
(1982) 09 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule No. 741 along with Civil Rules 742 to 744 of 1981

Laldothang Khawjal

APPELLANT

Vs

Lalvuana Hmer and Others

RESPONDENT

Date of Decision : 10-09-1982

Acts Referred:

Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 — Rule 180, 180, 184, 184

Citation : (1982) 1 GLR 776

Hon'ble Judges : D.Pathak, C.J. and K.N.Saikia, J

Bench : Division Bench

Advocate : B.M.Mahanta, B.B.Narzary, D.N.Choudhury, G.N.Sahewaila, K.Barman, M.Z.Ahmed, N.M.Lahiri, P.C.Goswami, P.Prasad, S.C.Das, Advocates appearing for Parties

Judgement

Saikia, J.—The petitioners in these four petitions pray, inter alia, for Writs of Prohibition directing the Assistant District Judge No. 1, NowgongcumCommissioner (Election Petitions), North Cachar Hills, Haflong, not to proceed with the election cases pending with him, and for Certiorari quashing his order dated 10.8.81 passed in each election case, namely. Misc. (E) Case Nos. 1/80, 3/80, 4/80, and 2/80. As the petitioners involve a common question of law, we propose to dispose of them by this common judgment.

2. The petitioner in Civil Rule No. 741/81. Shri Laldothang Khawjal of Haflong was declared elected from No. 5 Jenam Valley Constituency of North Cachar Hills District Council (hereinafter referred to as "the District Council") in the District Council election of 1980. The first respondent Lalvuana Hmer filed an election petition being Misc. (E) Case No. 1 80 which is being tried by the Assistant District Judge No. 1, NowgongcumCommissioner (Election petitions), North Cachar Hills, Haflong (hereinafter referred to as "the Commissioner"). The petitioner in Civil Rules No. 742/81 and 743/81, Shri Ijirangbe Jeme, of Haflong was elected from No. 22 Dibamlai Constituency of the District Council in the same election. The first respondents there of, Shri Idambe Zeme and Smti.

Isamle filed election petitions being Misc. (E) Case Nos. 3/80 and 4/80, respectively, which are being tried by the same Commissioner. The petitioner in Civil Rule No. 744/81, Shri Narendra Kemprai, was elected from No. 16, Diyungmukh Constituency of the District Council, against whom the first respondent Shri G. C. Langthasa has filed an election petition being Misc. (E) Case No. 2/80 which is also being tried by the Commissioner at Nowgong.

3. In all these election petitions, the petitioners, as respondents, filed written statements urging, inter alia, that the Assistant District Judge No. 1 Nowgong had no jurisdiction to hear and dispose of the election petitions as Commissioner inasmuch as he was not a person within the meaning of Rule 184 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 (hereinafter referred to as as Rules") ; and the notification appointing him as the Commissioner being not in conformity with Rule 184 read with Rule 180 of the Rules, it was bad and the Commissioner by virtue thereof could not hear and dispose of the election petitions. In each election case issues were framed. Issue No. 3 in Civil Rules 741, 742 and 744 of 1981 is

"Whether the Court of the Commissioner for disposal of the petition has been lawfully constituted by the Hon"ble Governor of Assam, Nagaland and Manipur etc. conferring competence and jurisdiction on the said Court".

In Civil Rule No. 743/81 it is issue No. 5 and in the following language :

"Whether the appointment of the Commissioner by the Governor has been in accordance with the Rule 184 of the Rules and if not whether the Commissioner has jurisdiction for hearing and disposing of the election petition".

4. In each case, by his order dated 10.8.81 the issue was decided by the Commissioner in the affirmative i. e. in favour of the election petitioner and against the present writ petitioner. Hence these four writ petitions. Some other points are also urged in each of the petitions, but we do not propose to deal with. The precise question requiring judicial determination, therefore, is whether the Assistant District Judge No. 1., Nowgong has been validly appointed as Commissioner in conformity with Rule 184 read with Rule 180 of the Rules.

5. Rule 180 of the Rules deals with presentation of the election petition to the Governor by any candidate or elector on any ground within sixty days from the date on which the result of the election is published in the Gazette. Rule 181 deals with contents of the petition and Rule 182 with deposit of security. Under Rule 183 if the provisions of the Rules 180, 181 or 182 are not complied with, the Governor shall dismiss the petition.

Rule 184 of the Rules reads as follows :

"184. Appointment of Commissioner.(1) If the petition is cot dismissed under foregoing rule 183, the Governor shall appoint as Commissioner for hearing and disposing of the petition a person who is or has been, or is eligible to be appointed, a Subordinate Judge, and thereafter all applications and proceedings

in connection therewith shall be dealt with and held by such Commissioner.

(2) When in respect of an election in a constituency more petitions than one are presented, the Governor shall refer all those petitions to the same Commissioner who may at his discretions inquire into the petitions either separately or in one or more groups, as he thinks fit.

(3) Where election petitions relate to different constituencies of a District Council, the Governor may refer all these petitions to the same Commissioner or may appoint one Commissioner in respect of petitions from each constituency or a group of constituencies and the provisions of subrule (2) shall apply to the inquiry thereto.

6. The Rules were framed in 1951 in initiation of the contemporary corresponding provisions of the Representation of the People Act, 1951. Section 86 of that Act, as in 1951, was as under;

"86. Appointment of Election Tribunal.(1) If the petition is not dismissed under Section 85, the Election Commission shall appoint an Election Tribunal for the trial of the petition.

(2) For the purpose of constituting such Tribunals the Election Commission shall obtain from the High Court of each State (other than Jammu and Kashmir)

(a) a list of persons who are or have been district judges In the State and who are in the opinion of the High Court fit to be appointed as members of the Election Tribunal, and

(b) a list of advocates of that High Court who have been in practice for a period of not less than ten years and who are in the opinion of the High Court fit to be appointed as such members.

and shall maintain the lists by making such alterations therein at the High Court may from time to time direct.

(3) Every Tribunal appointed under subsection (1) shall consist of

(a) a Chairman who shall be either a person who if or has been a judge of a High Court, or a person selected by the Election Commission from the list maintained by it under clause (a) of subsection (2); and

(b) two other members of whom one shall be selected by the Election Commission from the list maintained under clause (a) of subsection (2) and the other shall be selected by it from the list maintained under clause (b) of that section ;

Provided that where the petition for the trial of which a Tribunal is to be appointed is in respect of an election to the Legislative Assembly or the Legislative Council of a State, no person who belongs to the judicial service of another State shall be selected for appointment as a member of the Tribunal except with the consent of the Government of the other State;

Provided further that nothing in this subsection shall be deemed to prevent the appointment of a Chairman of the Tribunal before that of the other members.

(4)

(5) ...

(6) In this section, the expression "district judge" and ""judicial service"" have the same meanings as in Article 236."

The Government of Assam in its letter No. JDJ. 114/80/1 dated 20th June, 1980 wrote to Registrar (Judicial) Gauhati High Court:

"I am directed to say that the Govt. in Hill Areas Deptt. have received some election petitions from N. C. Hills District for which appointment of a Commissioner for hearing and disposing of the same has become necessary.

It is felt by the Govt. that at Nowgong there are two Assistant District Judges, one of whom may be suitable for such appointment as communication facilities are available there.

I am therefore to request that the Hon"ble High Court may be pleased to recommend the name of an Assistant District Judge for appointment as commissioner".

7. It appears from the High Court record, which has been called for, that the Hon"ble Chief Justice was pleased to approve that Shri B. C. Barua, Assistant District Judge No. 1 be recommended for appointment as Commissioner. However, the Registrar (Judl) in his letter No. HC. VII45/80/2/9584/A dated 23.7.80 wrote:

"Ref : Govt. letter No. JDJ. 114/80/1 dt. 20.6.80.

With reference to the letter cited above, I am directed to say that the Hon"ble Court has been pleased to recommend the Asstt. District and Sessions Judge, No, 1. Nowgong for appointment as Commissioner for hearing and disposing the electing petitions arising of N. C. Hills District".

8. It thus transpires that though the name of the incumbent B. C. Barua was not mentioned, in the context of the Govt. letter, it would net mean anybody else than him.

The Government notification No. GAD. 71/80/9 pf. dated 26th September, 1980 was as follows :

"In exercise of the powers conferred by subrule (1) of Rule 184 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951, the Governor of Assam is pleased to appoint the Assistant District & Sessions Judge, No. 1, Nowgong as Commissioner for hearing and disposing of the election petitions noted below filed against the Returning Officer and the Deputy Commissioner, North Cachar Hills District, under Rule 180 of the said rules."

The names of the present petitioners were mentioned and copies of the notification were sent to the Registrar (Judicial). Gauhati High Court and to the Assistant District and Sessions Judge No. 1, Nowgong. It appears Shri B. C. Barua began to try the election cases and framed the issues, and also heard the issue No. 3 (No. 5 in election case No. 4/80) and fixed a date for orders, but meanwhile he was transferred from his post to that of Chief Judicial Magistrate, Nowgong and in his place Shri R. Bora was posted as Assistant District and Sessions Judge No. 1, Nowgong. It appears that without further notification from the Government, Shri R. Bora assumed the charge of Commissioner and fixed 27.5.81 for rehearing of the preliminary issues including Issue No. 3 (No. 5 in case No. 4/80) and the impugned order was passed on 10.8.81 deciding the issue in the affirmative.

9. Mr. N. M. Lahiri, the learned Advocate General, Meghalaya submits that Rule 184 clearly speaks of a person who is or has been, or is eligible to be appointed a Subordinate Judge and as such the Subordinate Judge or his equivalent Assistant District Judge has to be appointed by name as a person and not by virtue of his office, and that the appointment in this case having been by virtue of office and not by name, it does not conform to the requirement of the Rule and the appointment is bad in law. In the context of the Government letter it is submitted that even if the appointment amounts to the appointment of the then incumbent in the post of the Assistant District Judge No. 1, Nowgong, Shri B. C. Barua, it has to be confined to him and not to his successors in office Mr. D. N. Choudhury, the learned Senior Government Advocate submits, inter alia, that the jurisdiction of the Commissioner cannot be challenged collaterally before this court and that Section 15 of the General Clauses Act, 1897 as well as Section 17 of the Assam General Clauses Act, 1915 provided that the power to appoint includes the power to appoint ex officio. Under those Sections, which are in part materia, where by, any act, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment may be made either by name or by virtue of office. Therefore, according to the counsel, the appointment of the Assistant District Judge No. 1, Nowgong by virtue of his office as Commissioner cannot be held to be bad. Under subrule (1) of Rule 3 of the Rules, which deals with interpretation in case of doubt, except where the context otherwise requires, the General Clauses Act, 1897, and the Assam General Clauses Act, 1916 shall apply for the interpretation of these rules as they apply for the interpretation of an Act of Parliament or of the Legislature of the State of Assam, as the case may be. Under subrule (1) thereof, subject to the provisions of subrule (1), if any question arises as to the interpretation of these rules it shall be referred for decision of the Governor and the decision of the Governor shall be final. Mr. Choudhury submits that subrule (1) of Rule 184 is only a power of appointment but does not prescribe the mode of appointment and it is open to the Governor in view of the above provisions of the General Clauses Act to appoint a person by virtue of his office which has precisely been done in this case. He relies on AIR

1965 Andhra Pradesh 372, AIR 1968 Andh. Pradesh 22, AIR 1968 Kerala 240, AIR 1969 M. P. 190, and AIR 1970 Gujrat 108. The above cases proceeded on the basis of the General Clauses Act visavis the Criminal Law Amendment Act of 1952. Mr. Choudhury also relies on *Sindhi Lohana Choithram Parasram vs. The State of Gujrat*, AIR 1967 S.C. 1532. In that case Section 6 of the Bombay Prevention of Gambling Act required that the Deputy Superintendent of Police must be "specially empowered" to issue the warrant. In the context of Section 15 of the Bombay General Clauses Act and Section 39(1) Cr. P. C. it was held that a person might be appointed to execute any function either by name or by virtue of his office as Deputy Superintendent of Police to issue a special search warrant. Mr. Choudhury also relies on AIR 1953 Assam 35, AIR 1968 S. C. 432, AIR 1976 SC 1697 and H981) S. C. C. 132. In the *State vs. Judhabir Chetri*, AIR 1953 Assam 35, the Court applied Section 39 (1) of the Cr. P.C. (old) and Section 3 (31) of the General Clauses Act, 1897 to the notification, which empowered all Magistrates of the first class in the State of Assam to exercise powers under S. 17, Assam Opium Prohibition Act of 1947. In *Abdul Hussain Tayabali vs. The State of Gujarat*, AIR 1968 SC 432, the Court interpreted the words "'specially appointed" in Section 3(c) of the Land Acquisition Act. In view of Section 15 of the General Clauses Act it was held that there could be no objection if the appointment was made of an officer by virtue of his office and not by his name. In the *State of Gujarat vs. Chaturbhuj Maganlal*, AIR 1976 SC 1697 the words "specially empowered" in Section 2 (c) of the Suppression of Immoral Traffic in Women and Girls Act (1956) was interpreted as not necessarily Involving selection of individuals by name or exofficio from the Magistrates of the first Class. The empowerment of all the Magistrates of the first class in one notification empowering all Judicial Magistrates of first class in the State by virtue of their office to try offences under the Act in the area of their respective jurisdictions was held to be special and not general. Further it was held that where the language of a statutory provision is susceptible of two interpretations the one which promotes the object of the provision, comports best with the purpose and preserves its smooth working should be chosen in preference to the other which introduces inconvenience and uncertainty in the working of the system. The wider, rather than the narrower view was preferred in interpreting the words "specially empowered".

10. On a close examination of the facts and the laws involved in the decisions cited by Mr. Choudhury, we find ourselves unable to agree with him for the following reasons : First, Rule 184 (1) is in such a clear language that there is no room for resorting to Section 15 of the General Clauses Act 1897 and Sec. 17 of the Assam General Clauses Act, 1915, in the matter of appointment of a person as Commissioner. There appears to be no problem of interpretation at all in this sub rule. We have also examined the Rules and we find that the subject or context does not require application of the General Clauses Act, more so, when the Rule 184 (1) is considered in line with the then contemporaneous and corresponding provisions of the Representation of the People Act, say Sec. 86.

Secondly, the Government consulted the High Court asking for one name out of the Assistant District Judge No. 1 and No. 2 of Nowgong, and the High Court recommended that of the Assistant District Judge No. 1, and the Government could not be unaware of his name. In this context it is difficult to accept that the Government desired to appoint the Commissioner under Rule 184 (1) by virtue of his office. Thirdly, the requirement of consultation with the High Court may be rendered unnecessary if once the appointment is made by virtue of office, for every successor incumbent to that office will automatically be appointed; and as any officer of that grade may be posted at Nowgong as Assistant District Judge No. 1, the same single consultation will horizontally as well as vertically cover the officers of that grade, present and to be promoted in future, so long as the election cases last. True that the cases are to be disposed of expeditiously, but this may not permit that the election cases may be tried by different stages. Lastly, not a single case of such interpretation in election law has been shown to us. The cases in other contexts do not appear to be applicable to the facts and circumstances of this case. Sub rule (1) of Rule 184 envisages three categories of persons, namely, (a) a person who is a Subordinate Judge, (b) a person who has been a Subordinate Judge, and (c) a person who is eligible to be appointed a Subordinate Judge. The third category is not envisaged as having an office. So also the second category inasmuch as a person who has been a Subordinate Judge need not necessarily continue to be a Subordinate Judge at the relevant time. Only in the case of the first category the question of the person occupying the office arises. Obviously the General Clauses Act cannot apply to the categories (b) and (c). If the subsection has to be given a uniform interpretation the General Clauses Act will not apply to the category (a) as well.

11. On the letters and spirit of Rule 184 subrule (1) three possible interpretations may be postulated: (1) it requires the appointment of a person considered as person in accordance with the qualifications or attributes stated in the subrule. This conforms to the concept of *persona designata*. A person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class or as filling a particular character. (Black's Law Dictionary). (2) A person described as the holder of a particular office and the appointment to ensure so long he occupies that office or answers the requirements of the appointment. The appointment is of the person and the office he holds is only his description or qualification. (3) The appointment by virtue of an office and whoever comes to occupy that office is taken to have been appointed, thus vertically covering the successive incumbents to that office. Of the three in the context of the election law as regards appointment of a Commissioner or a Tribunal, the first interpretation seems to be simple and more appropriate. The second interpretation may also be accepted in appropriate cases. The third seems to be woolly inapplicable.

12. In the instant case even if the second interpretation is accepted, as the learned Advocate General has fairly agreed, the appointment will enure to the then incumbent, Shri B. C. Barua. Then the question may arise as to whether he

ceased to be the Commissioner as soon as he ceased to hold the office of Assistant District Judge No. 1, Nowgong. If the appointment is taken to be of the person, namely, B. C. Barua, the Assistant District Judge No. 1, Nowgong as only the description of the person, the appointment may not come to an end with change of the description. This interpretation may be permissible in view of the fact that the subrule requires a person who is, or has been, or is eligible to be appointed, a Subordinate Judge. That Shri B. C. Barua is a person eligible to be appointed as Assistant District Judge cannot be in doubt. That he has been an Assistant District Judge can also not be in doubt. In this respect we respectfully agree with Mootham C. J. in 13 E, L. R. 328 (Mubarak's case) where he holds that "A person who has been a Judge" means a person who has at some time, held office as a Judge, but that it does not necessarily mean that the person must be holding office as a Judge at the time of his appointment as a member of the Tribunal. If Shri B. C. Barua satisfied one requirement at the time of appointment, but continues to satisfy another requirement after he ceased to be Assistant District Judge No. 1, it may be permissible to hold that so long as he continues to satisfy any one or more of the qualifications or attributes specified in Rule 184 (1) of the Rules, he continues to be the Commissioner. If this interpretation is accepted, Shri B. C. Barua continues to be the person appointed as Commissioner as he has been an Assistant District Judge and also eligible to be appointed as an Assistant District Judge. He, therefore, notwithstanding his transfer from the post of Assistant District Judge No. 1, still continues to be the Commissioner and has the jurisdiction to dispose of the election cases he was appointed to try and dispose of.

13. The next question is whether the portion or stage of the trial conducted by the successor Assistant District Judge No. 1, Shri R. Bora, can be said to have been validly done. Both Mr. Choudhury and Mr. S. C. Das argue that in the interest of early disposal of the election cases and in conformity with the de facto doctrine the proceedings may be held to be good. It is stated at the Bar that Shri R. Bora has also since been transferred. We find ourselves unable to accept this argument.

14. In *Gokaraju Rangaraju vs. State of Andhra Pradesh*, (1981) 3 S. C. C. 132 applying the de facto doctrine, it was held that judgments, decrees, etc. made by a de facto judge under colour of lawful authority had the same effect as that made by a de jure judge. Even if the appointment of a judge is found to be invalid, the judgments, decrees or orders made by him would continue to be valid and effective and his actions cannot be impugned collaterally. In that case reference was made to the observations of the court of Appeal in England in *Re James (An Insolvent)*, (1977) 1 ALL ER 364 = (1977) 2 WLR 1 where Lord Deane, M.R. characteristically said :

"He sits in the seat of a judge. He wears the robes of a judge. He holds the office of a judge. May be he was not validly appointed. But, still, he holds the office. It is the office that matters, not the incumbent

So long as the man holds the office, and exercises it duly and in accordance with law, his orders are not a nullity. If they are erroneous they may be upset on appeal. But, if not, erroneous they should be upheld. "

Referring to various authorities their Lordships observed (at para 14) that the de facto doctrine has been recognised by Indian courts also as is evident from *Pulin Behari vs. king Emperor* (1912) 15 Cal. LJ 517, 574 : 16 Cal. WN 1105 : 13 Cri. LJ 609 and *P.S. Menon vs. state of Kerala*, AIR 1970 Ker 165, 170 (FB) ULR (1969) 2 Kzr 391 : 1970 Lab 1C 967. Their Lordships observed (at para 17) :

"A judge, de facto, therefore, is one who is not a more intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to this offices, judgments pronounced by him and acts done as by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as judgments pronounced and acts done by a judge de jure Such is the de facto doctrine born of necessity and public policy to prevent needless confusion and endless mischief. There is yet another rule also based on public policy. The defective appointment of a de facto judge may be questioned directly in a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the judge except as a judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of a judge to his office. Otherwise as soon as a judge pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the judge is no judge. A judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointments. To question a judge's appointment in an appeal against his judgment is, of course, such collateral attack."

However, their Lordships of the Supreme Court made it clear that the judgment, orders etc. would continue to be valid as the judgments and orders of the Court notwithstanding that his appointment to such Court might be declared invalid. "It would be a different matter if the constitution of the Court itself is under challenge". The Court was not concerned in that case with such a situation.

15. In our present case it is the Constitution of the Commissioner which is being challenged and not the appointment of a particular Assistant District Judge. Under such circumstances the de facto doctrine would not apply, and it should be open to the High Court to issue a writ of prohibition. In *N. V. L. Narasimha Rao vs. Rao Bahadur Tellakula Jalayya and others*. 11 E. L. R. 402 (A.P), Subba Rao, CJ. (as he then was) in a Petition under Article 226 of the Constitution of India praying that the High Court be pleased to issue a writ of prohibition or other appropriate writ or order of direction, prohibiting the 5th respondent, the Election Tribunal, Eluru from proceeding further with the election petition, interpreting Section 86 of the Representation of the people Act, 1951, observed that the High Court was concerned only with a Tribunal functioning within its jurisdiction, and if

it was illegally constituted, the said Tribunal would be acting without jurisdiction, and therefore, It would be within the reach of the writ of prohibition, and that writ enabled courts to compel inferior Courts or Tribunals entrusted with judicial duties to keep within the limits of their jurisdiction. For exercising this jurisdiction the only question to be considered is whether the Tribunal, functioning within the territorial limits of High court's jurisdiction, has jurisdiction to proceed with an enquiry, or, whether it is exercising jurisdiction in excess of that conferred on it. In Mubarak Mazdoor vs. K. K, Banerji, 13 E. L. R. 328 in a Bench judgment of the Allahabad High Court, Mootham, C.J. dealt with the question of issue of a writ, direction or order, directing respondent not to act as a Member of the Election Tribunal in Election Petition No. 336 of 1957. In the above cases the petitioners moved the High Court collaterally for writs of prohibition while the election petitions were pending before the Tribunals. We have not been shown any decision to indicate that a writ of prohibition cannot be issued against an election Tribunal or for that matter, a Commissioner, whose constitution has not been in accordance with law. In Gokaraju Rangaraju's case (supra) it was clearly stated that "It would be a different matter if the constitution of the Court self is under challenge." We also do not find any laches or negligence on the part of the petitioners who filed written statements in their respective election cases taking objection as to the constitution and jurisdiction of the Tribunal. The same point they have raised before this High Court and copies of the writ petitions were duly furnished to the respondents. In S. Govinda Menon vs. Union of India, AIR 1967 S.C. 1274 it has been ruled that the jurisdiction for grant of a writ of prohibition is primarily supervisory and the object of that writ is to restrain courts or inferior Tribunals from exercising a jurisdiction which they do not possess at all or else prevent them from exceeding limits of their jurisdiction. In other words, the object is to confine Courts or Tribunals of inferior limited jurisdiction within their bounds. Where the defect of jurisdiction is apparent on the face of the proceedings and the application is made by a party, the order of prohibition goes as of right and is not a matter of discretion, (See Halsbury 3rd Ed. 214 at P. 115). Where the judge of an inferior court has given himself jurisdiction by an erroneous conclusion en a point of law, prohibition will lie. Prohibition may be applied for as soon as the absolute absence of jurisdiction is apparent on the record of the proceedings of the inferior court, even without the plea of jurisdiction being raised by plea or otherwise in that court. In our case the plea was raised even before the Commissioner.

16. For the reasons discused above, we would hold that (1) the appointment as Commissioner enured to Shri B. C. Barua, the then Assistant District Judge No. 1, Nowgong, and it still enures to him as he still fulfills the qualifications or attributes required under Rule 184 (1) ; (2) the stage of the Tribunal held by the successor incumbent as Assistant District Judge No. 1, Nowgong, Shri R. Bora has been without jurisdiction and he is liable to be prohibited by a writ of prohibition from proceeding with the trial of the election cases and a writ of certiorari may issue quashing the stage of the trial held by him in the election

cases ; (3) Shri B. C. Barua, despite his ceasing to be the Assistant District Judge No. 1, Nowgong, still continues to be the Commissioner, and he has the jurisdiction to try the election cases for trial and disposal of which he was appointed ; (4) it is nevertheless open for the Government to consult the High Court to recommend the name of any other person for appointment as Commissioner, if it so desires, under the changed circumstances. And we order accordingly.

17. In the result the impugned orders dated 10.8.81 are set aside and the stage of trial conducted by Shri R. Bora, successor Assistant District Judge No. 1, in such election case, is quashed and the petitions are allowed to the above extent. The Rules are accordingly made absolute. We make no order as to costs.