrations on 15.8.1992 in the office premises of the Deputy Commissioner, Diphu, Civil SDO Bakajan, Bokulia PS, SDO Hamren SubDivision at Ulukunchi and Block Development offices and at the office premises of the Deputy Commissioner. Haflong, SDO (Civil) Maibong and Police Stations in blatant violation of rules of celebration of Independence Day and this action is against national interest and displays disrespect to the National Flag, besides constituting a threat to the integrity and security of the State. This is mentioned as a ground.

41. In the writ petition it is stated that the allegations, even if assumed to be true, do not attract action under paragraph 16 (2) of the Sixth Schedule. In the counter affidavit of respondents 1 to 4 it is stated that the petitioner and his party people are not authorised to hoist National Flag on 15th August in Government offices and this act is prejudicial to public order and disrespect to National Flag and constitutes danger to the safety of the country. Decision to organise parallel Independence Day celebrations in premises under the control of

the State Government was reportedly taken by the ruling party (ASDC) and the students organisation (KSA). The ground is wholly irrelevant Inasmuch as responsibility for the decision cannot be foisted on the Council.

42. From the proceeding paragraphs it is evident that

(a) The aspects highlighted in the writ petition regarding paragraphs J and 2 of the Notification dated 27.11.1992 were not considered by the Government and there was nonapplication of mind to relevant aspects.

(b) Respondents have not attempted to place before the Court any material in support of the facts referred to in paragraphs 3, 4 and 5 and 13 and 14 of the Notification dated 2/. 11.1992.

(c) Respondents have not placed any material to show that the Council is bound to revise the rates of royalty for forest produce whenever the State Government revises the rates, which is the position implied in paragraphs 10 to 12 of the Notification dated 27.11 1992.

(d) Paragraphs 15 and 16 of the Notification dated 27.11.1992 refer to the decisions of two nonofficial organisations and not of the Council or any of the holders or office of the Council as such, though the petitioner in his capacity as Secretary General of a political party or organisation might have been a party to the decision. This aspect also indicates nonapplication of mind on the part of the Government regarding the ground mentioned in paragraphs 15 and 16 of the Notification dated 27.11.1992.

Learned Advocate Genera] submitted that the Court cannot go into factual controversies.

43. In the context of section 237 (b), Companies Act, 1956, which empowers the Central Government to appoint Inspectors to investigate the affairs of a company "if, in the opinion of the Central Government, there are circumstances suggesting..". Hidayaiullah, J. (as he then was) in Barium Chemicals Ltd. & another vs. Company Law Board & others, AIR 1967 SC 295, observed :

"Since the existence of "circumstances" is a condition fundamental to the making of an opinion the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness ... We have to see whether the Chairman in his affidavit has shown the existence of circumstances leading to such tentative conclusions." (emphasis supplied).

Shelat, J.. observed :

"...But the authority is required to arrive at such an opinion from circumstances suggesting what is set out in subclauses (i), (ii) or (iii). If these circumstances were not to exist, can the Government still say that in its opinion they exist or can the Government say the same thing where the circumstances relevant to the

clause do not exist?... .. But the expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. That expression points out that there must exist circumstances from which the authority forms an opinion that they are suggestive of the crucial matters set out in the three subclauses. If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of nonapplication of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute."

44. In *Rohtas Industries Ltd. vs. SD Agarwal & another*, AIR 1969 SC 707, which also dealt with the same provision of the Companies Act, 1956, it was observed :

"... In other words the existence of the circumstances in question is open to judicial review though the opinion formed by the Government is not amenable to review by the Courts."

45. The aspects dealt with in points (a) to (d) in paragraph 42 supra (paragraphs 1 and 2 and 15 and 16 of the Notification dated 27.11.1992) would establish nonapplication of mind in that regard. The aspects dealt with in points (b) and (c) of paragraph 42 supra (paragraphs 3, 4 and 5, 13 and 14 and 10 to 12 of the Notification dated 27.11.1992) would indicate failure of the respondents to place any material in support of the factual basis of the grounds. These defects are sufficient to vitiate the Notification issued on 27.11.1992 under paragraph 16 (2) of the Sixth Schedule to the Constitution.

46. The satisfaction of the Governor under paragraph 16 (2) of the Sixth Schedule is subjective satisfaction. Such satisfaction cannot be subjected to scrutiny in the light of objective tests. The parameters of judicial scrutiny in a case like this are within narrow confines. It is also necessary to bear in mind the purpose contemplated in paragraph 16 (2) of the Sixth Schedule and the connotation of the words "is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule".

47. The Supreme Court had occasion to consider the scope of judicial review in regard to action taken under Article 356 of the Constitution in the case of *State of Rajasthan & others vs. Union of India*, AIR 1977 SC 1361. Beg. CJ. in paragraph 63 of the judgment quoted the following passage from Tagore Law Lectures, 1974 on "Union and State Relations" delivered by Mr. Setalvad :

"...The constitutional machinery in a State may fail to function in numerous ways. There may be a political deadlock; ... The Government of a State can also be regarded as not being carried on in accordance with the Constitution in cases where a Ministry, although properly constituted, acts contrary to the provisions of the Constitution or seeks to use its powers for purposes not authorised by the Constitution and the Governor's attempts to call the Ministry to order have

failed. There could also be a failure of the constitutional machinery where the Ministry fails to carry out the directives issued to it validly by the Union Executive in the exercise of its powers under the Constitution."

The learned Chief Justice in paragraph 75 observed:

".. If it is actually stated on behalf of the Union Government that an action was taken on a particular ground which really falls completely outside the purview of Article 356 (1), the proclamation will be vitiated, not because the satisfaction was challenged or called in question on any ground but because it was admitted to be on matters outside Article 356(1)."

Chandrachud,J.(as he then was) in paragraph 124 of the judgment stated thus :  
"... It is for the President to judge whether a situation of the particular description has arisen necessitating the issuance of a proclamation for assumption of all or any of the powers mentioned in Cls. (a), (b) and (c) of Article 356(1). He is expected and ought to judge fairly but we cannot sit in judgment over his satisfaction for determining whether any other view of the situation is not reasonably possible. So long as the reasons, if any, are disclosed, given for the action proposed or taken, bear a reasonable nexus with the exercise of the particular power, the satisfaction of the President must be treated as conclusive. It will then not be open to judicial scrutiny. If, however, the reasons given are wholly extraneous to the formation of the satisfaction, would be open to the attack that it is vitiated by legal mala fides."" 48. In the judgment of Bhagwati, J. (as he then was) in paragraph 137 (at page 1406) it was stated as follows :

"... The satisfaction of the President that "a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of ""the Constitution is a condition precedent which must be fulfilled before the President can take action under Article 356, clause (1)."

The learned Judge stated in paragraph 144 as follows :

".. we must make it clear that the constitutional jurisdiction of this Court is confined only to saying whether the limits on the power conferred by the Constitution have been observed or there is transgression of such limits. Here the only limit on the power of the President under Article 356 Cl. (1) is that the President should be satisfied that a situation has arisen where the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The satisfaction of the President is a subjective one and cannot be tested by reference to any objective tests. It is deliberately and advisedly subjective because the matter in respect to which he is to be satisfied is of such a nature that its decision must necessarily be left to the executive branch of Government It cannot, therefore, by its very nature be a fit subject matter for judicial determination and hence it is left to the subjective satisfaction of the Central Government which is best in a position to decide it. The Court cannot in the circumstances, go into the question of correctness or adequacy of the facts

and circumstances on which the satisfaction of the Central Government is based ... But one thing is certain that if the satisfaction is mala fide or is based on wholly extraneous and irrelevant grounds, the Court would have jurisdiction to examine it, because in that case there would be no satisfaction of the President in regard to the matter in which he is required to be satisfied. The satisfaction of the President is a condition precedent to the exercise of power under Article 356, clause (1) and if it can be shown that there is no satisfaction of the President at all the exercise of the power would be constitutionally invalid."

49. Fazal Ali, J. stated thus in paragraph 203 :

" Even if an issue is not justifiable if the circumstances relied upon by the executive authority are absolutely extraneous and irrelevant, the Courts have the undoubted power to scrutinise such as exercise of the executive power. Such a judicial scrutiny is one which comes into operation when the exercise of the executive power is colourable or mala fide and based on extraneous or irrelevant considerations."

50. Raghuvir, C.J. in *Mr Vamuzo vs. Union of India & others*.1988 (2)GLJ 468, referring to the power under Article 356 of the Constitution observed :

" The same principle is stated in negative term, the power under Article 356 of the Constitution cannot be used for securing a good Government. The power cannot be used where in the entire election ruling party suffered a massive defeat, or where internal disturbance not amounting to or verging on abdication of its Governmental powers have not been exhausted, power under Article 356 can be used to take immediate action otherwise where it will lead to disastrous consequence and the Government of a State cannot be carried on. The use of Article 356 power to sort out internal differences or intraparty problem is not admissible in law. Power cannot be legitimately exercised on the ground of stringent financial exigencies of the State. Power also cannot be invoked merely on the ground that there ;ire serious allegations of corruption against the Ministry."

51. The Governor must be satisfied that a situation has arisen in which the administration of the autonomous district cannot be carried on in accordance with the provisions of the Sixth Schedule, This would mean breakdown of the constitutional machinery in the autonomous district None of the grounds relied on by the respondents has any nexus with any act violative of the provisions of the Sixth Schedule or use of its power by the Council for purposes not authorised by the provisions of the Sixth Schedule or failure to carry out directives, if any issued to it validly by the State Government in exercise of its powers under the Sixth Schedule of any other aspect arising under the Sixth Schedule. Some of the grounds may indicate failure, partially or fully, in providing good Government or administration in the autonomous district but it cannot be said that these grounds have any relevance or reasonable connection with the satisfaction of the Governor that a situation has arisen in which the

administration of the autonomous district cannot be carried on in accordance with the provisions of the Sixth Schedule. The mind of the Government is also clear from the note dated 9.11.1992 of the Commissioner and Secretary, HAD indicating that the functioning of the Council "was in an unhappy state of affairs", and the Cabinet decision dated 26.11 1992 that that (the Cabinet discussed about the mal administration of the Karbi Anglong District Council) and ?

(approved assumption of functions and powers of the Karbi Anglong District Council by the Government as per provisions of paragraph 16 (2) of the Sixth Schedule to the Constitution of India). It is clear that neither the Secretary nor the Government was satisfied that the administration of the district by the Council cannot be carried on in accordance with the provisions of the Sixth Schedule. The Notification dated 27.11.1992 is therefore vitiated by nonapplication of mind and unreasonableness. The decision is one which no reasonable person reasonably instructed in law can arrive at in the light of the grounds or facts adverted to. The Notification dated 27.11.1992 is therefore vitiated as it is based on matters outside paragraph 16 (2) of Me Sixth Schedule and is beyond the power of the Governor. The invocation of paragraph 16 (2) of the Sixth Schedule for reasons extraneous to the purpose contemplated therein would amount to colourable exercise of power. The Notification dated 27.11.1992 is therefore vitiated and cannot stand. Point answered in favour of petitioner.

52. The writ petition contains several grievances voiced against the State Government as well as the Administrator in regard to events which transpired On and after 9.11.1992. We are, in particular, referring to allegations regarding the treatment meted out to the office bearers of the Council by the Administrator in physically taking over the properties and assets of the Council even before the order dated 9.11.1992 was published in the Gazette on U.11.1992 and even in spite of the interim orders passed by this Court in Civil Rule No. 2407 of 1992 and this writ petition. We do not think we should go deeper into those allegations. However, we shall bear in mind the conduct of the respondents, in particular; the Administrator (Deputy Commissioner, Karbi Anglong District, Diphu third respondent) in arriving at a decision in the matter of costs.

53. Notification No. HAD. 58/90/83 (seen in Annexure 21) has been withdrawn by the Notifications No.HAD. 58/90/91 dated 27.11.1992. Notification No. HAD 58/90/84 dated 9.11 1992 (seen in Annexure 22) is ancillary to the Notification No. HAD. 58/90/83 dated 9.11.1992 and ceased to be in force when the former was withdrawn on 27.11.1992. It is therefore unnecessary to quash Notification No. HAD. 58/90/83 dated 9.11.1992 and the ancillary Notification. Government's competence to withdraw the earlier Notification cannot be questioned in view of our decision that earlier Notification was really issued under paragraph 16 (2) of the Sixth Schedule. It follows that only Notification No.HAD. 102/92/320 date] 27.11.1992 and No. HA O.I 02/92/321 dated 27.11.1992 are to be quashed. However, this decision of the Court can not be allowed to prejudice public interest. It is therefore necessary to declare that all actions taken by the

Administrator with reference to the administration of the area on and after 9.11.1992 until today shall not be deemed to be illegal on account of the illegality of the two impugned Notifications.

54. In the result, the writ petition is allowed as indicated her below :

(a) Notification No. HAD. 102/92/320 dated 27.11.1992 and No. HAD. 102/92/321 dated 27.11.92 issued under paragraph 16 (2) of the Sixth Schedule to the Constitution of India are hereby quashed.

(b) Respondents shall restore the position existing prior to 9.11.1992 within two weeks from today.

(c) It is declared that no action taken by the Administrator on and after 9.11.1992 and until today shall be regarded as illegal on account of the quashing of the two Notifications dated 27.11.1992 (Annexures 28 and 29, respectively).

(d) Misc. Case No. 113 of 1993 and No. 127 of 1993 are dismissed.

(e) Respondents shall pay Rs. 2,000/ (Rupees two thousand) as costs to the petitioner.