

(2020) 07 GAU CK 0012
In the Gauhati High Court
Case No : Writ Petition (C) No. 2143 Of 2020

Nerswn Boro And Anr

APPELLANT

Vs

State Of Assam And Ors

RESPONDENT

Date of Decision : 13-07-2020

Acts Referred:

Sixth Schedule to the Constitution (Amendment) Act 1995 — Section 2, 68D(3), 68F(1), 68F(2)
Constitution Of India, 1950 — Article 34, 77, 163(1), 163(2), 163(3), 166, 166(3), 239(2), 356, 371A(1)(b)
Bodoland Territorial Council (Election Rules), 2004 — Rule 13(1), 14, 30
Assam Rules Of Executive Business, 1968 — Rule 13, 14, 14(2), 15(1), 17, 19(2), 31(1)(xv)(j), 31(2)(iii)(e)

Citation : (2020) 07 GAU CK 0012

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : M Das

Final Decision : Dismissed

Judgement

SL NO.,Event,Date and Time

- 1.,Issue of Notice of Election,11/03/2020 (Wednesday)
- 2.,Last date for filling nominations,"18/03/2020 (Wednesday) (from 11.00 AM to 3.00 PM)
- 3.,Scrutiny of nominations,19/03/2020 (Thursday)
- 4.,Last date for withdrawal of candidature,21/03/2020 (Saturday) (upto 3.00 PM)
- 5., "Publication of list of contesting candidates",21/03/2020 (after 3.00 PM)
- 6.,Date of Poll,"04/04/2020 (Saturday) (from 8.00 AM to 4.00

PM)

7., "Date of Re-poll, if any", "06/04/2020 (Monday) (from 8.00 AM to 4.00

PM)

8., Date of counting, "08/04/2020 (Wednesday) (from 8.00 AM till completion of counting)

The SEC vide notification No. SEC. 146/2019/21 dated 20.01.2020 notified the list of Election Officer, Returning Officers and Asst Returning Officers",,,

and vide Notification No. SEC. 146/2019/25 dated 21.01.2020, notified the time schedule for the Preparation and Publication of the Electoral Rolls to",,,

the Constituencies of BTC.,,,

Further, the SEC by Notification vide No. SEC 146/2019/92 dated 11.03.2020, issued the Schedule for general election to BTC, fixing the various",,,

activities including the date of Poll on 04.04.2020 and date of counting on 08.04.2020. The Model Code of Conduct has been in force ever since.,,,

The SEC by letter vide Memo No. SEC 146/2019/117 dated 20.03.2020 deferred the remaining phases of BTC Election, 2020 after 21.03.2020, i.e",,,

after finalisation of the list of contesting candidates in each BTC constituency. It was also mentioned that a new schedule of poll will be notified and,,

that the Model code of Conduct would continue to be in force till further notification.,,,

Whereas the SEC by letter vide No. SEC. 146/2019/262 dated 07.04.2020 wrote to The Chief Secretary Assam, with a copy to The Governor Assam",,,

citing the challenge of Lock Down and Social Distancing and stated that it had received various representations including from The Govt. of Assam,,

for deferment of the election on the grounds of imposition of restrictions on public gatherings/ social distancing to prevent the possible outbreak of,,

COVID 19 pandemic in BTC areas, mentioning that since the Lockdown was unlikely to be lifted before 14.04.2020, it would not be possible to",,,

complete the deferred phases of BTC election before 27th April 2020, by when the tenure of the General Council of BTC would statutorily expire. In",,,

this context SEC requested The Govt. of Assam the Govt. of Assam to consider and take appropriate action to deal with the extraordinary situation,,

about the administration/governance of BTC under the relevant provisions of the Sixth Schedule to The Constitution of India.,,,

Whereas the Advocate General Assam has in his letter to the Commissioner & Secretary to The Governor Assam, vide Memo No.",,

AGL.58/75/pt/902dated 14th April, 2020 provided the following legal advise",,

That Model code of conduct is in force,,

It was mentioned in the communication of SEC dated 20.03.2020 that the Model Code of Conduct will be in force and will be reviewed at the time,,

of issuing of notification of remaining phases of election.,,

Since the MCC is in force and since the sitting members of BTC are also candidates for the general election to BTC, which has to be deferred it",,

would not be legally permissible to extend the term of the existing council, beyond 27.04.2020, resulting in an exceptional circumstance which warrants",,

the exercise of power under Rule 16(2) of the Sixth Schedule of the Constitution.,,

Advocate General had quoted a judgment of Hon Gauhati High Court. The Division Bench of the Hon High Court in the case Alphonse A. Sangma,,

vs Roynath D Sangma & Ors reported in 2011(2) GLT 80, observed inter alia, that",,

â??under sub paragraph 2 of Para, 16, the satisfaction of the Governor that a situation has arisen where the administration of an Autonomous District",,

or region cannot be carried on in accordance with the provisions of the Schedule is sufficient for him to assume to himself by a public notificationâ?!,,,

And declare that such functions or powers would be exercisable by such person or authority as he may specify in that behalf for a period of not,,

exceeding six months on each occasionâ??,,,

The Advocate General concluded with the following legal opinion",,

â??In view of the above, and primarily as the Model Code of Conduct is in force, in my considered legal opinion, the Honâ??ble Governor of Assam",,

has no alternative than to exercise his discretion, as a residuary power, under Para 16(2) of the Sixth Schedule of the Constitution and declare, by",,

issuing a public notification to that effect, that such functions or powers of the Bodoland Territorial Council shall be exercisable by such person or an",,

authority as he may specify in this behalf, for a period not exceeding six months on each occasion. â??"",,

Thus considering all the above, I am of the considered opinion that the emergency caused by spread of COVID 19 and the issues to address its spread",,

leading to Lockdown, Social Distancing have warranted that I as the Governor, Assam, shall assume the administration of Bodoland Territorial Council",,,

with immediate effect in exercise of powers vested in The Governor under sub paragraph 2 of Para 16 of the Sixth Schedule to the Constitution of,,

India in public interest and also desire to appoint Shri Rajesh Prasad, IAS as The Administrator of BTC to superintend, direct and control the",,,

overall Administration of Bodoland Territorial Council and this assumption of such functions by The Governor and under The Governor through The,,

Administrator of BTC, shall be for a period not exceeding six months or till a new council is elected and sworn in. Also the current Principal Secretary",,,

to The Bodoland Territorial Council may be transferred in public interest and in his place Shri Rakesh Kumar, IAS may be transferred and posted as",,,

The Principal Secretary to Bodoland Territorial Council.,,,

Notifications proclaiming the assumption of powers by the Governor as above and regarding the appointment of The Administrator and his terms of,,

reference, The Principal Secretary to BTC and issues relating to the rules of Business etc may be issued accordingly in this regard immediately. The",,,

matters have also been discussed with The Chief Secretary Assam and the Commissioner & Secretary to the Govt. of Assam, Welfare of Plains",,,

Tribes and Backward Classes Department in detail.,,,

8. Thereupon File No. TAD/BTC/250/2020/30 was called for by the Departmental Minister in WPT&BC Department and note dated 26.04.2020 was,,

put up before the CM. In the note, the Departmental Minister described the procedure and provisions of law that would be applicable in respect of the",,,

expiry of the term of the General Council of the BTC. In doing so, reference was made to the 1st proviso to Paragraph- 2(6A) of the Sixth Schedule",,,

and also to the order/note of Governor dated 25.04.2020. The Departmental Minister understood that the order/note of the Governor was as per the,,

legal advice of the learned Advocate General that it was not legally permissible to extend the term of the General Council of the BTC beyond,,

27.04.2020 as because the MCC was in force and the remaining stages of the election were deferred and the sitting members of the Council were,,

also candidates in the election. The note of the Minister referred to the invocation of the power under Paragraph 16(2) of the Sixth Schedule",,,

whereby, the Governor may by public notification assume to himself any of the

functions or power vested in the Council, if the Governor was satisfied",,,

that the situation had arisen where the administration of an Autonomous District or Region cannot be carried out in accordance to the provisions of,,

Sixth Schedule. Thereafter, the note the Departmental Minister provided as follows:-",,,

â??Perused the aforesaid note which was signed on 25/04/2020. It appears that the legal opinion on the basis of which the aforesaid note is prepared,,

appears to be contrary to the expressed provision of law as enumerated in the Constitution of India.,,

First, as stated above, as per expressed provisions contained in paragraph 2 (6A) of the Sixth Schedule to the Constitution of India, the Governor may",,,

extend the period of five years if circumstances exist which, in his opinion, render the holding of election impracticable. And, since such provision",,,

already exists in the Schedule, one cannot come to a conclusion 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. Thus, instead of invoking the provisions of paragraph 16(2), the",,,

provisions of paragraph 2 (6A) the Sixth Schedule of the Constitution of India should be invoked.,,

Second, the model code of conduct remain in force till the date on which election is scheduled to be concluded and since the last date election process",,,

which was 04/04/2020 has already expired and no further schedule is announced by the ASEC, the model code of conduct shall no longer be in force",,,

after 27/04/2020, i.e., the date of expiry of tenure of the present Council.",,,

Moreover, it appears from the note that the legal opinion is based on the facts which is incorrect. In the note it has been described that the remaining",,,

election phases has been deferred. It is a matter of record that no election has taken place and as such there is no question of remaining phases as no,,

election has held.,,

It is further noted that there is no legal bar in extending the term of the current BTC council as per provisions provided in the paragraph 2 Clause (6A),,,

proviso of the Sixth Schedule of the Constitution of India.,,

It is to be noted herein that provisions provided in the paragraph 2 Clause (6A) proviso of the Sixth Schedule of the Constitution of India has been,,

provided in the Constitution specifically to tackle a situation which is

extraordinary in nature which is the present situation arising out of Covid-19.,,

While incorporating the provisions of paragraph 2 Clause (6A) proviso of the Sixth Schedule of the Constitution of India, the legislature of the Indian",,,

Parliament to meet any exigencies has provided the aforesaid provision to meet such exigencies. The provision in the Sixth Schedule is self sufficient,,

and answers to each and every exigencies has been provided in the Sixth Schedule itself and as such the aforesaid provisions has been made in the,,

Sixth Schedule to extend the present Council.,,

That in the note it is seen that a judgment of the Honâ??ble Gauhati High Court was relied upon which was reported in 2011 (2) GLT 80 (Alphonse,,

A. Sangma vs Roynath D. Sangma & Ors). The aforesaid judgment is altogether on different footing and different context. The facts are different.,,

The aforesaid facts of the case is absolutely different from the facts of the instant case. In the aforesaid case the HE the Governor is exercising his,,

power under paragraph 16(2) of the Sixth Schedule of the Constitution of India is on the basis of situation arising out of non applicability of the Tenth,,

Schedule of the Constitution of India giving rise to uncertainty and other allegations but herein the instant case facts are absolutely different and as,,

such paragraph 16(2) of the Sixth Schedule of the Constitution of India is not applicable.,,

For meeting the situation arising out of global pandemic the Indian Parliament has enacted to meet such circumstances and exigencies, the specific",,,

provisions are already provided in the proviso to paragraph Clause (6A) of the Sixth Schedule of the Constitution of India.,,

The note also reflect that paragraph 16(2) is the only alternative is incorrect and would be amounting to invoking a power incorrectly contrary to the,,

constitutional provision for which it will be amounting to violation of constitutional provisions for the purpose it has been enacted.,,

Under such circumstances, in my considered view and opinion, the term of 5 years of BTC Council must be extended in accordance with the specific",,,

provision enumerated in the first proviso to the sub-paragraph 6A of paragraph 2 of the Sixth Schedule to the Constitution of India. It would be,,

constitutionally appropriate to extend the present terms of the existing BTC Council and as such I pray for reviewing the aforesaid order considering,,

the constitutional provision for a period which may be 1 (One) year or such time

within 1(one) year till election could be held when circumstances,,
arises and the threat of the ongoing CONVID 19 pandemic is reduced
substantially.â??,,

9. In response to the note of the Departmental Minister dated 26.04.2020, the
Governor made the order/note dated 27.04.2020 which is extracted as",,,

below:-,,

â??Chief Minister,,

Office notes above.,,,

Perused the notes in pages 9n â?" 13n,,

All the matters mentioned in the notes were also looked into and only after a
detailed and threadbare analysis, were the viewpoints mentioned in my",,,

detailed notes in pages 7N â?" 8N and decision thereof arrived at.,,,

I stand by my decision mentioned therein.,,,

Thus considering all the above, I am of the considered opinion that the
emergency caused by spread of COVID 19 and the issues to address its spread",,,

leading to Lockdown, Social Distancing have warranted that I as the Governor,
Assam, shall assume the administration of Bodoland Territorial Council",,,

with immediate effect in exercise of powers vested in The Governor under sub
paeagraph 2 of Para 16 of the Sixth Schedule to the Constitution of,,

India in public interest and also desire to appoint Shri Rajesh Prasad, IAS as â??
The Administrator of BTCâ?? to superintend, direct and control the",,,

overall Administration of Bodoland Territorial Council and this assumption of such
functions by The Governor and under The Governor through The,,

Administrator of BTC, shall be for a period not exceeding six months or till a new
council is elected and sworn in earlier, in case situation permits so.",,,

Also, the current Principal Secretary to The Bodoland Territorial Council may be
transferred in public interest and in his place Shri Rakesh Kumar",,,

IAS/Shri Siddharth Singh, IAS may be transferred and posted as The Principal
Secretary to The Bodoland Territorial Council. In this regard my earlier",,,

choice of Officer for posting as Principal Secretary BTC has been changed as
above though the choice for The Administration BTC remains the,,

same.,,,

Necessary notifications proclaiming the assumption of powers by The Governor
Assam as above and regarding the appointment of the Administrator,,

and to the rules of Business etc may be issued accordingly in this regard immediately. The matters have also been discussed with The Chief Secretary,,

Assam and the Commissioner & Secretary to The Govt. of Assam, Welfare of Plains Tribes and Backward Classes Department in detail. â??",,,

10. Mr. N Dutta, learned senior counsel for the petitioners by referring to paragraph 14 of the writ petition assails the two notifications both dated",,,

27.04.2020 of the Commissioner and Secretary to the Government of Assam in the WPT & BC Department by contending that under the 1st proviso,,

to Paragraph 2(6A) of the Sixth Schedule , the Governor ought to have extended the General Council of the BTC by a period not extending 6(six)",,,

months and, therefore, the assumption of the administration of the BTAD by the Governor under Paragraph 16(2) of the Sixth Schedule, as notified in",,,

the notifications dated 27.04.2020, are in violation of the constitutional provisions.",,,

11. By referring to paragraph 15 of the writ petition, Mr. N. Dutta, learned senior counsel has raised the contention that the discretions available to the",,,

Governor for exercising the powers under Paragraph 16(2) of the Sixth Schedule are provided in Paragraph 20BA of the Sixth Schedule, but such",,,

discretion is applicable only in respect of North Cachar Hills Autonomous Council and Karbi Anglong Autonomous Council, as the case may be. Even",,,

while exercising such discretion under Paragraph 20BA of the Sixth Schedule, a consultation with the Council of Ministers (COM) of Assam and the",,,

respective Autonomous Councils are mandatory. But in the instant case, the provisions of Paragraph 20BA of the Sixth Schedule being not applicable",,,

to the BTAD, the Governor while exercising the power under Paragraph 16(2) of the Sixth Schedule for assuming the administration of the BTAD,",,,

had acted as a Constitutional Governor and not as a Discretionary Governor. For a Constitutional Governor, the Governor has to act only on the aid",,,

and advice of the COM as provided in Article 163(1) of the Constitution of India. But in the instant case, the impugned notifications of 27.04.2020",,,

whereby the administration of the BTAD was assumed in exercise of the powers under Paragraph 16(2) of the Sixth Schedule, the Governor had",,,

unilaterally imposed his views and that too in violation of the constitutional provisions, not to speak of consulting the COM.",,,

12. By referring to paragraph 16 of the writ petition, it has been contended that Paragraph 20BA of the Sixth Schedule provides for the discretionary",,,

power of the Governor so far as it relates to the Autonomous Councils. Although BTAD was formed in the year 2003 by way of a constitutional,,

amendment, but no amendment has been brought in Paragraph 20BA of the Sixth Schedule, which establishes that so far as it relates to the BTAD",,,

the Governor of Assam is a Constitutional Governor and no discretion is provided to his Excellency. Accordingly it is contended that the notifications,,

dated 27.04.2020 which were issued at the dictate of the Governor of Assam were done without the aid and advice of the COM and as such are ultra,,

vires to the constitutional provisions.,,

13. By referring to paragraph 17 of the writ petition, an alternative contention has also been raised that even if it is to be understood that the Governor",,,

has a discretionary power under Paragraph 20BA of the Sixth Schedule so far as it relates to the BTAD, even then, as there was no consultation with",,,

the COM, which is a condition precedent for invoking powers under Paragraph 20BA, the notifications dated 27.04.2020 are void and without",,,

jurisdiction.,,

14. To substantiate his contention that the Governor in discharging the constitutional functions either acts as a Constitutional Governor or as a,,

Discretionary Governor, Mr. N Dutta, learned senior counsel submits that the Constitution itself provides that the Governor otherwise acts as a",,,

Constitutional Governor in discharge of the constitutional functions, except for the relevant provisions provided by or under the Constitution itself",,,

where it is specifically provided that the Governor acts in his discretion.,,

The learned senior counsel submits that discretions of various kinds are available to the Governor as per the provisions by or under the Constitution.,,

To name a few, as per Article 239(2) of the Constitution, when the Governor of a State is appointed as an Administrator of an adjoining Union",,,

Territory, the Governor is required to exercise his functions as an Administrator independently of his COM. As per Article 371A(1)(b) in respect of",,,

the State of Nagaland, the Governor shall after consulting the COM exercise his individual judgment as to the action to be taken. Again as per Article",,,

371A(1)(d), in respect of the Regional Council for the Tuensang district in Nagaland comprising of 35 members, the Governor shall in his discretion",,,

make the Rules. As per Article 371F(g) in respect of the State of Sikkim, the Governor shall subject to such directions as the President may, from",,,

time to time, deem fit to issue, act in his discretion. Reference has also been made to the provisions of Paragraph 9(2) of the Sixth Schedule which",,,

provides that in respect of share of the royalties to be made over to a District Council, the Governor in his discretion shall determine the amount to be",,,

payable.,,,

Accordingly a submission is made that in exercise of such discretions, the Governor acts in his discretion independently of the COM and while",,,

exercising the powers under such provisions of the Constitution, the Governor acts as a Discretionary Governor, perhaps except for Article 371A(1)",,,

(b) where the Governor exercises his individual judgment as to the action to be taken, but after consulting the COM.",,,

15. Reference has also been made to the provisions of Paragraph 20BA of the Sixth Schedule, where the Governor in discharge of his functions under",,,

the various Paragraphs of the Sixth Schedule as stated in the Paragraph itself, shall take such actions as he considers necessary in his discretion after",,,

consulting the COM and the North Cachar Hills Autonomous Council or the Karbi Anglong Autonomous Council, as the case may be. It is submitted",,,

that while invoking the powers under Paragraph 20BA of the Sixth Schedule, for the purpose of discharging his functions, the Governor acts in his",,,

discretion, but such discretion can be exercised only upon a consultation with the COM and the North Cachar Hills Autonomous Council and the Karbi",,,

Anglong Autonomous Council, as the case may be.",,,

16. By referring to the aforesaid provisions in the Constitution and the Sixth Schedule, Mr. N Dutta, learned senior counsel submits that except for the",,,

discretions provided by or under the Constitution and for the discretion that can be exercised while invoking the provision of Paragraph 20BA of the",,,

Sixth Schedule, the Governor acts as a Constitutional Governor for the purpose of exercise of his functions under the various provisions of the",,,

Constitution.,,,

17. Mr. N Dutta, learned senior counsel for the petitioner by referring to the provisions of Article 163(1) of the Constitution of India submits that the",,,

provisions thereof are specific to the extent that in exercise of his functions under the Constitution, the Governor acts on the aid and advice of the",,,

COM, except in so far as he is by and under the Constitution required to exercise his functions or any of them in his discretion. It is submitted that in",,,

so far as where discretion is not provided by or under the Constitution, the Governor acts as a Constitutional Governor on the aid and advice of the",,,
COM.,,,

18. For the purpose, reliance has been placed on the pronouncements of the Supreme Court in *Samsher Singh Vs. State of Punjab* reported in (1974) 2",,,

SCC 831, *Rameshwar Prasad (IV) Vs. Union of India and Anr.* reported in (2006) 2 SCC 1 E, *dwingson Bareh Vs. State of Assam and Others*",,,

reported in AIR 1966 SC 1220 and *Nabam Rebia Vs. Deputy Speaker, Arunachal Pradesh* reported in (2016) 8 SCC 1 and also in *S.R. Bommai and*",,,

Others Vs. Union of India and Others reported in (1994) 3 SCC 1.,,,

19. Upon reliance on the aforesaid propositions laid down by the Supreme Court, it is the submission of Mr. N Dutta, learned senior counsel that the",,,

Governor when he acts as a Constitutional Governor is required to act on the aid and advice of the COM and the discretions referred in Article 163(1),,,

does not give the Governor a general discretionary power to act against or without the aid and advice of the COM and that when the Governor acts as,,

the Constitutional Governor it would be appropriate that the matter should first be examined by the COM and then submitted to him for his own,,

recommendation.,,,

20. By referring to the provisions of Article 163(1) where it is provided that except in so far as the Governor is by or under the Constitution required to,,

exercise his functions or any of them in his discretion, it is the submission of Mr. N Dutta, learned senior counsel that by the expression "under the",,,

Constitution" it has to be understood that it indicates such discretions which had been recognized by the Supreme Court and the other Courts to be,,

a discretion bestowed upon the Governor while interpreting various provisions of the Constitution.,,,

21. Mr. N. Dutta, learned senior counsel for the petitioner refers to the note of the CS dated 04.04.2020 and points out that the CS in his note had",,,

provided two options to the Governor as to the actions that are required to be taken on the expiry of the term of the General Council of the BTC. The,,

two options given were for an action under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule i.e. for an extension of the term of the General,,

Council or for an action under Paragraph 16(2) of the Sixth Schedule for assumption of administration of the Council by the Governor himself. The,,

note of the CS was forwarded by the CM by his endorsement dated 24.04.2020 to the Governor and thereupon the Governor issued the order,,

contained in the note dated 25.04.2020. By the order/note dated 25.04.2020 the Governor expressed his opinion that due to emergency caused by the,,

Covid-19 pandemic and the related issues of lock down and social distancing, the Governor was of the opinion that he shall assume the administration",,,

of the BTAD with immediate effect in exercise of the power under Paragraph 16(2) of the Sixth Schedule and to appoint Mr. Rajesh Prasad, IAS to",,,

be the Administrator. After the order of 25.04.2020 was issued by the Governor the file was called by the Departmental Minister in the WPT&BC,,

department and the note dated 26.04.2020 was made by the Departmental Minister, whereby, the CM was requested that in the opinion of the",,,

Minister the term of the General Council of the BTC be extended under the 1 st proviso to Paragraph 2(6A) of the Sixth Schedule. The CM again,,

forwarded the note of the Departmental Minister to the Governor by his endorsement dated 26.04.2020. The Governor thereafter issued the,,

order/note dated 27.04.2020 expressing that he stands by his earlier decision contained in the order/note dated 25.04.2020.,,,

22. The two orders of the Governor of 25.04.2020 and 27.04.2020 are being assailed by the petitioner, on the ground, amongst others, that the",,,

Governor being discharging his duties as a Constitutional Governor had not acted on the aid and advice of the COM and infact when the two orders,,

were issued, there was no aid and advice from the COM. Accordingly, submission is made that the two orders of 25.04.2020 and 27.04.2020 being",,,

made in violation of the constitutional requirement of Article 163(1) as well as, the propositions of law laid down by the Supreme Court in Samsher",,,

Singh (supra), Rameshwar Prasad (supra), Edwingson Bareh (supra), Nabam Rebia (supra) and S.R. Bommai (Supra), the same would not be",,,

sustainable. The orders of 25.04.2020 and 27.04.2020 being not sustainable, as a consequence, the two notifications both dated 27.04.2020 by which",,,

the Governor had assumed the administration of the BTAD in exercise of the power under Paragraph 16(2) of the BTC and appointed the,,

Administrator, would also not be sustainable.",,

23. By referring to the concept aid and advice of the COM, Mr. N. Dutta, learned senior counsel makes the submission that the satisfaction of the",,,

Governor would be satisfaction of the COM and therefore, there being no satisfaction of the COM being available when the orders/notes of",,,

25.04.2020 and 27.04.2020 were issued, the same did not meet the requirement of the provisions of Article 163(1) as well as the proposition laid down",,,

by the Supreme Court.,,,

24. Mr. N. Dutta, learned senior counsel refers to the affidavit in opposition by the Governor Secretariat wherein in Paragraph 11 it is stated that the",,,

Governor had also considered the opinion expressed by the learned Advocate General, Assam for invoking his discretionary power to opt for the",,,

provision of Paragraph 16(2) of the Sixth Schedule. Accordingly, a submission is made that by the own affidavit by the Governor it is an admitted",,,

position that the Governor had exercised his discretionary power to opt for invoking for exercising the power under Paragraph 16(2) which provides,,

for the Governor assuming the administration of the Autonomous District Council. The Governor having exercised the discretionary power, it is",,,

submitted that he had not acted as the Constitutional Governor, but had acted as a Discretionary Governor.",,,

25. Mr. N. Dutta, learned senior counsel points out to the order dated 25.04.2020 of the Governor where amongst others, the opinion of the learned",,,

Advocate General in his letter dated 14.04.2020 was given its due consideration to arrive at the opinion formed by the Governor. The opinion of the,,

learned Advocate General as depicted in the order dated,,

25.04.2020 was that since the MCC was in force, and the sitting members of the BTC were also candidates for the general election to the BTC,",,

which had in the meantime being deferred, it would not be legally permissible to extend the term of the existing Council beyond 27.04.2020, which",,,

resulted in an exceptional circumstance warranting the exercise of the power under Paragraph 16(2) of the Sixth Schedule. For the purpose, the",,,

learned Advocate General quoted a judgment of this Court in Alphonse A. Sangma Vs. Roynath D. Sangma and Ors., reported in 2011 (2) GLT 80",,,

which provided that under Paragraph 16(2) of the Sixth Schedule if there is a satisfaction of the Governor that a situation had arisen where the,,

administration of an Autonomous District Council cannot be carried out in accordance with the provisions of the Sixth Schedule, it would be sufficient",,,

for him to assume by a public notification the administration of the Council.

Accordingly, the learned Advocate General had given the opinion that in",,,
view of the MCC being in force, the Governor had no alternative other than to
exercise his discretion, as a residuary power, under Paragraph-16(2) of",,,
the Sixth Schedule.,,,

26. Accordingly, a submission was made that the MCC being in force could not be
a relevant consideration for the Governor to be satisfied that a",,,
situation had arisen that the administration of the BTAD cannot be carried out in
accordance with the provisions of the Sixth Schedule. Further,,
submission is made that the opinion of the learned Advocate General, which the
Governor had relied upon providing for an exercise of discretion as a",,,
residuary power under Paragraph 16(2) of the Sixth Schedule, would be an
exercise of a power which is not found in the Constitution and hence",,,
would be unconstitutional.,,,

Mr. N Dutta, learned senior counsel reiterates his submissions that under the
Constitution, the Governor either acts as a Constitutional Governor or as",,,
Discretionary Governor as provided in the Constitution itself. But there is no such
further provision in the Constitution bestowing the Governor with,,
any residuary power to act under the Constitution beyond the powers to either
act as a Constitutional Governor or as Discretionary Governor. From,,
the said point of view, the opinion of the learned Advocate General, based upon
which the Governor had issued the orders dated 25.04.2020 and",,,
27.04.2020 would be orders which were issued beyond the powers conferred
upon the Governor by the Constitution.,,,

27. The learned senior counsel for the petitioners also made a submission that
even if it is construed that the Governor had not acted as a,,
Constitutional Governor, but as a Discretionary Governor under Paragraph 20BA
of the Sixth Schedule, still under Paragraph 20BA there is a",,,
requirement of a prior consultation with the COM before any such discretion is
exercised. By referring to the factual aspect under which the,,
orders/notes dated 25.04.2020 and 27.04.2020 were issued by the Governor, a
submission is made that the same were issued without there being any",,,
prior consultation with the COM and, therefore, even the required procedure for
acting as a Discretionary Governor under Paragraph 20BA was not",,,
followed.,,,

28. Mr. N. Dutta, learned senior counsel for the petitioners also raised a

contention that the interaction between the Governor and the authorities in the",,,
Govt. of Assam leading to the orders/notes of the Governor dated 25.04.2020
and 27.04.2020 were not a consultation as required under 20BA of the,,
Sixth Schedule. In Paragraph 51 of the judgment of the Supreme Court in State
of Bihar and Ors., -vs- Bal Mukund Sah and Ors., reported in 2000",,,
Vol-4 SCC 604, the Supreme Court provides that the essence of consultation is
the communication of a genuine invitation to give advice and a genuine",,,
consideration of that advice which in turn depends on sufficient information and
time being given to the party concerned to enable it to tender useful,,
advice. Accordingly, a submission is made that there was no genuine invitation
by the Governor before the COM to give aid and advice on the matter",,,
and nor there was a genuine consideration of that advice that may have been
given by the COM. Therefore, the procedure adopted in the interaction",,,
between the Governor and the authorities of the Govt. of Assam in arriving at the
orders/notes dated 25.04.2020 and 27.04.2020 were not based upon,,
any prior consultation by the Governor with the COM, as required under
Paragraph 20BA of the Sixth Schedule.",,,
29. Mr. N. Dutta, learned senior counsel for the petitioners had raised the specific
contention that as revealed from the contents of the orders/notes of",,,
the Governor dated 25.04.2020 and 27.04.2020, the core basis for the Governor
to arrive at his decision was the opinion rendered by the learned",,,
Advocate General as well as the contents of the given paragraph of the decision
in Alphonse A. Sangma(supra). By referring to the said materials,,
which formed the core basis of the decision of the Governor, Mr. N. Dutta,
learned senior counsel submitted that the Governor had taken into",,,
consideration irrelevant material and therefore, the decision arrived at would not
be sustainable. A further contention had also been made that apart",,,
from the above no other material had been indicated in the orders/notes of the
Governor and therefore, the maintainability of the decision would have",,,
to be judged from the materials revealed in the orders/notes itself,,
30. Mr. N. Dutta, learned senior counsel for the petitioners had also contended
that the provisions of Article 356 of the Constitution of India and",,,
Paragraph 16(2) of the Sixth Schedule are pari materia, where in exercise of the
powers under the two provisions, the President or the Governor, as",,,
the case may be is required to be satisfied as to the existence of the situation

provided in the two provisions. Accordingly, the proposition laid down in",,,
S.R. Bommai (supra) as regards the judicial review of the material based upon
which any such satisfaction was arrived for exercise of the power,,
under the two provisions, would also be applicable in the present case.",,,

31. Mr. N. Dutta, learned senior counsel for the petitioners had contended that in
the deliberation stated to have taken place between the Governor",,,

and the other authorities in the Government of Assam, the procedural
requirement of the Assam Rules of Executive Business, 1968 (REB 1968) were",,,

not followed, which had also vitiated the procedure adopted for the purpose. The
specific provisions of the REB 1968 had been referred and by",,,

relating it to the various communications that had taken place between the
authorities, contention had been raised that such procedures had neither",,,

been followed nor been adopted for the purpose.,,,

32. Per contra, Mr. D Saikia, learned senior counsel for the respondents No.1, 2
and 3, being the authorities under the Government of Assam as well",,,

as the Governor Secretariat, makes a categorical contention that the Governor in
requiring the issuance of the Notifications",,,

No.TAD/BTC/250/2020/30 and No.TAD/BTC/250/2020/31 both dated
27.04.2020, as issued by the Commissioner & Secretary to the Govt. of",,,

Assam in the WPT&BC Department, had acted as a Constitutional Governor and
not as a Discretionary Governor and nor he had acted under the",,,

provisions of Paragraph 20BA of the Sixth Schedule. By referring to the stand
taken by the respondents in paragraph 14 of the affidavit of the CS and,,

paragraph 12 of the affidavit of the Governor Secretariat that the requirements
of Paragraph 20BA of the Sixth Schedule had been complied with, it is",,,

the contention of Mr. D Saikia, learned senior counsel that from the said
averments, it is not to be inferred that the Governor while requiring the",,,

issuance of the Notifications dated 24.07.2020 had invoked Paragraph 20BA of
the Sixth Schedule. It is explained that by paragraph 14 of the affidavit,,

of the CS and paragraph 12 of the Governor Secretariat, it has been meant that
while acting as the Constitutional Governor, even the requirements of",,,

Paragraph 20BA of the Sixth Schedule had also been complied with.,,,

33. It is the contention of Mr. D Saikia, learned senior counsel that before the
Notifications dated 27.04.2020 were issued by which in exercise of the",,,

power under Paragraph 16(2) of the Sixth Schedule, the Governor had assumed

the administration of the BTAD, the aid and advice of the COM was",,,

in place and, therefore, it cannot be said that the Governor had exercised his functions without there being any aid and advice of the COM.",,

34. In order to substantiate his contention, Mr. D Saikia, learned senior counsel states that the departmental officials in the WPT & BC Department",,,

had initiated a note to the Secretary of the Department bringing to his notice that the term of the General Council of BTC would expire on 27.04.2020,,

and hence, the higher authorities may perhaps be apprised of the same for taking necessary action. The Secretary made a note to the CS that although",,,

the term of the General Council of BTC would expire on 27.04.2020 and the ASEC had notified to hold the elections on 04.04.2020 and the necessary,,

process for the purpose had already been started, but the elections had been deferred in view of the Covid-19 pandemic situation. In the existing",,,

scenario it had appeared to the Secretary that holding of the election before 27.04.2020 would be impractical and both the MOS and the BTC election,,

Rules are silent on the question of extension of the term of office. Accordingly a suitable decision was requested to be taken at the highest level for,,

extending the term of office of the Council beyond 27.04.2020. The note of the Secretary dated 03.04.2020 further provided that as the Departmental,,

Minister was not available, therefore, the CM may be moved through the CS. It was stated that in response thereof the CS by the note dated",,,

04.04.2020 had provided for two options, one being an extension of the Council under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule or in",,,

the alternative for the Governor to assume the administration of the BTAD under Paragraph 16(2) of the Sixth Schedule. The CM having endorsed,,

the said note of the CS by his endorsement dated 24.04.2020, had given the Governor two options to choose from. The Governor by his order",,,

contained in the note dated 25.04.2020, had opted for the option to assume the administration of the BTAD under Paragraph 16(2) of the Sixth",,,

Schedule. As the Departmental Minister had put up a note thereafter on 26.04.2020, the CM again made an endorsement placing the matter before",,,

the Governor for his decision and the Governor by the order contained in the note dated 27.04.2020 had reiterated his earlier decision in the order,,

dated 25.04.2020. Thereafter, entire materials along with the note of the CS providing for the two options, as endorsed by the CM, the opinion/decision",,,

of the Governor, the subsequent note of the Departmental Minister of 26.04.2020 and the consequential reiteration by the Governor on 27.04.2020 of",,,

his earlier decision to opt for the option of assuming the administration of the BTC under Paragraph 16(2) of the Sixth Schedule were all placed before",,,

the COM which met at 3 PM on 27.04.2020. It is the submission of Mr. D Saikia, learned senior counsel that in the meeting of the COM at 3 pm on",,,

27.04.2020 an unanimous decision was taken to endorse the view expressed by the CM and in such unanimous decision where the entire COM had",,,

participated, including the Departmental Minister who had made the note dated 26.04.2020, there were no dissenting views being expressed by any of",,,

the Ministers, including the Departmental Minister, meaning thereby that even the note dated 26.04.2020 of the Departmental Minister to extend the",,,

term of the General Council of the BTC did not find favour with the COM. The COM by endorsing the view of the CM meant that the two options",,,

provided by the CS, which itself was forwarded by the CM to the Governor, gave the Governor the option to opt either for extending the term of the",,,

General Council of the BTC under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule, or to assume the administration of the BTAD under",,,

Paragraph 16(2).",,,

35. It is submitted that the Governor having been given the option to opt for either of the two options, his decision to opt for assuming the",,,

administration of the BTAD under Paragraph 16(2) is also the satisfaction of the COM. Accordingly, it is submitted that the Governor in exercising his",,,

power under Paragraph 16(2) of the Sixth Schedule to assume the administration of the BTAD had acted on the aid and advice of the COM, and",,,

therefore, the requirement of Article 163(1) of the Constitution as well as the propositions laid down by the Supreme Court in *Samsher Singh* (supra)",,,

Rameshwar Prasad (supra), *Edwingson Bareh* (supra), *Nabam Rebia* (supra) and *S.R. Bommai* (supra) had been duly complied with.",,,

36. Mr. D Saikia, learned senior counsel also submits that the MCC that was in force, which finds specific mention in the opinion of the learned",,,

Advocate General which again, was accepted by the Governor in the order/note dated 25.04.2020 has its own relevance for the purpose of the",,,

Governor arriving at his decision of 25.04.2020. Mr. D Saikia, learned senior counsel submits that as per the notification of the ASEC dated",,,

11.03.2020, the elections were to have been held in 8(eight) stages and out of the 8(eight) stages, the election process for the 1st 5(five) stages i.e. up",,,
to the publication of the list of the contesting candidates were already over and only the actual polling, re-polling, if any, and counting and declaration",,,
of the result remained to be done. Accordingly, reference was made to the MCC, particularly, clause 22 thereof which provides that the candidate and",,,
the political party in power shall exercise utmost restraint for use of their official power which also included that no member of the BTC or any other,,
person having a government vehicle shall use the same in election campaign and for any such matter related to the election and that no financial aid",,,
grants/inputs of any development scheme shall be provided to the voters by the members or any member of the political party in power, etc. It is",,,
submitted that in order to ensure that the requirements of the MCC are maintained by the members/persons belonging to the political party in power",,,
election officials are appointed from amongst the officials of the Government of Assam. But due to the Covid-19 pandemic situation, all such election",,,
officials were required to be withdrawn resulting in a situation that if any contesting member of the BTC or any person belonging to the political party,,
in power conducts itself in breach of the MCC, there would be no one to monitor their activities. In the circumstance, non-extension of the terms of",,,
the General Council of the BTC due to the MCC being in force would be a relevant aspect and the Governor having taken into account, the MCC",,,
being in force, as advised by the learned Advocate General would not be an irrelevant consideration made by the Governor.",,,

37. It is the contention of Mr. D Saikia, learned senior counsel that the expression COM and the Cabinet are being loosely used in the affidavits of the",,,
respondents but it cannot be construed that what has been done by the COM, which again can be verified from the records, would be an act not done",,,
by the COM and a meaning cannot be given that merely because the expression Cabinet was used therefore, it would no longer be an act done by the",,,
COM.,,,

38. It is the contention of Mr. D Saikia, learned senior counsel that the Governor exercises his functions under the Constitution when in exercise of",,,
any of the powers under the relevant provision of the Constitution he acts in the manner he is required to act under the said provision. Till such,,

notification is issued, on being caused to be issued by the Governor, notifying the exercise of any of the functions under the Constitution, all such",,,

notings, orders, etc., are a part of the deliberation between the various authorities, including the Governor and that of the Government. It is also the",,,

contention of Mr. D Saikia that when the CM had endorsed the views of the CS on 24.04.2020 and forwarded it to the Governor, there was no",,,

Cabinet meeting as many of the Ministers were not available in town. The CM being the head of the COM endorsed the note of the CS and",,,

forwarded it to the Governor and the view of the CM was subsequently ratified by the COM on 27.04.2020, which, thereupon became the aid and",,,

advice of the COM.,,,

39. Mr. D Saikia, learned senior counsel also contends that there was an objective, as well as, subjective satisfaction on the part of the Governor on",,,

the basis of the materials on record which included the views of the Government of Assam and the CM, the opinion of the learned Advocate General",,,

of Assam and that of the ASEC as well as the various other representations from the Members of the Parliament and other political personalities,,,

related to the BTAD, in arriving at his opinion contained in the order/note dated 25.04.2020 and the view of the Departmental Minister made on",,,

26.04.2020 and other relevant materials were also taken into consideration in arriving at his decision contained in the order/note dated 27.04.2020.,,,

40. Mr. D Saikia, learned senior counsel also made a submission that the decision as well as the basis of the decision of the judgment of the Division",,,

Bench of this Court in Alphonse A. Sangma (supra) are most relevant in relation to the powers being exercised by the Governor in this case, inasmuch",,,

as, the Governor in Alphonse A. Sangma (supra) case had also not exercised his power under Paragraphs 20BA or 20BB of the Sixth Schedule as",,,

Paragraphs 20BA or 20BB are inapplicable to the State of Meghalaya from where the said matter had originated and similarly Paragraph 20BA of the,,,

Sixth Schedule is also not applicable in the BTAD. Therefore, the views expressed as well as the decision made in Alphonse A. Sangma (supra)",,,

cannot be stated to be not relevant for the purpose of the matter at hand which relates to the BTAD. Accordingly, the learned senior counsel responds",,,

to the contention raised by the petitioners that by relying on the paragraph from the judgment in Alphonse A. Sangma (supra) in his note dated,,,

25.04.2020, the Governor had not taken any irrelevant material into consideration. It is also the contention of the learned senior counsel that the",,

learned Advocate General in giving his opinion to the Governor had rightly relied upon the judgment in Alphonse A. Sangma (supra).,,

41. In response to the contention of the petitioners that the procedural requirement of the REB 1968 had not been followed in the meeting of the COM,,

dated 27.04.2020, Mr. D Saikia contends that although a Cabinet Memorandum was not prepared, but all the relevant materials including the note of",,

the CS dated 04.04.2020, endorsement of the CM dated 24.04.2020, the note of the Governor dated 25.04.2020 containing the opinion, the note of the",,

Departmental Minister dated 26.04.2020 containing his views as well as the note of the Governor dated 27.04.2020 where the earlier decision was,,

reiterated, were all placed and discussed in the meeting of the COM held on 27.04.2020. Further the REB, 1968 itself provides for a deviation from",,

the required procedure in the event of there being an emergent situation provided the substantial requirements are met and that the requirements of the,,

REB 1968 itself are directory in nature and as such a slight deviation from the prescribed procedure by itself may not entail a declaration that the,,

resolution in the meeting of the COM stands vitiated. It is also the contention that the endorsement dated 24.04.2020 having been made by the CM,",,

and the CM having the discretion under the REB 1968 to deviate from the prescribed procedure in the event of there existing an emergency situation,,

and in the instant case it being the case of an emergency situation, a little deviation on its own could not vitiate the entire procedure adopted.",,

Accordingly, learned senior counsel there was substantial compliance of the required procedure.",,

42. It is the contention of Mr. D Saikia, learned senior counsel that the COM in its meeting of 27.04.2020 having endorsed and ratified the view of the",,

CM dated 24.04.2020, which again endorses the view of the CS dated 04.04.2020, providing for two options before the Governor, i.e., either to extend",,

the term of the General Council of the BTAD in exercise of the power under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule or to assume,,

the administration of the BTAD himself in exercise of the power under Paragraph 16(2), both of the Sixth Schedule, it is the aid and advice of the",,

COM that the Governor may opt for the exercise of either of the two options. In

this respect, it is also the contention that even the Supreme Court had",,,
laid the proposition that it would be permissible for the Legislature to require the Governor to perform any act independent of the COM. In such,,
circumstance, it cannot be inferred that the COM does not have any power to provide with the Governor in their aid and advice an option to opt",,,
between two options and that their aid and advice must contain only one option. It is the further contention that in the constitutional scheme under the,,
Constitution there is no such bar or inhibition which refrains the COM from giving two options to the Governor in exercise of their aid and advice.,,,
Accordingly, it is contended that in the instant case had the COM given only one option to the Governor i.e., to act in exercise of the power under the",,,
1st proviso to Paragraph 2(6A) of the Sixth Schedule, but the Governor acts in exercise of the power under Paragraph 16(2), the same would have",,,
been an exercise of the functions without the aid and advice of the COM. But when the COM had itself given the Governor to opt for either of the,,
two options and the Governor exercises his functions by opting for either of the two options, the Governor has discharged his functions as per the",,,
satisfaction of the COM.,,,

43. In the context of the said contention, explained Mr. D Saikia, learned senior counsel that the averments made in paragraph 11 of the affidavit of",,,
the Governor Secretariat that the Governor had invoked his discretionary power to opt for the provisions of Paragraph 16(2) of the Sixth Schedule,,
would have to be understood. Paragraph 11 of the affidavit does not reflect that it is the stand of the Governor that he had exercised the power under,,
Paragraph 16(2) of the Sixth Schedule as a Discretionary Governor. All that the said averment indicates is that when two options were given by the,,
COM in their aid and advice requiring the Governor to exercise his option between the two options, he had so exercised by opting for one of the two",,,
options and this is not a discretion exercised by the Governor as a Discretionary Governor, but opting between the two options given to him in the aid",,,
and advice of the COM.,,,

44. Mr. Saikia also contends that the expression "consultation" and "aid and advice" can also be used interchangeably and consultation is in,,
fact a process of aid and advice.,,,

45. Mr. D.K. Mishra, learned senior counsel for the intervener UPPL on the other

hand, although agreeing with the end result of the contention raised",,,
by Mr. D Saikia, learned senior counsel to the extent that all the constitutional requirements in arriving at the notifications dated 27.04.2020 were duly",,,
complied with, but with regard to the aspect whether the Governor had acted as a Constitutional Governor under Article 163(1) of the Constitution or",,,
he had acted as a Discretionary Governor under Paragraph 20BA of the Sixth Schedule, takes a contrary stand.",,,

46. Mr. D.K. Mishra, learned senior counsel by referring to the meaning of the term election as held by the Supreme Court in N .P. Ponnuswami Vs.",,,

Returning Officer, Namakkal constituency and Others reported in AIR 1952 SC 64, Mohinder Singh Gill Vs. Chief Election Officer, New Delhi",,,

reported in (1978) 1 SCC 405 has raised the contention that the term election depicts a wide range of a situation beginning from the issuance of the",,,

notification for declaring an election up to the stage of the declaration of the result of the election.",,,

47. Accordingly, a contention was raised that the expression "election" appearing in the 1st proviso to Paragraph 2(6A) of the Sixth Schedule",,,

would mean any such stages of the election between the issuance of the notification for declaring an election up to the stage of declaration of the",,,

result of the election. Therefore, when in the instant case, the notification for declaration of the election was issued and five out of the eight stages",,,

were already over, it has to be understood that in the context of the 1st proviso to Paragraph 2(6A) of the Sixth Schedule that the election to the BTC",,,

had already been held. If the election had already been held, there cannot remain any further situation where the Governor would be required to arrive",,,

at any decision whether it is impracticable to hold the election for the General Council of the BTC.",,,

48. As a consequence, it is the contention of Mr. D.K. Mishra learned senior counsel that in the facts and circumstances of the present case, the",,,

option before the Governor to act in exercise of the power under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule was not available at all and",,,

therefore, the only option before the Governor was to act in exercise of the power under Paragraph 16(2).",,,

49. Having so contended, Mr. D.K. Mishra, learned senior counsel raised the contention that the provision of Paragraph 20BA of the Sixth Schedule",,,

are applicable even in respect of the BTAD. According to the learned senior counsel the provisions of Paragraph 20BA were brought in by the Sixth,,

Schedule to the Constitution (Amendment) Act 1995, and on the other hand, the BTAD was brought in by the Sixth Schedule to the Constitution",,,

(Amendment) Act, 2003. Section 2 of the Sixth Schedule to the Constitution (Amendment) Act 1995 provides that the Sixth Schedule to the",,,

Constitution, shall, in its application to the State of Assam, have effect to the modifications provided therein, which also included the insertion of",,,

Paragraph 20BA after Paragraph 20B. Accordingly, it is the contention that the provisions of 20BA having been brought in with its application to the",,,

State of Assam, and BTAD being also located within the State of Assam, and there being no expressed provision excluding BTAD from the purview",,,

of Paragraph 20BA, it has to be interpreted that the provisions of Paragraph 20BA of the Sixth Schedule are also applicable to the BTAD.",,,

50. Mr. D.K. Mishra, learned senior counsel refers to the provisions of Paragraphs 1(2), 4, 10 and 17 of the Sixth Schedule and contends that in",,,

respect of all such provisions, that it had specifically been provided that the provisions thereof would not be applicable to the BTAD. In the Sixth",,,

Schedule to the Constitution (Amendment) Act, 2003, by which BTAD was brought in under the provisions of Sixth Schedule, specific provisions have",,,

been incorporated providing the exclusion of the provisions of Paragraphs 1(2), 4, 10 and 17 of the Sixth Schedule, in respect of the BTAD.",,,

By referring to such exclusionary provisions in the Sixth Schedule itself, Mr. D.K. Mishra, learned senior counsel submits that wherever the",,,

Parliament intended as to which provisions of the Sixth Schedule would not be applicable to the BTAD, the same had been expressly provided in the",,,

Sixth Schedule itself. Accordingly, in respect of Paragraph 20BA where no such exclusion has been provided, it has to be understood that the",,,

provisions of Paragraph 20BA would be applicable in respect of BTAD. As Paragraph 20BA was an existing provision when the Sixth Schedule to,,

the Constitution (Amendment) Act 2003 was enacted, the Parliament would have specifically excluded the provision of Paragraph 20BA in its",,,

applicability to the BTAD, had it been its intention.",,,

51. Mr. D.K. Mishra, learned senior counsel reads the non-inclusion of BTAD in Paragraph 20BA along with Karbi Anglong Autonomous Council",,,

and North Cachar Hills Autonomous Council in the manner that as because BTAD had not been included in Paragraph 20BA, in the event the",,,

Governor invokes the provision of Paragraph 20BA, no consultation is required with the General Council of BTC, and a prior consultation with the",,,

COM alone would be sufficient compliance of its requirements.,,,

52. In order to substantiate his contention that the provision of the 1st proviso to Paragraph 2(6A) of the Sixth Schedule would not be available in the",,,

facts and circumstances of the present case, Mr. D.K. Mishra, learned senior counsel raises a hypothetical situation where if a given candidate is",,,

declared elected after the fifth stage as because there was no contest, the election of that particular candidate would be complete at the end of the",,,

fifth stage itself and therefore, in that situation it cannot be said that the election was not held. Accordingly, it cannot be a case where it would be",,,

impracticable to hold the election so as to exercise the power under the 1 st proviso to Paragraph 2(6A) of the Sixth Schedule. According to the",,,

learned senior counsel, the power to exercise the provision of 1st proviso to Paragraph 2(6A) of the Sixth Schedule would be available to the Governor",,,

only at a stage before the election process starts.,,,

53. According to Mr. D.K. Mishra, learned senior counsel, except for the 1st proviso to Paragraph 2(6A) of the Sixth Schedule, no other provision is",,,

available either in the Sixth Schedule itself or in the Constitution empowering the Governor to extend the term of the General Council of an",,,

Autonomous District Council beyond the period of five years, as provided in Paragraph 2(6A). As the provisions of the 1st proviso to Paragraph 6(A)",,,

of the Sixth Schedule would be inapplicable in the facts and circumstances of the present case, no further power remained with the Governor to",,,

extend the term of the General Council of the BTC and in such circumstance the only other option available before the Governor was to assume the",,,

administration of the BTAD in exercise of the power under Paragraph 16(2).,,

54. With regard to the contention of the writ petitioners that in view of the propositions laid down in Samsher Singh (supra), the Governor in exercising",,,

any of the powers under the Sixth Schedule, except for Paragraph 9(2), acts as a Constitutional Governor, inasmuch as , the provisions of Paragraph",,,

20BA had not been made applicable in respect of BTAD, Mr. D.K. Mishra, learned senior counsel for the intervener UPPL, submits that the lis",,,

between the parties in *Samsher Singh* did not include an interpretation of Sixth Schedule to the Constitution and the reference to Paragraph 9(2) of the,,

Sixth Schedule in paragraph 139 of *Samsher Singh* (supra) was made merely as an example. Therefore, as because of the inclusion of Paragraph 9(2)",,,

of the Sixth Schedule in paragraph 139 of *Samsher Singh* (supra), it cannot be inferred that in respect of the exercise of all other powers under the",,,

Sixth Schedule, where the provision of Paragraph 20BA is not applicable in respect of BTAD, the Governor acts as a Constitutional Governor. Mr.",,,

D.K. Mishra, learned senior counsel also refers to Paragraph 12 of the judgment of the Supreme Court in *M .P. Special Police Establishment â?vs-*",,,

State of M.P. and Others reported in (2004) 8 SCC 788 to show that the provision of Paragraph 154 of *Samsher Singh* (supra) is illustrative and,,

exhaustive.,,,

55. Mr. D.K. Mishra, learned senior counsel relied upon to the proposition in Paragraph 18 of *Bachhittar Singh â?vs- State of Punjab* reported in AIR",,,

1963 SC 395 to submit that the order passed by the CM, even though it may be on a matter pertaining to the portfolio of a particular minister, will be",,,

deemed to be an order of the COM. It would be so deemed that the contents would be the CMâ??s advice to the Governor, for which the COM",,,

would be collectively responsible. By relying upon the said proposition, Mr. D.K. Mishra, learned senior counsel raised the contention that the",,,

endorsement of the CM dated 24.04.2020 as regards the contents of the note by the CS, would therefore be construed to be the collective",,,

responsibility of the COM and it by itself would be the aid and advice. Accordingly, it is submitted that the contention of the writ petitioners that the",,,

COM themselves has to make the aid and advice is incorrect.,,,

56. With regard to the contention of the writ petitioners that by relying upon Paragraph 51 of *Bal Mukund Sah* (supra) that the interaction between the,,

Governor and the authorities in the Govt. of Assam was not a consultation as contemplated in Paragraph 20BA of the Sixth Schedule, Mr. D.K.",,,

Mishra, learned senior counsel submits that the explanation of the concept â??consultationâ?? by the Supreme Court in Paragraph 51 of *Bal Mukund*",,,

Sah (supra) was specific to the requirement of consultation of the Government with the High Court under the Bihar Judicial Service (Recruitment),,,

Rules 1955 and the said concept of â??consultationâ?? cannot be incorporated or

equated with the concept of prior consultation as contained in,,

Paragraph 20BA of the Sixth Schedule. According to the learned senior counsel the meaning and requirement of a consultation would be,,

different under different context and the same meaning and requirement cannot be made equally applicable under all circumstances.,,

57. Accordingly, a contention had been raised by Mr. D.K. Mishra, learned senior counsel that the file being sent to the Governor by the CM as per,,

the endorsement of 24.04.2020 and the note of the Governor of 25.04.2020 would satisfy the requirement of a prior consultation under Paragraph,,

20BA of the Sixth Schedule.,,

58. A further contention had been raised that as per the provision of Article 163(2) and 163(3) of the Constitution, the consultation that had taken,,

place between the Governor and the Govt. of Assam shall not be gone into by the Court as no judicial review is maintainable. Any interference by the,,

Court upon a judicial review of the consultation would amount to an interference with the discretion being exercised by the Governor.,,

59. Mr. D.K. Mishra, learned senior counsel submits that the word may appearing in the 1 st proviso to Paragraph 2(6A) of the Sixth,,

Schedule has been interpreted by this Court to mean that the exercise of the power under the said provision would be directory and not mandatory.,,

Accordingly, by relying upon the pronouncement of the Supreme Court in Paragraph 7 in State of Madhya Pradesh Vs. GC Mandawar reported in,,

AIR 1954 SC 493, wherein it was provided that in a matter of discretion with the local Government whether it will grant dearness allowance and if so,,

how much, the prayer for mandamus is clearly misconceived, as that could be granted only when there is a right of the applicant to compel the,,

performance of some duty on the opponent. As the provisions of the 1 st proviso to Paragraph 2(6A) of the Sixth Schedule are directory, therefore, no,,

mandamus would be maintainable for a direction to the respondent authorities to extend the term of the General Council of the BTC beyond five,,

years. In this respect Mr. D.K. Mishra, learned senior counsel also relies on the pronouncement of the Supreme Court in Paragraph 9 of M ani Subrat,,

Jain vs- State of Haryana reported in (1977) 1 SCC 486 wherein also it is provided that though it is elementary to be restated, but no one can ask,,

for a mandamus without a legal right. There must be a judicially enforceable

legal right as well as a legally protected right before one suffering a legal,,
grievance can ask for a mandamus.,,

60. Mr. D.K. Mishra, learned senior counsel for the intervener UPPL also makes a submission that as the provisions of the 1st proviso to Paragraph",,,

2(6A) of the Sixth Schedule would be inapplicable in the facts and circumstances of the present case, therefore, the only alternative available before",,,

the Governor was to exercise the power under Paragraph 16(2), or else a vacuum would have been created. According to learned senior counsel that",,,

if on the expiry, the term of the General Council of the BTC cannot be extended under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule and",,,

at the same time, the Governor also does not assume the administration under Paragraph 16(2), the administration of the BTC would be nonexistent",,,

resulting in a vacuum.,,

61. It is the contention of Mr. DK Mishra, firstly that as the provision of the 1 st proviso to Paragraph 2(6A) of the Sixth Schedule is not applicable in",,,

the present case and secondly, Paragraph 20BA being applicable to BTAD and the Governor having exercised his powers under Paragraph 16(2) and",,,

the provisions of 16(2) being included for exercise of the powers of the Governor under Paragraph 20BA, in the instant case, the Governor while",,,

assuming the administration of the BTAD under Paragraph 16(2) of the Sixth Schedule had invoked the provisions of Paragraph 20BA. In other,,

words, the Governor had acted as a Discretionary Governor under Paragraph 20BA of the Sixth Schedule.",,,

62. Having so contended, Mr. DK Mishra, learned senior counsel seeks to justify the stand of the Governor in paragraph 11 of the affidavit of the",,,

Governor Secretariat that the Governor had invoked his discretionary power to opt for the provision of Paragraph 16(2) of the Sixth Schedule. In doing,,

so, the requirements of Paragraph 20BA of the Sixth Schedule had also been followed i.e., the requirement of exercising his discretion after consulting",,,

the COM.,,

63. Mr. DK Mishra, learned senior counsel, in order to buttress his contention that the Governor had invoked the provisions of Paragraph 20BA of the",,,

Sixth Schedule to exercise the power under Paragraph 16(2) also refers to the averments made in paragraph 14 of the affidavit of the CS and,,

paragraph 12 of the affidavit of the Governor Secretariat wherein it is provided

that the mandate of Paragraph 20BA had been fully complied with and,,
contends that the said averments also takes it beyond any doubt that the Governor had exercised and invoked the provisions of Paragraph 20BA,,

64. Per contra Mr. M. Sarania, learned counsel for the intervener Mr. N. Sarania raised the contention that historically Bodoland which comprises of",,,

plains tribal people was never included in the earlier legislation pertaining to the special rights granted to the hills tribe people in the State of Assam.,,,

The learned counsel refers to the Schedule Districts Act, 1874 which provides for rights given to the hills tribe people in the present State of Assam as",,,

well as the other hills tribe people in the erstwhile undivided State of Assam which now comprises of the States of Nagaland Mizoram Meghalaya etc.,,,

The learned counsel accordingly also referred to the subsequent legislation pertaining to the hills tribe people and submits that at no point of time the,,

Bodoland which comprises of plains tribe people was ever included in the legislation providing certain rights to the hills tribe people. By drawing an,,

analogy the learned counsel points out that in paragraph 20BA of the Sixth Schedule, while referring to the Karbi Anglong Autonomous Council and",,,

North Cachar Hills Autonomous Districts, the reference to BTAD had deliberately been omitted as the provisions of Paragraph 20BA are not made",,,

applicable to BTAD because of the above historical reason.,,,

65. Otherwise, Mr. M. Sarania, learned counsel for all other purpose adopts the arguments advanced by Mr. D. Saikia, learned senior counsel and Mr.",,,

DK Mishra, learned senior counsel.",,,

66. Mr. N. Dutta, learned senior counsel for the petitioners in reply to the contention of Mr. DK. Mishra, learned senior counsel for the intervener",,,

UPPL that the pronouncement in Samsher Singh (supra) as regards the Governor acting as a Discretionary Governor while exercising the power,,

under Paragraph 9(2) of the Sixth Schedule, is illustrative and not exhaustive and that the said provision is an obiter dicta, made a submission that the",,,

provision in M.P. Special Police Establishment (supra) in Paragraph 12 that the exceptions set out in the judgment in Samsher Singh (supra) are not,,

exhaustive, does not lead to an inference that the Governor in exercising the powers under the various provisions of the Sixth Schedule, other than",,,

Paragraph 9(2), acts as a Discretionary Governor.",,,

67. Mr. N. Dutta, learned senior counsel in his reply reiterates that the

Constitution of India recognizes that the Governor either acts as a",,,
Constitutional Governor as provided in Article 163(1) of the Constitution or he acts as a Discretionary Governor as provided in the various provisions,,
by or under the Constitution. According to the learned senior counsel three types of discretions are discernible:-,,

- i) Discretion simpliciter where the Governor acts as per his own discretion,,
- ii) Discretion with prior consultation of the COM as provided in Articles 371A(1b), 371H(a) and Paragraph 20BA of the Sixth Schedule etc.",,,
- iii) Discretion as per the direction of the President as provided in Article 371F(g),,,

68. The Parliament in its wisdom having distinguished between a "discretion simpliciter" and "discretion after consultation" and having,,

provided separate provisions for exercising the different discretions, the Governor cannot exercise a "discretion simpliciter" in respect of",,,

exercising power where "discretion after consultation" is being provided for. Mr. N. Dutta, learned senior counsel in other words made the",,,

submission that for exercising the power under Paragraph 16(2) of the Sixth Schedule for which the Governor is required to invoke the provisions of,,

Paragraph 20BA, and Paragraph 20BA having provided for exercising discretion after consulting the COM, the Governor cannot exercise a discretion",,,

simpliciter for discharging his functions under Paragraph 16(2) and such discretion has to be exercised only after consulting the COM.,,,

69. Mr. N. Dutta, learned senior counsel also raised a contention in reply that records reveal that there were meetings of the COM on 07.04.2020 and",,,

12.04.2020 and therefore, it cannot be accepted that the matter could not be placed before the COM on 25.04.2020 or on any prior date, as because",,,

all the ministers were not available.,,,

As regards the contention of Mr. N. Dutta, learned senior counsel that the matter was deliberately not placed before the COM prior to 25.04.2020, so",,,

as to enable the respondents to derive an undue benefit, Mr. D. Saikia, learned senior counsel for the respondents replied that the meeting the COM",,,

on 07.04.2020 and 12.04.2020 had its own urgent agenda related to the Covid-19 pandemic and at that stage the priority was not for a consideration on,,

the term of the BTC coming to an end.,,,

70. Mr. N. Dutta, learned senior counsel in reply also raised a contention that the Government cannot bestow a discretion to the Governor and the only",,,

discretion that the Governor can exercise for exercising his powers under Paragraph 16(2) is to exercise his discretion after consultation with the,,

COM as provided in Paragraph 20BA.,,,

If on the other hand the provisions of Paragraph 20BA of the Sixth Schedule are not applicable to BTAD or that as contended by the respondents the,,

Governor had acted as a Constitutional Governor, the law declared by the Supreme Court in *Samsher Singh (supra)*, *Rameshwar Prasad (supra)*,",,,

Edwingson Bareh (supra) and *Nabam Rebia (supra)* and also in *S.R. Bommai(supra)* would be applicable and the Governor can act only on the aid,,

and advice of COM.,,,

71. With regard to the contention of Mr. D.K. Mishra, learned senior counsel for the intervener UPPL that sending the file to the Governor on",,,

24.04.2020 pursuant to the endorsement of the CM of the same date was itself the consultation contemplated under Paragraph 20BA of the Sixth,,

Schedule, Mr. N. Dutta, learned senior counsel for the petitioners submitted that the relevant file went to the Governor on two dates, i.e. 24.04.2020",,,

and 26.04.2020 and prior to none of the dates there were any prior consultation by the Governor with the COM. With regard to the contention of Mr.,,,

D. Saikia, learned senior counsel for the respondents that there was a prior consultation with the Government, Mr. N. Dutta, learned senior counsel",,,

submitted that the Parliament had not provided for any consultation with the Government and therefore, any consultation with the Government without",,,

there being a consultation or aid and advice of the COM does not fulfill the requirement of the law. With regard to the submission of Mr. D. Saikia,",,,

learned senior counsel that there was a ratification by the COM on 27.04.2020, Mr. N. Dutta, learned senior counsel submitted that a subsequent",,,

ratification after the exercise of his function by the Governor would be unacceptable in law and no such ratification can remove the procedural lacuna,,

that had already taken place.,,,

72. Mr. N Dutta, learned senior counsel for the petitioners by referring to the concept of "consultation" as provided in paragraph 33 of *State of*,,,

Bihar and Another Vs. Bal Mukund Sah and Others reported in (2000) 4 SCC 640 s,ubmitted that in order to make a consultation effective, there has",,,

to be an interchange of views between the authority who is required to consult and the authority who is required to be consulted. Reference had also,,

been made to the pronouncement of the Supreme Court in paragraph 27 of Pu Myllai Hlyccho Vs. State of Mizoram reported in (2005) 2 SCC 9,2",,,

wherein it is provided that when the Governor invokes the provision of Paragraph 20BB of the Sixth Schedule, the Governor shall consult the COM",,,

and if he thinks necessary the District Council or the Regional Council concerned, and take such action as he considers necessary in his discretion.",,,

73. By referring to the said two pronouncements of the Supreme Court, Mr. N Dutta, learned senior counsel submitted that the procedure adopted in",,,

the instant case by the authorities leading to the order/note of the Governor dated 25.04.2020 does not meet the requirement of there being an",,,

effective consultation, inasmuch as, there is no interchange of views between the Governor and the authorities in the Government of Assam.",,,

74. On a conspectus of the aforesaid contentions and submissions of the parties, the following core issues and ancillary issues has arisen for an",,,

adjudication:,,

Core issues:,,

(i) In exercising his functions under Paragraph 16(2) of the Sixth Schedule leading to the two notifications dated 27.04.2020, whether the Governor",,,

had acted as a Constitutional Governor or had acted as a Discretionary Governor and if yes, whether the provisions of Paragraph 20BA of the Sixth",,,

Schedule was invoked?,,

(ii) If the Governor had acted as a Constitutional Governor, whether the requirements of Article 163(1) of the Constitution, or if the Governor had",,,

acted as a Discretionary Governor, whether the requirements of Paragraph 20BA of the Sixth Schedule, had been complied with?",,,

(iii) In arriving at his opinion/decision contained in the notes/order dated 25.04.2020 and 27.04.2020, respectively, whether the Governor had taken into",,,

consideration any irrelevant material, so as to render the opinion/ decision to be unsustainable?",,,

(iv) Whether the Governor was guided by any extraneous consideration or had taken into consideration materials that were not reflected to have been",,,

taken into consideration in the order/notes dated 25.04.2020 and 27.04.2020?,,

(v) Whether the option of exercising the power under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule was available to the Governor in the",,,

background of the factual situation that as on the day the opinion/decision was

formed by the Governor, five out of the eight stages of the election to",,,
the BTC was already over and, therefore, it cannot be construed that it was not impracticable to hold the election?"",,

(vi) Whether the third prayer in the writ petition for a writ in the nature of mandamus directing the respondents to extend the term of the General,,

Council of the BTC can be decided in favour of the petitioners? The corollary question that would arise is whether after expiry of the term, whether",,,

an extension can be ordered and secondly, whether a writ in the nature of mandamus would be maintainable in the facts and circumstance of the",,,

present case?,,

(vii) Whether the petitioners have a locus-standi to assail the notifications dated 27.04.2020, by which the Governor has assumed the administration of",,,

the BTC, and whether there is any delay and laches on the part of the petitioners in instituting the writ petition, more particularly, with reference to the",,,

prayer no. (c) for a direction to extend the General Council of the BTC?,,

Ancillary issues:-,,

(i) Whether the provisions of Paragraph 20BA of the Sixth Schedule are applicable to the BTAD?,,

(ii) Whether the respondent authorities in their deliberations with the Governor leading to the opinion/decision dated 25.04.2020 and 27.04.2020, had",,,

not followed the procedure prescribed in the REB 1968, thereby rendering the entire procedure adopted to be unsustainable?"",,

75. For convenience sake, we take up the ancillary issues for a decision prior to adventing upon the core issues."",,

Whether the provisions of Paragraph 20BA of the Sixth Schedule are applicable to the BTAD?,,

76. Mr. DK Mishra, learned senior counsel for the intervener UPPL by referring to paragraphs 14 of the affidavit of the CS and 12 of the affidavit of",,,

the Governor Secretariat had raised the contention that it is an admitted position of the respondents that the provisions of Paragraph 20BA of the Sixth,,

Schedule had been invoked by the Governor in issuing the impugned notifications both dated 27.04.2020, whereby the administration of the BTAD was",,,

assumed by exercising the powers provided in Paragraph 16(2). The said averments of the respondents in their affidavits are also being relied upon to,,

sustain the submission that the provisions of Paragraph 20BA of the Sixth

Schedule are also applicable to the BTAD.,,

Mr. D Saikia, learned senior counsel for the respondents on the other hand had made a categorical statement that the Governor while exercising his",,

powers under Paragraph 16(2) of the Sixth Schedule had not invoked the provisions of Paragraph 20BA and had in fact acted as a Constitutional,,

Governor as provided in Article 163(1) of the Constitution. Mr. Saikia explained that the purport of the averments made in paragraph 14 of the,,

affidavit of the CS and paragraph 12 of the affidavit of the Governor Secretariat, wherein it is stated that the provisions of Paragraph 20BA of the",,

Sixth Schedule had been complied with, would be that although the Governor had acted as a Constitutional Governor, but in doing so, had also",,

complied with the requirements of Paragraph 20BA, which are also inherent in the procedural requirements under Article 163(1) of the Constitution.",,

77. We are of the view that merely on the basis of the averments made in paragraph 14 of the affidavit of the CS and paragraph 12 of the affidavit of,,

the Governor Secretariat, wherein it is provided that the provisions of Paragraph 20BA of the Sixth Schedule had been complied with, it cannot be",,

inferred that the Governor had invoked the provisions of Paragraph 20BA in causing the notifications dated 27.04.2020 to be issued. The word,,

â??complyâ?? as found in the Oxford English Reference Dictionary means â??to act in accordance withâ?? whereas the word â??invokeâ?? as,,

found in the Cambridge Dictionary means â??to use a law in order to achieve something.â?? Merely because in the affidavit it had been stated that,,

the provisions of Paragraph 20BA of the Sixth Schedule had been complied with, meaning thereby that the authorities had acted in accordance with",,

the requirements of Paragraph 20BA, but that by itself cannot mean that the authorities had also invoked the provisions of Paragraph 20BA, and that",,

they had used the powers conferred under Paragraph 20BA for causing the notifications dated 27.04.2020 to be issued.,,

78. Mr. DK Mishra, learned senior counsel for the intervener UPPL also raised the contention that Paragraph 20BA to the Sixth Schedule had been",,

brought in by the Sixth Schedule to the Constitution (Amendment) Act 1995. Section 2 of the said Amendment Act of 1995, inter-alia provides as",,

under:-,,

â??The Sixth Schedule to the Constitution shall, in its application to the State of

Assam, have effect subject to the following modifications, namely:-",,,

(1)â?|â?|â?|â?|â?|...,,

(2)â?|â?|â?|â?|...,,

(3)â?|â?|â?|â?|...,,

(4)â?|â?|â?|â?|â?|...,,

(5)â?|â?|â?|â?|â?|...,,

(6) After Paragraph 20B, the following paragraph shall be inserted, namely:-",,,

20BA. Exercise of discretionary powers by the Governor in the discharge of his functions.- The Governor in the discharge of his functions under sub-,,

paragraphs (2) and (3) of paragraph 1, sub-paragraphs (1), (6), sub-paragraph (6A) excluding the first proviso and sub-paragraph (7) of paragraph 2,",,

sub-paragraph (3) of paragraph 3, sub-paragraph (4) of paragraph 4, paragraph 5, sub-paragraph (1) of paragraph 6, sub-paragraph (2) of paragraph",,,

7, sub-paragraph (4) of paragraph 8, sub-paragraph (3) of paragraph 9, sub-paragraph (3) of paragraph 10, sub-paragraph (1) of paragraph 14, sub-"",,,

paragraph (1) of paragraph 15 and sub-paragraphs (1) and (2) of paragraph 16 of this Schedule, shall, after consulting the Council of Ministers and the",,,

North Cachar Hills Autonomous Council or the Karbi Anglong Autonomous Council, as the case may be, take such action as he considers necessary",,,

in his discretion.â???,,,

According to Mr. DK Mishra learned senior counsel the provisions of Section 2 of the Sixth Schedule (Amendment) Act of 1995 being applicable to,,

the State of Assam, and BTAD being located within the State of Assam, and in the absence of any expressed provisions in the Sixth Schedule itself",,,

excluding the BTAD from the purview of Paragraph 20BA, it cannot be inferred that the provisions of Paragraph 20BA would not be applicable to the",,,

BTAD. According to the learned senior counsel as the provisions of the Sixth Schedule are made applicable to the BTAD by the Sixth Schedule to the,,

Constitution (Amendment) Act, 2003, all the existing provisions of the Sixth Schedule on the date when the Sixth Schedule (Amendment) Act, 2003",,,

was enacted would be applicable to the BTAD also. As Paragraph 20BA was available in the Sixth Schedule on the date when the Sixth Schedule,,

(Amendment) Act 2003 was enacted, therefore, the provisions of Paragraph 20BA would also be applicable to the BTAD.",,

Mr. DK Mishra, learned senior counsel further referred to the provisions of Paragraphs 1(2), 4, 10 and 16 of the Sixth Schedule to submit that",,,

wherever the Parliament intended that a particular provision of the Sixth Schedule would not be applicable to the BTAD, expressed exclusionary",,,

provision thereof had been incorporated in the Sixth Schedule itself to indicate that the given particular provision would not be applicable to the BTAD.,,,

As the scheme of the Sixth Schedule itself provides for an expressed exclusionary provision in respect of whichever provision of the Sixth Schedule,,,

would not be applicable to the BTAD, non-provision of any such expressed exclusionary provision as regards the applicability of Paragraph 20BA to",,,

the BTAD, would also have to be interpreted in the manner that the provisions of Paragraph 20BA would be applicable to the BTAD.",,,

79. According to Mr. DK Mishra, learned senior counsel the aspect that Paragraph 20BA was not amended by the Sixth Schedule (Amendment) Act",,,

of 2003 by bringing in the reference to BTAD in the said Paragraph and even after the Sixth Schedule (Amendment) Act of 2003, reference in",,,

Paragraph 20BA remained confined to the Karbi Anglong Autonomous Council and North Cachar Hills Autonomous Council, it by itself cannot lead",,,

to an inference that the provisions of Paragraph 20BA were not made applicable to BTAD. The learned senior counsel submits that the only inference,,,

of BTAD being not referred in Paragraph 20BA even after the Sixth Schedule (Amendment) Act of 2003 would be that in order to exercise the,,,

discretion, Governor in respect of BTAD is not required to consult the General Council of the BTC and the discretion can be exercised only upon a",,,

prior consultation with the COM.,,,

80. Mr. N Dutta, learned senior counsel for the writ petitioners on the other hand submitted that unlike the areas under the Karbi Anglong",,,

Autonomous Council and North Cachar Hills Autonomous Council, the areas included in the BTAD comprises of the plains tribal people belonging to",,,

the Bodo community, as well as people belonging to other non-tribal communities. Because of the diverse composition of the people residing in the",,,

BTAD and as a delicate balance had been achieved as regards the co-existence of the tribal and the non-tribal people in the BTAD, the Parliament in",,,

its wisdom thought it appropriate not to make the provisions of Paragraph 20BA applicable to the BTAD. According to the learned senior counsel the,,,

consequence of Paragraph 20BA being not applicable to the BTAD, would be that the Governor while exercising any of the powers under the Sixth",,,

Schedule, except for Paragraph 9(2), would act as a Constitutional Governor and not as a Discretionary Governor. The desirability of the Governor to",,,

act as a Constitutional Governor flow from the delicate balance that had been achieved as regards the co-existence of the tribal and the non-tribal",,,

people in the BTAD.,,,

81. Mr. M Sarania, learned counsel for the intervener, Mr. N. Sarania had referred to the earlier legislations pertaining to the special rights granted to",,,

the hills tribe people in the State of Assam to raise the contention that BTAD comprises of the plains tribe people and not hills tribe and therefore",,,

historically BTAD was not included in any such earlier legislation. The classification sought to be made in respect of the BTAD on the basis of it",,,

comprising of plains tribe people is being urged upon to submit that the provisions of Paragraph 20BA of the Sixth Schedule is not applicable to the",,,

BTAD.,,,

82. The contention raised by Mr. M Sarania, learned counsel for the intervener Mr. N Sarania would be difficult to be accepted and the classification",,,

on historical reasons based upon the composition of the type of tribal people residing in the area, sought to be made in respect of the BTAD, cannot be",,,

a reason to exclude BTAD from the purview of the provisions of Paragraph 20BA of the Sixth Schedule.,,,

83. With regard to the contentions raised by Mr. N Dutta, learned senior counsel for the petitioners that the provisions of Paragraph 20BA were",,,

consciously being not made applicable to the BTAD by the Parliament as because it comprises of a delicate co-existence of the plains tribe people and",,,

the non-tribal people, we find that the reasoning advanced by the learned senior counsel may not by itself be sufficient to arrive at a definite conclusion",,,

that the provisions of Paragraph 20BA are not applicable to the BTAD. The interpretation given by Mr. DK Mishra, learned senior counsel for the",,,

intervener UPPL that by not referring to the BTAD in Paragraph 20BA even after the Sixth Schedule (Amendment) Act 2003, can be inferred to",,,

mean that in exercising the discretionary power under Paragraph 20BA in respect of BTAD, the Governor is not required to consult the Autonomous",,,

District Council of BTAD, but is required to have a prior consultation with the

COM, is being contended to counter the contentions raised by Mr. N",,,
Dutta, learned senior counsel for the petitioners.",,,

84. On the other hand, the submission of Mr. DK Mishra, learned senior counsel for the intervener UPPL that the provisions of Paragraph 20BA",,,

being made applicable to the State of Assam as per Section 2 of the Sixth Schedule (Amendment) Act 1995 and BTAD being included within the,,

State of Assam and wherever the Parliament had intended for a particular existing provision of the Sixth Schedule to be made not applicable to the,,

BTAD, had provided for an expressed exclusionary provision thereof and no such expressed exclusionary provision having been provided in respect of",,,

the applicability of Paragraph 20BA to the BTAD, the interpretation thereof would be that the provisions of Paragraph 20BA would be applicable to",,,

the BTAD also, had not been countered by any of the parties.",,,

85. In this respect, submissions had also been made that as per the laws of interpretation wherever a statute provides for an expressed exclusionary",,,

clause in respect of any of the provisions in the statute to be made applicable for a particular entity, it has to be inferred that in respect of the other",,,

provisions of the same statute for which no exclusionary clause had been provided in respect of the said particular entity, it would have to be",,,

interpreted that the other provisions of the statute concerned would be applicable to the given particular entity, save and except any such exception",,,

that can be inferred from the relevant provision itself.,,,

86. But, however, it being the specific stand of the respondents that the Governor while causing the issuance of the notifications dated 27.04.2020 had",,,

acted as a Constitutional Governor by following the procedure of Article 163(1) of the Constitution and had not acted as a Discretionary Governor by,,

invoking the provisions of Paragraph 20BA of the Sixth Schedule and also considering the aspect that in the facts and circumstances of the present,,

case, the Governor was required to act as a Constitutional Governor and, therefore, the provisions of Paragraph 20BA were not invoked, we refrain",,,

from deciding the issue on its merit in the present case as to whether the provisions of Paragraph 20BA of the Sixth Schedule are also applicable to,,

the BTAD.,,,

Whether the respondent authorities in their deliberations with the Governor leading to the opinion/decision dated 25.04.2020 and 27.04.2020, had not",,,

followed the procedure prescribed in the REB 1968, thereby rendering the entire procedure adopted to be unsustainable?",,

87. Mr. N Dutta, learned senior counsel for the petitioners had raised the contention that in arriving at the opinion/decision dated 25.04.2020 and",,,

27.04.2020, respectively, the Governor had not acted on the aid and advice of the COM and in fact, when the said opinion/decision was rendered, the",,,

aid and advice of the COM was not in existence. Further, as per the averments made in the affidavit of the CS in paragraph 8, the CM had made his",,,

endorsement to the Governor on 24.04.2020 being the view of the State Government, for necessary action by the Governor on any of the two",,,

alternatives provided in the note of the CS dated 04.04.2020. In paragraph 13 of the same affidavit, it had been averred that the Governor had duly",,,

consulted and taken the aid and advice of the Government of Assam, including the CM, the Departmental Minister and thereafter the advice of the",,,

CM was ratified by the COM. In the affidavit of the Governor Secretariat, in paragraph 11, it had been averred that the Governor upon due",,,

consideration of the advice of the Government of Assam, as expressed by the CM, who is the Head of the COM, had expressed his views and",,,

returned the file on 25.04.2020 with a detailed note. In the said paragraph, it had also been averred that the Governor had duly consulted and taken the",,,

aid and advice of the Government of Assam, including the Head of the COM i.e. the CM, who represents the COM as well as the Departmental",,,

Ministers while arriving at his decision to invoke the provision of Paragraph 16(2) of the Sixth Schedule instead of the first proviso to Paragraph,,

2(6A).,,

88. By referring to such averments in the affidavits, it is firstly a contention of the petitioners that the decision of the Governor to exercise the power",,,

under Paragraph 16(2) of the Sixth Schedule, as contained in the notes/orders dated 25.04.2020 and 27.04.2020, were arrived at without there being",,,

any aid and advice of the COM and the aid and advice of the Government of Assam cannot be a substitute for the aid and advice of the COM.,,,

Secondly, it was also a contention that the REB 1968 having provided a specific procedure as to how the policy decisions of the Government are to be",,,

arrived at and the aid and advice given by the Government of Assam by means of the note/endorsement of the CM of 24.04.2020 being processed,,

without following the procedure prescribed in the REB 1968, such aid and advice of the Government of Assam would also be untenable and cannot be",,,

acted upon by the Governor to arrive at the opinion/decision contained in the notes/orders dated 25.04.2020 and 27.04.2020.,,,

89. To substantiate his submission, Mr. N Dutta, learned senior counsel for the petitioners referred to the provision of Rule 31(1)(xv)(j) of the REB",,,

1968 which pertains to proposals for dissolution of a District or Regional Council under the Sixth Schedule, which, amongst others, shall be submitted",,,

to the CM before the issuance of any order. Reference was also made to the provision of Rule 31(2)(iii)(e), which again pertains to proposals for",,,

dissolution of a District or Regional Council, which requires that such cases shall be submitted by the Secretary of the Department concerned, with the",,,

approval of the CM, to the Governor before the issuance of any such order. Thereafter, reference was also made to the provision of Rule 32(b) which",,,

provides that the CM shall if the Governor so requires, submit for consideration of the Cabinet any matter on which a decision had been taken by a",,,

Minister but which has not been considered by the Cabinet.,,,

By referring to the aforesaid provisions of the REB 1968, it is contended by the learned senior counsel for the petitioners that in making the",,,

endorsement of the CM dated 24.04.2020 the required procedure had not been followed, and therefore, the Governor ought to have required the",,,

endorsement of the CM to be submitted for a consideration of the Cabinet.,,,

Mr. Dutta, learned senior counsel for the petitioners also referred to the provision of Rule 14 of the REB 1968 which provides that the matters",,,

referred in the Second Schedule to the Rules shall be submitted to the CM after consideration by the Minister concerned for obtaining his orders for,,

circulation of the case under Rule 15 or for bringing it up for consideration at a meeting of the Cabinet. Accordingly, reference was made to the",,,

Second Schedule to the Rules, which includes amongst others, proposals involving any major policy or practice.",,,

By referring to the said Rule, a contention had been raised that the dissolution of the General Council of the BTC and taking over its administration by",,,

the Governor would have to be construed to be a major policy decision or practice. Accordingly, a submission was made that as the requirement of",,,

Rule 14 of the REB 1968 was not followed, the endorsement dated 24.04.2020 of

the CM would be vitiated and the Governor could not have acted",,,
upon it to arrive at his decisions/orders of 25.04.2020 and 27.04.2020.,,,
90. Mr. D Saikia, learned senior counsel for the respondents per-contra had referred to the provision of Rule 15(1) of the REB 1968 which provides",,,
that the CM may direct that any case referred in the Second Schedule, instead of being brought up for a discussion at a meeting of the Cabinet, be",,,
circulated to the Ministers for opinion and if all the Ministers are unanimous and the CM thinks that the discussion at a meeting of the Cabinet is,,
unnecessary, the case shall be decided without such discussion. Only if the Ministers are not unanimous or if the CM thinks that a discussion at a",,,
meeting is necessary, the case shall be discussed at a meeting of the Cabinet. Reference had also been made to the provision of Rule 17 of the REB",,,
1968, which provides that when it had been decided to bring a case before the Cabinet, the Department to which the case belongs, shall, unless the",,,
CM otherwise directs, prepare a memorandum indicating the salient facts of the case and the points for decision. Reference was also made to the",,,
provision of Rule 19(1) of the REB 1968, which provides that the memorandum so prepared shall be sent by the Secretary to the Cabinet and to the",,,
CM and other Ministers, so as to reach them by two clear days before the date of such meeting and the CM may, in case of an emergency, curtail the",,,
period of two days.,,,
By referring to the aforesaid provisions of REB 1968, it was the contention of Mr. D Saikia, learned senior counsel for the respondents that in the",,,
event of there being an emergent situation, the CM has the discretion to deviate from the procedure prescribed in the REB 1968, provided that there is",,,
unanimity between the Ministers on the decision. It was contended that the endorsement of the CM of 24.04.2020 was a unanimous view of all the,,
Ministers and, therefore, the deviation thereof from the provisions of the REB 1968 was a permissible exercise under the Rules. Further, the",,,
endorsement of 24.04.2020 had given the Governor the discretion to exercise any of the two options between extending the General Council of the,,
BTC by exercising the power under the 1 st proviso to Paragraph 2(6A) of the Sixth Schedule or to assume to himself the administration of the,,
Council by exercising the power under Paragraph 16(2). The subsequent note of the Departmental Minister urging upon the Governor to exercise the,,

first option, cannot be said to be the basis to show that there was no unanimity between the Ministers, as because the first option urged upon by the",,,

Departmental Minister was also an option contained in the endorsement of the CM of 24.04.2020.,,,

91. Further contention had been raised that the procedure prescribed in the REB 1968, which is the Rules of the Executive Business of the State",,,

framed under Article 166(3) of the Constitution, had been held by the Supreme Court in State of Bihar â?"vs- Sunny Prakash reported in (2013) 3",,,

SCC 559 and Narmada Bachao Andolon â?"vs- State of M.P. reported in 2011 (12) SCC 333, to be directory. From the said point of view also any",,,

deviation from the prescribed procedure of REB 1968 cannot vitiate the decision of the Government contained in the endorsement of the CM of,,

24.04.2020.,,,

92. Mr. DK Mishra, learned senior counsel for the intervener UPPL supports the contention raised by Mr. D Saikia, learned senior counsel for the",,,

respondents and for the sake of avoiding a repetition, we do not reproduce the summary of the contention of Mr. DK Mishra.",,,

93. No material has been placed before the Court which may indicate that the complete procedure prescribed under the REB 1968 had been followed,,

while arriving at the view of the CM as contained in the endorsement dated 24.04.2020. Nor the petitioners have placed any material to substantiate,,

their contention that the complete procedure prescribed under REB 1968 had not been followed. The petitioners also proceed on the presumption that,,

as nothing had been placed on record, as to what happened to the file between 04.04.2020 when the note of the CS was made and 24.04.2020 when",,,

the endorsement of the CM was made, therefore, it is to be understood that the required procedure was not followed. The respondents take the stand",,,

that it being permissible under the REB 1968 for the CM to make a deviation from the prescribed procedure in the event of there being an emergent,,

situation and the prevalence of the Covid-19 pandemic being a reflection of an emergent situation, the deviation, if any, from the procedure as asserted",,,

by the petitioners, would not vitiate the view of the CM contained in the endorsement dated 24.04.2020. Further, it is also the stand that the procedure",,,

prescribed in the REB 1968 are directory and therefore, any deviation thereof would not vitiate the opinion formed, decision made or the view",,,

expressed in any such note, order or endorsement for which the procedure of the REB 1968 was required to have been followed.",,,

As regards the proposition that the provisions of the REB 1968 are directory, reliance has been made on the following propositions by the Supreme",,,

Court, which are extracted as below:-",,,

i) Paragraph 20 of State of Bihar â?"vs- Sunny Prakash reported in (2013) 3 SCC 559,,,

â??20.â?|.This view has been reaffirmed by this Court in subsequent decisions : see Ghaio Mall and Sons v. The State of Delhi (1959) S.C.R.,,,

1424), and it is, therefore settled law that provisions of Art. 166 of the Constitution are only directory and not mandatory in character and, if they are",,,

not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the",,,

Governorâ?|.â?,,

ii) Paragraph 32 to 37 of Narmada Bachao Andolan â?"vs- State of M.P. reported in 2011 (12) SCC 333,,,

â??32.Earlier cases of this Court suggest that the Rules of Business are to be construed as directory so that substantial compliance with them would,,,

suffice to uphold the validity of the relevant order of the Government.,,,

33. Similarly, in R. Chitralekha, a Constitution Bench of this Court had observed that it is settled law that the provisions of Article 166 of the",,,

Constitution are only directory and not mandatory in character. In para 4 it was held as under:,,,

4â?|. This view has been reaffirmed by this Court in subsequent decisions; see Ghaio Mal & Sons v. State of Delhi and it is therefore, settled law that",,,

provisions of Article 166 of the Constitution are only directory and not mandatory in character and, if they are not complied with, it can be established",,,

as a question of fact that the impugned order was issued in fact by the State Government or the Governor.â?,,

The judgment in R. Chitralekha has been subsequently cited for this proposition in Bannari Amman Sugars Ltd. v. CTO.,,,

34. In Dattatraya Moreshwar Pangarkar v. State of Bombay a Constitution Bench of this Court held that an omission to make and authenticate an,,,

executive decision in the form mentioned in Article 166 does not make the decision itself illegal, on the basis that its provisions were directory and not",,,

mandatory.,,

35. However, in the recent decisions in MRF Ltd. v. Manohar Parrikar, a two-Judge Bench of this Court has sought to distinguish the abovementioned",,,

judgments and taken the view that in case there is non-compliance with the Business Rules framed under Article 166(3) of the Constitution, the",,,

notification issued in violation of the Business Rules is void ab initio and all actions consequent thereto are null and void. The Court held: (SCC pp.,,

418-19 para 107),,,

107. Thus, from the foregoing, it is clear that a decision to be the decision of the Government must satisfy the requirements of the Business Rules",,,

framed by the State Government under the provisions of Article 166(3) of the Constitution of India. In the case on hand, as has been noticed by us and",,,

at the High Court, the decisions leading to the notification do not comply with the requirements of the Business Rules framed by the Government of",,,

Goa under the provisions of Article 166(3) of the Constitution and the notifications are the result of the decision taken by the Power Minister at his,,

level. The decision of the individual Minister cannot be treated as the decision of the State Government and the notifications issued as a result of the,,

decisions of the individual Minister which are in violation of the Business Rules are void ab initio and all actions consequent thereto are null and void",,,

36. On the other hand, the Crawford Baylay & Co. v. Union of India, a two-Judge Bench has accepted that the Rules of Business framed under",,,

Article 77 of the Constitution, which is analogous to Article 166, are directory and not mandatory, with the following observations:",,,

It was next contended with reference to the Allocation of Business Rules that the Central Government in the Urban Department can appoint an Estate,,

Officer but in the present case, the Finance Department has appointed an Estate Officer which is in violation of the Allocation of the Business Rules,",,

1961. Though the Division Bench dealt with the aspect exhaustively in its judgment and held that the provisions of the Business Rules are not,,

mandatory and will not vitiate the appointment, we fully agree that the Rules of Business are administrative in nature for governance of the business of",,,

the Government of India framed under Article 77 of the Constitution of India. In this connection, the Division Bench referred to the decision of this",,,

Court in Dattatraya Moreshwar Pangarkar v. State of Bombay. There analogous

Rules of Business framed by the State under Article 166 of the Constitution of India came up for consideration and it was observed that they are directive and no order will be invalidated, if there is a breach thereof.

We have considered the larger Bench judgment of this Court in *R. Chitralekha* and taken note of the fact that MRF Ltd. is distinguishable from the case at hand since that case dealt with rules pertaining to financial implications for which there were no provisions in the Appropriation Act, and so the rules required mandatory compliance. Here, there is no issue of financial repercussions. The issue here is whether the Council of Ministers is permitted to delegate the power to amend its decision to a Committee of Ministers consisting of the Ministers in charge of the Departments concerned and the Chief Minister, and whether such amendment needs to be consistent with Rules of Business framed under Article 166 of the Constitution of India. The case law provides that delegation is permissible and that Rules of Business are directory in nature. In view of the above, we find that delegation of power is permissible. Submissions so made on behalf of the appellant in this regard are preposterous.

94. Considering the above, more particularly, the aspect that the REB 1968 itself provides for a deviation from the procedure under the Rules in the event of there being an emergent situation and further the procedure prescribed in the REB 1968 being directory, we answer the question that in spite of the procedure of REB 1968 having not been scrupulously followed, the same by itself would not vitiate the view of the CM in the endorsement dated 24.04.2020, so as to render the orders/notes of the Governor of 25.04.2020 and 27.04.2020 to be not sustainable. It would be more so as the facts and circumstances of the case reveal that there was a subsequent ratification of the view of the CM contained in the endorsement dated 24.04.2020 by the COM in its meeting held on 27.04.2020. Having said so, we however, do not mean to say that the subsequent ratification by the COM on 27.04.2020 of the view of the CM in the endorsement of 24.04.2020 to be that there was an aid and advice by the COM even as on 24.04.2020.

Whether the option of exercising the power under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule was available to the Governor in the

background of the factual situation that as on the day the opinion/decision was formed by the Governor, five out of the eight stages of the election to",,,

the BTC was already over and therefore, it cannot be construed that it was not impracticable to hold the election?"",,

95. Mr. DK Mishra, learned senior counsel for the intervener UPPL had raised a contention that the concept "election" had been decided by the",,

Supreme Court to mean to include all the stages from the initial stage of issuing the notification declaring the election up to the final stage of declaring",,

the result and notifying the winning candidates. For the purpose, the pronouncement of Supreme Court in NP Ponnuswami (supra), Mohinder Singh",,

Gill (supra) had been relied upon. By relying upon the said concept of "election", it was the contention of Mr. DK Mishra, learned senior counsel",,

that in the election so declared for the BTC, five out of the eight stages were already over when the election stood deferred. Therefore, as five stages",,

were already over and the five stages being also included in the concept of election, it cannot be said that the election to the General Council of the",,

BTC was not held. If it cannot be said that the election to the General Council of the BTC was not held, in that event, the condition precedent of the",,

1st proviso to Paragraph 2(6A) of the Sixth Schedule that there has to be an impracticability to hold the election, would have to be found to be absent",,

in the facts and circumstances of the present case. If the condition precedent of exercising the power under the 1st proviso to Paragraph 2 (6A) of",,

the Sixth Schedule, i.e. the existence of an impracticability to hold the election is absent, the option to exercise power under the 1st proviso to",,

Paragraph 2(6A) would be unavailable to the Governor",,

96. The relevant provisions of the pronouncements of the Supreme Court in paragraph 7 of N.P Ponnuswami (supra) and paragraph 22 of Mohinder",,

Singh Gill (supra), relied upon by Mr. DK Mishra, learned senior counsel to support his submission as regards the concept election are extracted as",,

below:-",,

7. "The discussion in this passage makes it clear that the word "election" can be and has been appropriately used with reference to the",,

entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the",,

process."

Paragraph 22 of Mohinder Singh Gill:-,,

â??22. At the first blush we get the comprehensive impression that every calling in question of an election save, at the end, by an election petition, is",,,

forbidden. What, then, is an election? What is â??calling in questionâ??? Every step from start to finish of the total process constitutes",,,

â??electionâ?,, not merely the conclusion or culminationâ?|â?|â?|.â??",,,

97. In this respect, we also refer to the notification No.SEC.146/2019/92 dated 11.03.2020 of the ASEC by which the electors of the 40 BTC",,,

Constituencies were called upon to elect the members to constitute a new General Council of the BTC. The schedule of the General Election to the,,

BTC 2020 provided in the said notification, which had been extracted in paragraph 7(a) hereinabove, provides the date and time of issuance of notice",,,

of election to be 11.03.2020; last date of filing nomination to be 18.03.2020 from 11.00AM to 3.00PM; scrutiny of nomination to be 19.03.2020; last,,

date for withdrawal of candidature to be 21.03.2020 up to 3.00 PM; publication of the list of contesting candidates to be 21.03.2020 after 3.00 PM;,,

date of poll to be 04.04.2020 from 8.00 AM. to 4.00 PM; date of re-poll, if any, to be 06.04.2020 from 8.00 AM to 4.00 PM; and the date of counting",,,

to be 08.04.2020 from 8.00 AM till completion of counting. Admittedly, by the notification No.SEC.146/2019/117 dated 20.03.2020, the further stages",,,

of the election beyond the fifth stage, i.e. publication of the list of contesting candidates stood deferred. In other words, five stages of the election up",,,

to the stage of publication of the list of contesting candidates were already over,,

98. According to Mr. DK Mishra, learned senior counsel for the intervener UPPL, five stages of the election being already over, the condition",,,

precedent of there being an impracticability to hold the election was no longer in existence and therefore the elections have to be construed to have,,

already been held. The learned senior counsel contends that the five stages which were over being also within the concept of election as pronounced,,

by the Supreme Court in NP Ponnuswami (supra) and Mohinder Singh Gill (supra), therefore, it has to be understood that the election had been held.",,,

If the election had been held, there cannot remain any question as regards the existence of an impracticability to hold the election.",,,

99. Mr. D Saikia, learned senior counsel for the respondents on the other hand raised the contrary contention that as the remaining three stages of the",,,

election had been deferred and was yet to be held and due to the existing situation of the Covid-19 pandemic which rendered the holding of the,,

remaining three stages to be impracticable, the condition precedent of there being an impracticability to hold the election did exist in the facts and",,,

circumstances of the present case.,,

100. Mr. N Dutta, learned senior counsel for the petitioners on the other hand raised the contention by referring to the concept impracticability as held",,,

by the Supreme Court in its pronouncement in paragraphs 28, 29, 30, 31, 32 of Union of India and others Vs. Harjeet Singh Sandhu, reported in (2001)",,,

5 SCC 593 submitted that "impracticable" means impossible to carry out and is normally used for a specific procedure or course of action and,,

sometimes it may be synonymous with the term "impossible"; whereas on the other hand "impractical" often means to be simply,,

"unrealistic" or "not sensible",,,

101. Relevant extracts of the of the pronouncements of the Supreme Court in paragraphs 29, 30, 31 and 32 in Harjeet Singh Sandhu (supra) is as",,,

below:-,,

29. Let us first examine what is the meaning of the term "impracticable" in sub-rule (2) of Rule 14.,,

30. In Major Radha Krishan case this court has held:,,

When the trial itself was legally impossible and impermissible the question of its being impracticable, in our view cannot or does not arise.",,,

"Impracticability" is a concept different from "impossibility" for while the latter is absolute, the former introduces at all events some degree",,,

of reason and involves some regard for practice. According to Webster's Third New International Dictionary "impracticable" means not,,

practicable; incapable of being performed or accomplished by the means employed or at command. "Impracticable" presupposes that the action is,,

"possible" but owing to certain practical difficulties or other reasons it is incapable of being performed. The same principle will equally apply to,,

satisfy the test of "inexpedient" : as it means not expedient; disadvantageous in the circumstances, inadvisable, impolitic. It must therefore be held that",,,

so long as an officer can be legally tried by a Court-Martial the authorities concerned may, on the ground that such a trial is not impracticable or",,,

inexpedient, invoke Rule 14(2). In other words, once the period of limitation of

such a trial is over the authorities cannot take action under Rule 14(2).""",,,

31. The above passage shows that the learned Judges went by the dictionary meaning of the term "impracticable", placed the term by placing it in",,,

juxtaposition with "impossibility" and assigned it a narrow meaning. With respect to the learned judges deciding Major Radha Krishan case, we",,,

find ourselves not persuaded to assign such a narrow meaning to the term. "Impracticable" is not defined either in the Act or in the Rules. In such",,,

a situation, to quote from Principles of Statutory Interpretation (Chief Justice G.P. Singh, Seventh Edition, 1999, pp. 258-259):",,,

When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in",,,

common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental",,,

rule that "the meanings of words and expressions used in an Act must take their colour from the context in which they appear". Therefore",,,

"when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the",,,

diverse meanings a word is capable of, according to lexicographers". As stated by Krishna Iyer, J. "Dictionaries are not dictators of statutory",,,

construction where the benignant mood of a law, and more emphatically, the definition clause furnish a different denotation". In the words of",,,

Jeevan Reddy, J.: "A statute cannot always be construed with the dictionary in one hand and the statute in the other. Regard must also be had to the",,,

scheme, context and to the legislative history." Learned Judge Hand cautioned "not to make a fortress out of the dictionary" but to pay more",,,

attention to the sympathetic and imaginative discovery of the purpose or object of the statute as a guide to its meaning.""",,,

32. In Words and Phrases (Permanent Edition, Vol.20, page 460-461) it is stated that the term "impossible" may sometimes be synonymous with",,,

"impracticable" ; "impracticable" means "not practicable", incapable of being performed or accomplished by the means employed or at",,,

command; "impracticable" is defined as incapable of being effected from lack of adequate means, impossible of performance, not feasible;",,,

"impracticable" means impossible or unreasonably difficult of performance, and is a much stronger term than "expedient". In The Law",,,

Lexicon (P. Ramanatha Aiyer, Second Edition, page 889) one of the meanings assigned to impracticable is "not possible" or "not",

feasible"; at any rate it means something very much more than "not reasonably practicable". In The New Oxford Dictionary of English,

(1998, at p.918), impracticable (of a course of action) is defined to mean "impossible in practice to do or carry out". The same dictionary states,

the usage of the term in these words - "Although there is considerable overlap, impracticable and impractical are not used in exactly the same way.",

Impracticable means "impossible to carry out" and is normally used of a specific procedure or course of action,Impractical, on the other",

hand, tends to be used in more general senses, often to mean simply "unrealistic" : or "not sensible".,

102. By referring to the said pronouncement of the Supreme Court in Harjeet Singh Sandhu (supra) it is contended by the petitioners that the,

prevailing situation of Covid-19 pandemic requiring a deferment of the last three stages of the election had made it impossible to carry out the election,

any further and therefore, it is a situation where it would be impracticable to hold the remaining three stages of the election. It being impracticable to,

hold the remaining three stages of the election, Mr. N Dutta, learned senior counsel for the petitioners contended that the condition precedent for,

exercising the power under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule was in existence in the present matter.,

103. Both Mr. N Dutta, learned senior counsel for the petitioners and Mr. D Saikia, learned senior counsel for the respondents are in agreement that",

due to the prevailing Covid-19 pandemic situation, it was impossible to carry out the further three stages of the election and therefore, it was a",

situation where it was impracticable to hold the election.,

104. Although Mr. DK Mishra, learned senior counsel for the intervener UPPL in principle agrees to the existence of the impracticability, but the",

contention of the learned senior counsel was that five of the stages of the election having already been carried out, and election being a whole concept",

which also includes the five stages that were carried out, it has to be construed that the election was held and therefore, there is no requirement to",

arrive at any conclusion whether it was impracticable to hold the election or not.,

105. To answer the contention raised by Mr. DK Mishra, learned senior counsel

for the intervener UPPL, we extract the relevant provision of the 1st",,,
 proviso to Paragraph 2(6A) of the Sixth Schedule, which is as under:-",,,
 "Provided that the said period of five years may, while a Proclamation of
 Emergency is in operation or if circumstances exist which, in the opinion",,,
 of the Governor, render the holding of elections impracticable, be extended by
 the Governor for a period not exceeding one year at a time and in any",,,
 case where a Proclamation of Emergency is in operation not extending beyond a
 period of six months after the Proclamation has ceased to operate.",,,
 106. The condition precedent of exercising the power under the 1st proviso to
 Paragraph 2(6A) of the Sixth Schedule is the existence of a,,
 circumstance which in the opinion of the Governor "render the holding of
 elections impracticable.",,,
 107. True as held by the Supreme Court in its pronouncement in NP Ponnuswami
 (supra) and Mohinder Singh Gill (supra) the concept election,,
 constitutes the total process, which includes every step from the start to the
 finish. From the said concept of the term "election" even the first",,,
 five stages which were over, also constitutes the election to the General Council
 of the BTC. But, the requirement of the 1st proviso to Paragraph",,,
 2(6A) of the Sixth Schedule is "to render the holding of election
 impracticable." Going by the meaning of the expression "impracticable",,,
 as held by the Supreme Court in Harjeet Singh Shandu (supra), the existence of
 the Covid-19 pandemic situation had rendered it impracticable to",,,
 continue with the further three stages of the election. But the requirement of the
 1st proviso to Paragraph 2(6A) of the Sixth Schedule is rendering of,,
 holding of the election to be impracticable. The word "hold" from which the
 word "holding" emerges as per the meaning in the Oxford,,
 English Reference Dictionary is "to keep or sustain a thing in a particular
 position". Going by the said meaning, the expression "holding",,,
 appearing in the 1st proviso to Paragraph 2(6A) of the Sixth Schedule would
 mean to keep or sustain the election till the last stage of the election is,,
 over. Therefore, if the election cannot be kept sustained till the last stage is over,
 it has to be accepted that the situation had rendered holding of the",,,
 election to be impracticable.,,,
 108. As the requirement of the 1st proviso to Paragraph 2(6A) of the Sixth
 Schedule is to "render the holding of election impracticable", any",,,

situation which renders it impracticable to complete all the stages of the election would have to be construed to be a situation which renders the,

holding of the election impracticable.,,

In the instant case, as the remaining three stages of the election stood deferred as it was impossible to go ahead with the same, we are of the view",,

that the condition precedent of the 1st proviso to Paragraph 2(6A) of the Sixth Schedule to renders the holding of election impracticable, is in",,

existence in the facts and circumstances of the present case. Therefore, it has to be accepted that the Governor also had the option to exercise the",,

power under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule.,,

In arriving at his opinion/decision contained in the notes/orders dated 25.04.2020 and 27.04.2020, respectively, whether the Governor had taken into",,

consideration any irrelevant material, so as to render the opinion/ decision to be unsustainable?",,

And,,

Whether the Governor was guided by any extraneous consideration or had taken into consideration materials that were not reflected to have been,,

taken into consideration in the orders/notes dated 25.04.2020 and 27.04.2020?,,

109. Mr. N. Dutta, learned senior counsel for the petitioners had raised the contention that as discernible from the order/note dated 25.04.2020 of the",,

Governor, the opinion of the learned Advocate General was taken into consideration and was the core basis for the Governor to arrive at his",,

opinion/decision that he would assume the administration of the General Council of the BTC in exercise of the power under Paragraph 16(2) of the,,

Sixth Schedule. By referring to the opinion of the learned Advocate General, as extracted in the order/note of the Governor of 25.04.2020, the learned",,

senior counsel points out that the opinion of the learned Advocate General was that since the MCC was in force and the sitting members of the BTC,,

were also candidates in the election to the BTC, which had to be deferred, it would not be legally permissible to extend the term of the existing Council",,

beyond 27.02.2020, resulting in an exceptional circumstance which warranted the exercise of the power under Paragraph 16(2) of the Sixth Schedule.",,

The learned Advocate General also referred to the paragraph in Alphonse A. Sangma (supra) wherein it is provided that under Paragraph 16(2) of the,,

Sixth Schedule if the Governor is satisfied that the situation had arisen where the

administration of an Autonomous District or Region cannot be,,
carried on in accordance with the provisions of the Sixth Schedule, it would be sufficient for the Governor to assume to himself the administration of",,,
the Autonomous District by a public notification. The learned Advocate General was also of the opinion that for the above reasons and primarily as,,
the MCC was in force, in his legal opinion, the Governor had no alternative other than to exercise his discretion as a residuary power under Paragraph",,,
16(2) of the Sixth Schedule and declare by issuing a public notification that the functions and powers of the BTC shall be exercisable by such person,,
or authority as he may specify in that behalf. The Governor thereafter in his order/note of 25.04.2020 provided that considering all the above he is of,,
the opinion that the emergency caused by the spread of Covid-19 leading to lockdown, social distancing etc., had warranted that the Governor to",,,
assume the administration of the BTC with immediate effect.,,

110. Mr. N. Dutta, learned senior counsel by referring to the above contended that the MCC being in force cannot be a reason not to extend the term",,,
of the existing General Council of the BTC, nor the judgment of the Division Bench of this Court in Alphonse A. Sangma (supra) has any relevance in",,,
the present matter as the said judgment was delivered in the context of the State of Meghalaya, where admittedly a provision in the nature of",,,
Paragraph 20BA of the Sixth Schedule is not applicable and further that there is no such residuary power being vested on the Governor by the,,
Constitution.,,

111. Mr. D. Saikia, learned senior counsel for the respondents on the other hand contended that the election declared for the General Council of the",,,
BTC by the notification dated 11.03.2020 was scheduled to have been held in 8 (eight) stages where the 4th stage was the last date of withdrawal of,,
candidature which was 21.03.2020 up to 3.00 PM and the 5th stage was the publication of the list of contesting candidates which was also 21.03.2020.,,
At that stage the ASEC by the notification dated 20.03.2020 had deferred the remaining stages of the BTC election i.e. the stage after publication of,,
the list of candidates on 21.03.2020. But the MCC that was brought into force by the notification of the ASEC dated 11.03.2020 continued to remain,,
in force. Although the election stood deferred and the MCC remained in force, there was no bar on the respective candidates to continue with the",,,

election campaigning. In the circumstance, if an extension had been granted to the existing General Council of the BTC in exercise of the power under",,

the 1st proviso to Paragraph 2(6A) of the Sixth Schedule, the sitting members of the BTC would have continued to hold the office as well as indulge in",,

campaigning activity, in a situation where, they would continued to have the official authority and also used the official paraphernalia, like the official",,

vehicles etc. Mr. D. Saikia, learned senior counsel refers to the provision of Clause 22 of the MCC 2015 issued by the ASEC which provides that the",,

candidate and the political party in power shall exercise utmost restraint in use of their official power and no member of the BTC and any other person",,

having a government vehicle shall use the same in election campaign and further no financial aid, grants or inputs of any development scheme shall be",,

provided to the voters by the members of the political party in power.",,

112. By referring to the Clause 22 of the MCC 2015, Mr. D. Saikia, learned senior counsel submitted that had an extension been granted to the",,

existing General Council of the BTC, the required infrastructure of the authorities to monitor, whether any of the member of the General Council of",,

the BTC or any other person of the ruling political party had violated the MCC, was not in place as the observers appointed for the purpose had to be",,

withdrawn due to the prevailing Covid-19 pandemic situation. It was submitted that considering the said situation it cannot be said that the opinion",,

rendered by the learned Advocate General against extension of the General Council of the BTC, due to the MCC being in force, was irrelevant for the",,

purpose.",,

113. Mr. N. Dutta, learned senior counsel for the petitioners in reply contended that Clause-22 of the MCC also refers to the Ministers, MLAs, MPs",,

etc., and therefore, if the MCC is in force, even the said officials should not be holding their office.",,

114. As regards the Division Bench judgment of this Court in Alphonse A. Sangma (supra), Mr. N. Dutta, learned senior counsel for the petitioners",,

contended that Paragraphs 20BA and 20BB of the Sixth Schedule were made applicable in respect of the States of Assam, Mizoram and Tripura",,

respectively, whereunder, the Governor exercises his discretion upon prior consultation with the COM. A provision of same nature having not been",,

made applicable to the State of Meghalaya, no such discretionary power is

available to the Governor in that State. Therefore, while dealing with a",,,
matter as regards the dissolution of a District Council in the State of Meghalaya,
the Governor acts as a Constitutional Governor and not as a",,,
Discretionary Governor. The judgment in Alphonse A. Sangma (supra) being a
judgment relating to the Governor acting as a Constitutional Governor,",,
the same would not be applicable while considering the dissolution of a District
Council in Bodoland which is in the State of Assam.,,,

115. Mr. D. Saikia, learned senior counsel for the respondents contended that in
the instant case where the Governor had assumed the administration",,,
of the BTAD in exercise of the power under Paragraph 16(2) of the Sixth
Schedule, the Governor had acted as a Constitutional Governor and neither",,,
the provisions of Paragraph 20BA were invoked nor he had acted as a
Discretionary Governor. Therefore, the principles of law as can be found in",,,
Alphonse A. Sangma (supra) would also be applicable in the present matter as
because the principles laid down in the said judgment were on the,,
premises where the Governor acts as a Constitutional Governor.,,,

116. The meaning of the word "irrelevant" as found in the Major Law
Lexicon by P. Ramanatha Aiyar is "not pertinent; without relation to",,,
the matter in issue; redundant; a term which has a signification of not
applicable",, and "in law of evidence, means not relevant; not relating to or",,,
applicable to the matter in issue; not supporting the issue." Therefore in order
to call a material which was taken into consideration for arriving at a,,
decision to be an irrelevant material, such material would have to be not
pertinent or to be without any relation to the matter in issue or not supporting",,,
the issue.,,,

117. In the instant case, the issue raised was whether the Governor had taken
into consideration irrelevant materials to arrive at his decision not to",,,
extend the term of the General Council of the BTC and in doing so, whether the
opinion of the learned Advocate General that the MCC was in force",,,
and therefore, an extension of the General Council would be impermissible, can
be construed to be a material not relevant for the issue. In other",,,
words, as per the meaning the expression "irrelevant" we are required to
consider whether the opinion regarding the MCC being in force would",,,
be of any pertinence, or whether it would have any relation or whether it would
have a signification of being not applicable for the purpose of grant of",,,

extension to the General Council of the BTC.,,

118. When we take into consideration of the submission of Mr. D. Saikia, learned senior counsel for the respondents that the MCC which was in",,,

force in the BTC would have a relation to the General Council of the BTC being extended as there may be a scope for the members of the BTC to,,

violate Clause 22 of the MCC 2015, it cannot be said that the MCC being in force would be wholly without any pertinence, or it would have no relation",,,

or it would have no signification of being not applicable, for the purpose of being taken into consideration as a material to arrive at a decision not to",,,

extend the General Council. The MCC, in view of Clause 22 of MCC 2015, appears to have relation to the grant of extension of the General Council",,,

of the BTC.,,

119. As regards the reliance on the particular paragraph in Alphonse A. Sangma (supra) in the order/note of the Governor of 25.04.2020, all that the",,,

paragraph provides is that while exercising the power under Paragraph 16(2) of the Sixth Schedule, the satisfaction of the Governor that the situation",,,

had arisen where the administration of an Autonomous District or Region cannot be carried on in accordance with the provisions of Sixth Schedule, is",,,

sufficient for him to assume to himself the administration of the District Council. The same is merely a proposition of law that the satisfaction of the,,

Governor as regards the existence of a situation is sufficient for him to assume the administration. We do not find any reason as to why the said,,

proposition of law laid down in Alphonse A. Sangma (supra), which had been relied upon by the Governor in his order/note 25.04.2020, can be said to",,,

be not pertinent or be not related to a matter pertaining to not extending the term of the existing General Council of a District Council and thereby,,

leading to the assumption of the administration of a District Council.,,

120. We also take note of the further contention of Mr. D. Saikia, learned senior counsel for the respondents that for arriving at his decision leading to",,,

the order/note dated 25.04.2020, the Governor had other materials before him apart from the opinion of the learned Advocate General. Such materials",,,

included the representations made to the Governor by several political personalities related to the BTC. The opinion of the learned Advocate General,,

was more of a nature of advising the Governor whether it would legally be permissible to assume the administration of the General Council of the,,

BTC.,,

121. With regard to the contention of Mr. D. Saikia, learned senior counsel for the respondents that other materials were also available on record, Mr.",,,

N. Dutta, learned senior counsel for the petitioners relied upon the pronouncement of the Supreme Court in Mohinder Singh Gill (supra) wherein in",,, paragraph 8, it is provided as follows:-",,,

â??The second equally relevant mater is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the",,,

reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning",,,

may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the",,,

observations of Bose J. in Gordhandas Bhanji A.I.T. 1952 S.C. 16.,,,

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer",,,

making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have",,,

public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference,,

to the language used in the order itself.,,

Orders are not like old wine becoming better as they grow older.â??.",,,

122. Accordingly, it is contended by Mr. N. Dutta that as any such reference to the representations being filed by the political personalities did not find",,,

place in the order/note of the Governor 25.04.2020, therefore, as per the proposition of law laid down in paragraph 8 of Mohinder Singh Gill (supra),",,,

the reasoning for passing the said order cannot now be supplemented by fresh reasons either in the shape of an affidavit or otherwise and the,,

existence of the representations by the political personalities cannot be made an additional ground to validate the decision in the order/note dated,,

25.04.2020.,,

123. The law has been settled by the Supreme Court in its proposition in paragraph 8 of Mohinder Singh Gill (supra) that no fresh reasons can be,,

supplemented to the existing reasoning contained in an order by means of either an affidavit or otherwise. But in the instant case, the order/note of the",,,

Governor dated 25.04.2020 is being assailed by taking the stand that irrelevant material was taken into consideration while passing the order.,,

Therefore, we consider the lis between the parties to be confined as to whether irrelevant materials were taken into consideration. We further take",,,

note of that apart from the contention that irrelevant materials were taken into consideration by the Governor in arriving at the order/note dated,,

25.04.2020, no further contention had been raised as regards the adequacy or inadequacy of the materials that were taken into consideration by the",,,

Governor. As the question of inadequacy of materials is not an issue, it is not relevant for us as to whether there were any further material before the",,,

Governor to arrive at the decision contained in the order/note dated 25.04.2020.,,

124. From the said point of view, we are required only to examine whether the opinion of the learned Advocate General regarding the MCC being in",,,

force can be a reason for the Governor to arrive at his decision to assume the administration of the General Council of the BTC in exercise of the,,

power under Paragraph 16(2) of the Sixth Schedule and whether the MCC being in force can be said to be wholly irrelevant for the purpose. Further,,

we are also required to examine whether from the paragraph in the judgment in Alphonse A. Sangma, which was also relied upon by the Governor in",,,

his order/note dated 25.04.2020 can be said to be irrelevant for the purpose. The answer to the contention raised as to whether the materials referred,,

in the order/note of the Governor dated 25.04.2020 were irrelevant material had already been answered in negative in the foregoing paragraphs.,,

125. Be that as it may, a contention had also been raised by Mr. N. Dutta, learned senior counsel for the petitioners that the provisions of Article 356",,,

of the Constitution and Paragraph 16(2) of the Sixth Schedule are pari materia to the extent that in Article 356 the President on receipt of the report of,,

the Governor is required to be satisfied that the situation had arisen in which the Government of the State cannot be carried on in accordance with the,,

provisions of the Constitution whereas, in paragraph 16(2) the Governor is required to be satisfied that a situation had arisen in which the",,,

administration of an Autonomous District or Region cannot be carried on in accordance with the provisions of the Sixth Schedule. In exercise of both,,

the powers, the President or the Governor, assumes to himself all or any of the functions of the Government of the State or the functions or power of",,,

the District Council or Regional Council, as the case may be.",,

126. The satisfaction that the President is required to arrive at on the aid and advice of the COM for assuming the function of the State under Article,,

356 of the Constitution had been explained by the Supreme Court in S.R. Bommai (supra). In Article 356 of the Constitution of India the requirement,,

is if the President on receipt of a report from the Governor of a State or is otherwise satisfied that a situation had arisen in which the Government of a,,

State cannot be carried on in accordance with the provisions of the Constitution, whereas in Paragraph 16(2) of the Sixth Schedule the requirement is if",,

at any time the Governor is satisfied that a situation had arisen in which the administration of an Autonomous District or Region cannot be carried on,,

in accordance with the provision of the Sixth Schedule, the President or the Governor as the case may be may assume the function of the Government",,

of the State or the function or power of the District Council or Regional Council.,,

127. In Article 356 of the Constitution, the satisfaction of the President is on the basis of the report of the Governor or otherwise, whereas in",,

Paragraph 16(2) of the Sixth Schedule, the requirement is if at any time the Governor is satisfied.",,

128. The expression "otherwise" appearing in Article 356 of the Constitution had been interpreted by the Supreme Court in S.R. Bommai,,

(supra) to mean that the expression is of a very wide import and cannot be restricted to materials capable of being tested on principles relevant to,,

admissibility of evidence in course of law and it would be difficult to predicate the nature of materials which may be placed before the President or,,

which he may have come across before taking action under Article 356(1). The Supreme Court was also of the view that since the President is not,,

expected to record his reasons for his subjective satisfaction it would be equally difficult for the Court to enter the "political thicket" to ascertain,,

what weighed with the President for the exercise of the power under Article 356. It was held that since several imponderables would enter,,

consideration and govern the ultimate decision, which would be based not only on the events that have preceded the decision and would also depend",,

on likely consequences to follow, therefore, it would be wholly incorrect to view the exercise of the satisfaction of the President on a par with the",,

satisfaction recorded by the executive officers in the exercise of administrative

control.,,

129. Relevant portions of paragraph 35 of the pronouncement of S.R. Bommai (supra) are extracted below:,,

â??35. The marginal note of Article 356 indicates that the power conferred by the provision is exercisable â??in case of failure of constitutional,,

machinery in Statesâ?. While the text of the said article does not use the same phraseology, it empowers the President, on his being satisfied that",,,

â??a situation has arisenâ? in which the Government of the State â??cannotâ?? be carried on in accordance with the provisions of the Constitution",,,

i.e., on the failure of the constitutional machinery, to take action in the manner provided in sub-clauses (a), (b) and (c) and (sic of) clause (1) thereof.",,,

This action he must take on receipt of a report from the Governor of the State concerned or â??otherwiseâ?, if he is satisfied therefrom about the",,,

failure of the constitutional machinery. Article 356(1) confers extraordinary powers on the President, which he must exercise sparingly and with great",,,

circumspection, only if he is satisfied from the Governorâ??s report or otherwise that a situation has arisen in which the Government of the State",,,

cannot be carried out in accordance with the provisions of the Constitution. The expression â??otherwiseâ? is of very wide import and cannot be,,

restricted to material capable of being tested on principles relevant to admissibility of evidence in courts of law. It would be difficult to predicate in the,,

nature of material which may be placed before the President or which he may have come across before taking action under Article 356(1). Besides",,,

since the president is not expected to record his reasons for his subjective satisfaction, it would be equally difficult for the Court to enter â??the",,,

political thicketâ? to ascertain what weighed with the President for the exercise of power under the said provision. The test laid down by this Court,,

in Barium Chemicals Ltd. v. Company Law Board⁶ and subsequent decisions for adjudging the validity of administrative action can have no,,

application for testing the satisfaction of the President under Article 356. It must be remembered that the power conferred by Article 356 is of an,,

extraordinary nature to be exercised in grave emergencies and, therefore, the exercise of such power cannot be equated to the power exercised in",,,

administrative law field and cannot, therefore, be tested by the same yardstick. Several imponderables would enter consideration and govern the",,,

ultimate decision, which would be based, not only on events that have preceded the decision, but would also depend on likely consequences to follow",,,

and, therefore, it would be wholly incorrect to view the exercise of the President's satisfaction on a par with the satisfaction recorded by",,,

executive officers in the exercise of administrative control. The opinion which the president would form on the basis of the Governor's report or,,

otherwise would be based on his political judgment and it is difficult to evolve judicially manageable norms for scrutinizing such political decisions. It",,,

therefore, seems to me that by the very nature of things which would govern the decision-making under Article 356, it is difficult to hold that the",,,

decision of the President is justiciable. To do so would be entering the political thicket and questioning the political wisdom which the courts of law,,

must avoid. The temptation to delve into the president's satisfaction may be great but the courts would be well advised to resist the temptation for,,

want of judicially manageable standards. Therefore, in my view, the court cannot interdict the use of the constitutional power conferred on the",,,

President under Article 356 unless the same is shown to be mala fide. I am, therefore, in respectful agreement with the view expressed",,,

in the Rajasthan case as regards the extent of review available in relation to a Proclamation issued under Article 356 of the Constitution. In other,,

words it can be challenged on the limited ground that the action is mala fide or ultra vires Article 356 itself.â??,,

130. It had again been held by the Supreme Court in S.R. Bommai (supra) that only the cases which permit application of totally objective standards,,

for deciding whether the constitutional machinery had failed are amenable to judicial review and the remaining cases where there is any significant,,

area of subjective satisfaction dependent on some imponderables or inferences are not justiciable because there are no judicially manageable,,

standards for resolving the controversies and those cases are subjected only to political scrutiny and correction for whatever its value in the existing,,

political scenario.,,,

131. Relevant portions of paragraphs 44, 45 and 46 of the pronouncement of S.R. Bommai (supra) are extracted below:",,,

44. The expression 'or otherwise' in Article 356 indicates the wide range of the materials which may be taken into account for the,,

formation of opinion by the President. Obviously, the materials could consist of several imponderables including some matter which is not strictly legal",,

evidence, the credibility and authenticity of which is incapable of being tested in law courts. The ultimate opinion formed in such cases, would be",,

mostly a subjective political judgment. There are no judicially manageable standards for scrutinizing such materials and resolving such a controversy.,,

By its very nature such controversy cannot be justiciable. It would appear that all such cases are, therefore, not justiciable.",,

45. It would appear that situations wherein the failure of constitutional machinery has to be inferred subjectively from a variety of facts and,,

circumstances, including some imponderables and inferences leading to a subjective political decision, judicial scrutiny of the same is not permissible",,

for want of judicially manageable standards. These political decisions call for judicial hands off envisaging correction only by a subsequent electoral,,

verdict, unless corrected earlier in Parliament.",,

46. In other words, only cases which permit application of totally objective standards for deciding whether the constitutional machinery has failed, are",,

amenable to judicial review and the remaining cases wherein there is any significant area of subjective satisfaction dependent on some imponderables,,

or inferences are not justiciable because there are no judicially manageable standards for resolving that controversy; and those cases are subject only,,

to political scrutiny and correction for whatever its value in the existing political scenario. This appears to be the constitutional scheme.â??,,

132. It had further been held that Article 356 requires that the President â??has to be satisfiedâ?? that the situation in question had arisen and hence,,

the material in question has to be such as would induce a reasonable man to come to the conclusion in question. Although the sufficiency or otherwise,,

of the materials cannot be questioned, the legitimacy of the inference drawn from such material is certainly open to judicial review. The narrow area",,

in which the exercise of power under Article 356 would be subject to a judicial review would include the grounds where the satisfaction is perverse or,,

mala-fide or based wholly on extraneous and irrelevant grounds and therefore there was no satisfaction at all. It would be beyond the judicially,,

discoverable and manageable standards, unless the exercise of excessive power is so palpably irrational or malafide as to invite judicial intervention.",,

There is every risk and fear of the court undertaking upon itself the task evaluating with fine scales and through its own lenses the comparative merits,, of one rather than the other measure and in doing so, the court will travel unwittingly into the political arena and subject itself more readily to the,, charges of encroaching upon policy making. In such circumstance, the â?? political thicketâ?? objection would creep in.",,,

133. Relevant portions of paragraphs 60 and 75 of the pronouncement of S.R. Bommai (supra) are extracted below:,,

â??60. â?|â?|â?|. It is not disputed before us that the Proclamation issued under Article 356(1) is open to judicial review. All that is contended is that,, the scope of the review is limited. According to us, the language of the provisions of the article contains sufficient guidelines on both the scope and the",,, limitations, of the judicial review.â??",,,

â??75. â?|â?|â?|.. Hence there is a need to confine the exercise of power under Article 356(1) strictly to the situation mentioned therein which is a,, condition precedent to the said exercise. That is why the Framers of the Constitution have taken pains to specify the situation which alone would,, enable the exercise of the said power. The situation is no less than one in which â??the Government of the State cannot be carried on in accordance,, with the provisions of this Constitutionâ?. A situation short of the same does not empower the issuance of the proclamation. The word â??cannotâ?,,

emphatically connotes a situation of impasse. In Shorter Oxford Dictionary, 3rd Edn., at page 255, the word â??canâ? is defined as â??to be able; to",,, have power or capacityâ?. The word â??cannotâ?, therefore, would mean â??not to be ableâ? or â??not to have the power or capacityâ?. In",,,

Stroudâ??s Judicial Dictionary, 5th Edn., the word â??cannotâ? is defined to include a legal inability as well as physical impossibility. Hence",,, situations which can be remedied or do not create an impasse, or do not disable or interfere with the governance of the State accordance to the",,,

Constitution, would not merit the issuance of the Proclamation under the article.â??",,,

134. But again it also does not mean that the Court can merely be an onlooker and a helpless spectator. The Court owes its duty and responsibility to,, defend the democracy. The decision can be tested on the ground of legal mala-fide or high irrationality and therefore, satisfaction reach by the",,,

President for issuing the proclamation under Article 356 must be tested only on those grounds of unconstitutionality and not on the ground that the,,

material which enables him to reach the satisfaction was not sufficient or inadequate. The Court cannot go into the question of adequacy of material,,

or the circumstances justifying the declaration of the President's Rule.,,

Judicial review must be distinguished from the justiciability by the Court and the two concepts are not synonymous. The power of judicial review is a,,

constituent power and cannot be abdicated by the judicial process of interpretation but the justiciability of the decision taken by the President is one of,,

the exercises of power by the Court which is hedged by self imposed judicial restraint. Judicial review is not concerned with the merits of the decision,,

but with the decision making process.,,

135. Relevant portions of paragraphs 215, 216, 227, 256 and 260 of the pronouncement of S.R. Bommai (supra) are extracted below:",,

215. The width of the power is very wide, the satisfaction of the President is subjective satisfaction. It must be based on relevant",,

materials. The doctrine that the satisfaction reached by an administrative officer based on irrelevant and relevant grounds and when some irrelevant,,

grounds were taken into account, the whole order gets vitiated has no application to the action under Article 356. Judicial review of the Presidential",,

Proclamation is not concerned with the merits of the decision, but to the manner in which the decision had been reached. The satisfaction of the",,

President cannot be equated with the discretion conferred upon an administrative agency, of his subjective satisfaction upon objective material like in",,

detention cases, administrative action or by subordinate legislation. The analogy of the provisions in the Government of India Act or similar provision in",,

the Constitution of Pakistan and the interpretation put upon it by the Supreme Court of Pakistan do not assist us. The exercise of the power under,,

Article 356 is with the aid and advice of the Council of Ministers with the Prime Minister as its head. They are answerable to Parliament and,,

accountable to the people.,,

216. To test the satisfaction reached by the President there is no satisfactory criteria for judicially discoverable and manageable standards that what,,

grounds prevailed with the President to reach his subjective satisfaction. There

may be diverse, varied and variegated considerations for the President",,,

to reach the satisfaction. The question of satisfaction is basically a political one, practically it is an impossible question to adjudicate on any judicially",,,

manageable standards. Obviously the Founding Fathers entrusted that power to the highest executive, the President of India, with the aid and advice",,,

of the Council of Ministers. The satisfaction of the President being subjective, it is not judicially discoverable by any manageable standards and the",,,

court would not substitute their own satisfaction for that of the President. The President's satisfaction would be the result of his comprehending in",,,

his own way the facts and circumstances relevant to the satisfaction that the Government of the State cannot be carried on in accordance with the",,,

provisions of the Constitution. There may be wide range of situations and sometimes may not be enumerated, nor can there be any satisfactory",,,

criteria, but on a conspectus of the facts and circumstances the President may reach the satisfaction that the Government of the State cannot be",,,

carried on in accordance with the provisions of the Constitution. Therefore, the subjective satisfaction is not justiciable on any judicially manageable",,,

standards. Moreover, the executive decision of the President receives the flavour of the legislative approval after both Houses of Parliament have",,,

approved the Proclamation and executive satisfaction ceases to be relevant !â?â?
!...,,

227. These conclusions do not reach the journey's end. However, it does not mean that the court can merely be an onlooker and a helpless",,,

spectator to exercise of the power under Article 356. It owes duty and responsibility to defend the democracy. If the court, upon the material placed",,,

before it finds that the satisfaction reached by the President is unconstitutional, highly irrational or without any nexus, then the court would consider the",,,

contents of the Proclamation or reasons disclosed therein and in extreme cases the material produced pursuant to discovery order nisi to find the",,,

action is wholly irrelevant or bears no nexus between purpose of the action and the satisfaction reached by the President or does not bear any",,,

rationale to the proximate purpose of the Proclamation. In that event the court may declare that the satisfaction reached by the President was either",,,

on wholly irrelevant grounds or colourable exercise of power and consequently Proclamation issued under Article 356 would be declared",,,

unconstitutionalâ?â?!,,,

256. Judicial review must be distinguished from the justiciability by the court. The two concepts are not synonymous. The power of judicial review is a,,

constituent power and cannot be abdicated by judicial process of interpretation. However, justiciability of the decision taken by the President is one of",,,

exercise of the power by the court hedged by self-imposed judicial restraint. It is a cardinal principle of our Constitution that no one, however lofty",,,

can claim to be the sole judge of the power given under the Constitution. Its actions are within the confines of the powers given by the Constitution.,,,

260. The decision can be tested on the ground of legal mala fides, or high irrationality in the exercise of the discretion to issue Presidential",,,

Proclamation. Therefore, the satisfaction reached by the President for issuing the Proclamation under Article 356 must be tested only on those",,,

grounds of unconstitutionality, but not on the grounds that the material which enabled him to reach the satisfaction was not sufficient or inadequate.",,,

The traditional parameters of judicial review, therefore, cannot be extended to the area of exceptional and extraordinary powers exercised under",,,

Article 356. The doctrine of proportionality cannot be extended to the power exercised under Article 356. The ultimate appeal over the action of the,,

President is to the electorate and judicial self restraint is called in aid, in which event the faith of the people in the efficacy of the judicial review would",,,

be strengthened and the judicial remedy becomes meaningful.â?â?,,

136. The interpretation given by the Supreme Court in S.R. Bommai (supra) case in respect of the judicial review of the satisfaction by the President,,

in proclaiming a Presidentâ?â?s Rule under Article 356 is based on the expression â?â?otherwiseâ?â? appearing in Article 356. In paragraph 16(2) of,,

the Sixth Schedule the expression is â?â?if at any timeâ?â? the Governor is satisfied, finds place which again would have a similar connotation and",,,

purport as the expression â?â?otherwiseâ?â? appearing in Article 356. Without drawing a parallel to the expression â?â?otherwiseâ?â? in Article 356,,

and the expression â?â?if at any timeâ?â? in paragraph 16(2), what can be inferred is that the expression â?â?if at any timeâ?â? also connotes a wider",,,

impact. Therefore, the principles of judicial review laid down in S.R. Bommai (supra) would also be applicable while exercising a judicial review of the",,,

satisfaction that the Governor may have arrived in exercising the power under

Paragraph 16(2) of the Sixth Schedule.,,

137. Broadly speaking some of such principles would be that it would be appropriate for the Court to go into the materials based upon which the,,

Governor had arrived at an objective satisfaction to assume the administration of the District Council or Regional Council in exercise of power under,,

Paragraph 16(2) of the Sixth Schedule, but at the same time it would be inappropriate to go into materials that may have been taken into consideration",,,

to arrive at any such subjective satisfaction that the Governor may have arrived, which would also include the materials leading to the political thicket",,,

that may have been in existence while arriving at any such satisfaction. Further it would be wholly incorrect to view the exercise of the,,

Governor's satisfaction on a par with the satisfaction recorded by the executive officers in exercise of administrative control. Also the satisfaction,,

arrived at by the Governor to exercise the power under Paragraph 16(2) of the Sixth Schedule can be interfered in judicial review if the exercise of,,

the power was palpably irrational or malafide and was based upon irrelevant material. However, the Court should not go into the question of adequacy",,,

or inadequacy of the material, nor the Court should undertake upon itself the task of evaluating the comparative merits of one rather than the other",,,

measure that had been taken.,,

138. The reasoning of the Supreme Court in paragraph -8 of Mohinder Singh Gill (supra) clearly pertains to the justification of an order of the Election,,

Commission of India in the exercise of an administrative control, which can be based only upon the reasons stated in the order and that the reasons",,,

cannot be expanded either by an affidavit or otherwise. In respect of the satisfaction of the Governor while exercising a constitutional function, it",,,

would be wholly incorrect to view the satisfaction on a par with the satisfaction recorded by the executive officers, although it may be a statutory",,,

authority in exercise of administrative control. It would also be equally inefficacious to rely solely on paragraph 8 of the pronouncement of Mohinder,,

Singh Gill (Supra) that in order to justify the satisfaction arrived at by the Governor, the authorities cannot rely on any further material that the",,,

Governor may have taken into consideration while arriving at his satisfaction. As held by the Supreme Court the Governor is also equally not expected,,

to record his reasons for his subjective satisfaction.,,

139. The Supreme Court in its pronouncement in *S.R Bommai* (supra) had, amongst others, held that the President is not expected to record his,, reasons for his subjective satisfaction and therefore, it would be wholly incorrect to view the exercise of the President satisfaction on a par with the,, satisfaction recorded by the executive officers in exercise of administrative control. The President satisfies itself on being objectively satisfied and also,, on being subjectively satisfied and the principle for judicial review to be followed is that only the materials which relate to an objective satisfaction of,, the President as to whether there is a constitutional machinery failure, are available to a judicial review and the remaining material which may relate to,, a subjective satisfaction are not justiciable and this appears to be the constitutional scheme. The satisfaction of the President must be tested only on,, the ground of unconstitutionality and not on the ground that the material which enables him to reach the satisfaction was not sufficient. Such restraint,, in exercising the power of judicial review is a self imposed judicial restraint. Even the decision of the Supreme Court in *Barium Chemicals Ltd vs.,,* Company Law Board reported in Air 1967 SC 295 had been held by the Supreme Court in *S.R Bommai* (supra) to be a decision concerning the,, subjective satisfaction of an authority created by the statute. In paragraph 227 of *S.R. Bommai* (supra), it had clearly been held that if the Court up-on,, the materials placed before it find that the satisfaction reached by the President is unconstitutional, highly irrational or without any nexus, then the,, Court would consider the contents of the Proclamation or reasons disclosed therein and in extreme cases, the material produced pursuant to discovery,, order nisi to find whether the action is wholly irrelevant.,,

Such provisions of the Supreme Court in *S.R Bommai* (supra) clearly spells out that even materials other than the materials and reasons referred in,, the order of the President, can be looked into by the Court to arrive at its conclusion whether the satisfaction reached by the President is based on,, wholly irrelevant material.,,

140. The provisions of Article 356 of the Constitution and Paragraph 16(2) of the Sixth Schedule being *pari-materia*, which was also the submission of,,

Mr. N Dutta, learned senior counsel for the petitioners, the same principle would also be applicable in respect of the exercise of judicial review by the,,

Court while examining the satisfaction arrived at by the Governor while

exercising his power under the provision of Paragraph 16(2) of the Sixth,,
Schedule. The Supreme Court in paragraph 260 of S.R Bommai (supra) had also
provided that the traditional parameter of judicial review, therefore",,,
cannot be extended to the area of exceptional and extra ordinary power
exercised under Article 356.,,
141. From such point of view, the restrictions provided in paragraph 8 of
Mohinder Singh Gill (supra) that only the reasons stated in the order can be",,,
the basis to examine its validity and no further reason can be supplemented
either in the form of an affidavit or otherwise, would not be applicable in",,,
respect of a judicial review while examining the satisfaction of the Governor
arrived at while exercising the power under Paragraph 16(2) of the sixth,,
Schedule.,,
142. But again the Supreme Court had clearly provided in paragraph 215 of S.R.
Bommai (supra) that the adequacy or inadequacy of the materials,,
before the President while arriving at a satisfaction under Article 356 of the
constitution are also not required to be gone into by the Court while,,
examining the satisfaction of the President. We are of the view that the said
proposition would also be applicable while examining the satisfaction,,
arrived at by the Governor while exercising the power under Paragraph 16(2) of
the Sixth Schedule. But in any view of the matter, as already",,,
concluded hereinabove, the satisfaction arrived at by the Governor in the orders/
notes dated 25.04.2020 and 27.04.2020 have not been assailed on the",,,
ground that the materials before the Governor while arriving at such satisfaction
were inadequate. The only ground urged upon to assail the,,
satisfaction was that irrelevant materials were taken into consideration. From the
said point of view also we are not required to go into the adequacy,,
or inadequacy of the materials that were available before the Governor while
arriving at his satisfaction in the orders/notes dated 25.04.2020 and,,
27.04.2020. The records pertaining to the materials based upon which the
Governor had arrived at his satisfaction, including the representations of the",,,
political personalities referred by Mr. D. Saikia were ordered to be produced and
were available for inspection by either of the parties. No contention,,
had been made that the materials contained in the records that may have been
taken into consideration by the Governor were irrelevant, let alone it",,,
being inadequate.,,

In exercising his functions under Paragraph 16(2) of the Sixth Schedule leading to the two notifications dated 27.04.2020, whether the Governor had",,,

acted as a Constitutional Governor or had acted as a Discretionary Governor and if yes, whether the provisions of Paragraph 20BA of the Sixth",,,

Schedule was invoked?,,

143. By the notification no. TAD/BTC/250/2020/30 dated 27.04.2020 of the Commissioner & Secretary to the Government of Assam in the WPT &,,

BC Department the Governor in exercise of the power under Paragraph 16(2) of the Sixth Schedule had assumed to himself the administration of the,,

BTAD including all the functions and powers vested in or exercisable by the BTC.,,,

144. Paragraph 16(2) of the Sixth Schedule provides that if he is satisfied that a situation had arisen in which the administration of an Autonomous,,

District or Region cannot be carried out in accordance with the provisions of the Sixth Schedule, the Governor may by public notification assume to",,,

himself all or any of the functions or powers vested in or exercisable by the District Council.,,,

145. Mr. N. Dutta, learned senior counsel for the petitioners had raised the contention that as per the provisions of the Constitution the Governor can",,,

exercise a power provided by any of the provisions of the Constitution, either as a Constitutional Governor or as a Discretionary Governor. For",,,

exercising his functions as a Constitutional Governor, the Governor is required to follow requirements of Article 163(1) of the Constitution. For",,,

exercising his functions as a Discretionary Governor, the extent of discretion vested on the Governor depends upon the provisions under which such",,,

discretion is being exercised. As already indicated some of the provisions of the Constitution give the Governor an absolute discretion, while in the",,,

other provisions the discretion is to an extent circumscribed in the manner provided in the provisions itself. Again, while exercising the discretion under",,,

Article 371 A(1) (b) of the Constitution, the Governor after consulting the COM exercises his individual judgment, whereas under Paragraph 20BA of",,,

the Sixth Schedule the Governor in discharge of his functions as provided therein, takes such action as he considers necessary in his discretion after",,,

consulting, amongst others, the COM.",,,

146. Amongst the Paragraphs stated in Paragraph 20BA of the Sixth Schedule in respect of which the Governor exercises his discretion after,,

consulting the COM, Paragraph 16(2) also finds place. Accordingly, it has to be understood that when the Governor exercises his power under",,,

Paragraph 16(2) of the Sixth Schedule he does so by invoking the provisions of Paragraph 20BA. So ordinarily the answer to the question whether in,,

exercising his functions under Paragraph 16(2) of the Sixth Schedule, leading to the two notifications dated 27.04.2020, the Governor had acted as a",,,

Constitutional Governor or as a Discretionary Governor, the answer would have been that he had acted as a Discretionary Governor and in doing so",,,

had invoked the provisions of Paragraph 20BA.,,,

147. Mr. N. Dutta, learned senior counsel for the petitioners points out that Paragraph 20BA of the Sixth Schedule requires the Governor to exercise",,,

his discretion after consulting the COM, and also after consulting the Karbi Anglong Autonomous Council or the North Cachar Hills Autonomous",,,

Council, as the case may be. Accordingly it is contended that as no reference had been made to BTAD or the BTC in Paragraph 20BA of the Sixth",,,

Schedule, therefore, it was the intention of the Parliament that the discretionary power vested on the Governor under Paragraph 20BA would not be",,,

available when the Governor exercises his powers, amongst others, under Paragraph 16(2) in respect of BTAD. To substantiate his contention, Mr.",,,

N. Dutta, learned senior counsel had referred that the BTAD comprises of a mixed population of plains tribal people belonging to the Bodo community",,,

and other communities also comprising of persons belonging to non-tribal communities and there is a delicate balance in the co-existence of the,,

different communities. On the other hand, the Karbi Anglong Autonomous Council and the North Cachar Hills Autonomous Council exercises its",,,

jurisdiction over the areas which mainly comprises of a homogenous tribal population. It is because of this distinction that is applicable to the BTAD",,,

the Parliament in its wisdom had not made the provisions of Paragraph 20BA of the Sixth Schedule applicable to BTAD. Therefore, the Governor",,,

could not have acted as a Discretionary Governor under Paragraph 20BA of the Sixth Schedule and had in fact acted as a Constitutional Governor. In,,

any view, it is the case of the petitioners as discernable from paragraphs 15 & 16 of the writ petition that the Governor while causing the two",,,

notifications dated 27.04.2020 to be issued had acted as a Constitutional Governor. The case sought to be made out in paragraph 17 of the writ petition,,

appears to be an alternative contention that if the Governor had acted as a Discretionary Governor by invoking Paragraph 20BA of the Sixth,,

Schedule, even then the requirement of having a prior consultation with the COM was not fulfilled.",,,

148. Mr. D.K. Mishra, learned senior counsel for the intervener, UPPL had raised the contention that the provisions of the Paragraph 20BA of the",,,

Sixth Schedule are also applicable to the BTAD and the reasoning advanced by the learned senior counsel had already been discussed in the,,

paragraphs hereinbefore. But we had refrained from answering the question whether Paragraph 20BA of the Sixth Schedule would also be applicable,,

to the BTAD. Mr. D.K. Mishra had also raised a contention that as according to him the powers under the 1st proviso to Paragraph 2(6A) of the,,

Sixth Schedule were unavailable to the Governor in the facts and circumstances of the present case, therefore, the Governor had to act as a",,,

Discretionary Governor by invoking the power under Paragraph 20BA.,,,

149. Mr. D. Saikia, learned senior counsel for the respondents had taken a specific stand that the Governor in causing the issuance of the two",,,

notifications of 27.04.2020 had acted as a Constitutional Governor as provided under Article 163(1) of the Constitution and had not invoked the powers,,

under Paragraph 20BA of the Sixth Schedule.,,,

150. We have taken note of that as per the note dated 04.04.2020 of the CS, two options were made available i.e., either to extend the term of the",,,

General Council of the BTC by exercising the power under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule or to assume the administration,,

of the BTAD by the Governor himself by exercising the power under Paragraph 16(2). The options made available in the note of the CS were,,

endorsed by the CM on 24.04.2020 and was forwarded to the Governor for his consideration. The view of the CM contained in the endorsement of,,

24.04.2020 which provided the two options to the Governor was approved and ratified by the COM in its meeting held on 27.04.2020. In other words,",,

the Governor was required to exercise his option as to which of the two options given would find his favour.,,,

151. As already noticed, the first option was to extend the term of the General Council of the BTC by exercising the powers under the 1st proviso to",,,

Paragraph 2(6A) of the Sixth Schedule and the other option was to assume the

administration of the BTAD himself by exercising the power under,,
 Paragraph 16(2). To opt for the option of assuming the administration himself,
 there would also be a corresponding option being exercised by the",,,
 Governor not to extend the General Council of the BTC, although in an implied
 manner. If the 1st proviso to Paragraph 2(6A) of the Sixth Schedule",,,
 provides the Governor with the power to extend the term of the District Council,
 and an option had been given to the Governor either to extend it or to",,,
 assume the administration himself, any exercise of the option to assume the
 administration himself would in an implied manner amount to exercising",,,
 the option not to extend and therefore any exercise of the option not to extend
 would also have to be an exercise of the power under the 1st proviso to,,
 Paragraph 2(6A) of the Sixth Schedule.,,,

152. If the power under Paragraph 20BA of the Sixth Schedule is construed to be
 available to the Governor even in respect of the BTC, still the",,,
 provisions of Paragraph 20BA can be invoked only while exercising the power
 under Paragraph 16(2). As exercising the power under the 1st proviso,,
 to Paragraph 2(6A) of the Sixth Schedule is not included under Paragraph 20BA,
 any exercise of the power under the 1st proviso to Paragraph 2(6A)",,,
 would have to be exercised by the Governor by acting as a Constitutional
 Governor.,,,

153. In such view of the matter, even to impliedly exercise the option not to
 extend the term of the General Council of the BTC by opting for the",,,
 exercise of power under Paragraph 16(2) of the Sixth Schedule for assuming the
 administration himself, the Governor would have to act as a",,,
 Constitutional Governor.,,,

154. By referring to the averment made in paragraph 11 of the affidavit of the
 Governor Secretariat wherein it is averred, â??His Excellency The",,,
 Governor has also considered the opinion expressed by The Learned Advocate
 General, Assam in invoking his discretionary power to opt for the",,,
 provisions of Para 16(2) of the Sixth Scheduleâ?, Mr. N Dutta, learned senior
 counsel had also raised a contention that it is an admitted position from",,,
 the affidavit of the Governor Secretariat that the Governor had used his
 discretionary power. The learned senior counsel reiterates his argument that,,
 the Constitution provides for the Constitutional Governor, save and except, the
 specific provisions where the Governor is required to act in his",,,

discretion. No discretionary power having been vested in the Governor for exercising his power under Paragraph 16(2) of the Sixth Schedule in,,

respect of BTAD, and the Governor having by his own admission stated in the affidavit that his discretionary power was exercised, a contention had",,,

been raised that the Governor had acted without jurisdiction or beyond the provisions of the Constitution.,,,

155. Mr. D Saikia, learned senior counsel for the respondents clarified that the averment made in paragraph 11 of the affidavit of the Governor",,,

Secretariat has to be read in whole and a specific expression â??invoking his discretionary powerâ?? cannot be extracted in isolation and be given a,,

different meaning to the context. It is explained that what had been stated in the affidavit of the Governor Secretariat is that two options were given to,,

the Governor by the Government as well as the COM in their aid and advice, i.e., to either opt for extending the term of the General Council of the",,,

BTC by exercising the power under 1st proviso to Paragraph 2(6A) of the Sixth Schedule, or to assume the administration of the BTAD himself by",,,

exercising the power under Paragraph 16(2). Two options having been given to the Governor, an option was conferred on the Governor, in the aid and",,,

advice of the COM as well as by the authorities of the Government, to accept either of the two options. The averment made in paragraph 11 of the",,,

affidavit of the Governor Secretariat containing the expression â??invoking his discretionary powerâ??, is explained to mean the limited discretion of",,,

opting between the two options that were conferred on the Governor in the aid and advice of the COM as well as by the authorities of the,,

Government. Therefore, the expression â??invoking his discretionâ?? would have to be understood to mean the limited discretion or the option as",,,

indicated above and not that the Governor had acted as a Discretionary Governor.,,,

156. Mr. N Dutta, learned senior counsel had raised the further contention that neither the Government of Assam nor the COM is vested with any",,,

power to give the Governor a discretion, may be a limited discretion, if otherwise the provisions of the Constitution do not provide for such discretion.",,,

On the contrary, Mr. D Saikia, learned counsel for the respondents relies upon the proposition laid down by the Supreme Court in paragraph 52 of",,,

State of Gujarat Vs. RA Mehta, reported in (2013) 3 SCC 1, which is extracted as below:",,,

52. The exception carved out by the main clause under Article 163(1) of the Constitution permits the legislature to bestow upon the Governor the,,

power to execute certain functions that may be performed by him, in his own discretion, or in consultation with other authorities, independent of the",,,

Council of Ministers.â?,,

By relying on the said proposition, it is contended that if the exception carved out by the main clause under Article 163(1) permits the Legislature to",,,

bestow upon the Governor to execute certain functions in his own discretion or in consultation with other authorities, independent of the COM, as a",,,

corollary it also has to be understood that the exceptions carved out by the main clause of Article 163(1) also bestows upon the COM, while tendering",,,

their aid and advice, the power to provide the Governor with a discretion to opt between two options.",,,

157. The exceptions carved out by the main clause under Article 163(1) is in respect of the discretionary powers bestowed on the Governor by and,,

under the Constitution. The discretionary powers bestowed on the Governor by and under the Constitution referred in the exception carved out in,,

Article 163(1) relates to the powers exercisable by the Governor as a Discretionary Governor under the Constitution, whereas the aid and advice of",,,

the COM relates to the power exercised by the Governor as a Constitutional Governor. From the said point of view, we are unable to accept the",,,

contention of Mr. D Saikia, learned senior counsel that from the proposition of the Supreme Court that on the basis of the exception carved out under",,,

Article 163(1) permitting the Legislature to bestow upon the Governor to execute certain functions in his own discretion, independent of the COM, it",,,

can also be inferred that the COM while tendering their aid and advice can bestow the Governor with a discretion.,,,

158. But at the same time, as held by the Supreme Court in paragraph 48 of Samsher Singh (supra), the satisfaction of the Governor required by the",,,

Constitution is the satisfaction of the COM on whose aid and advice the Governor generally exercises all his powers and functions. If in the,,

satisfaction of the COM, the Governor is provided with an option to opt between two options, we do not find any provision in the Constitution which",,,

prohibits the COM to arrive at such a satisfaction. Mr. N Dutta, learned senior counsel for the petitioners had made a submission that the COM while",,,

giving their aid and advice must be specific and provide the Governor with only one choice to act upon. But such submission is not supported by,,

referring to any of the provisions of the Constitution.,,,

159. The expression "aid and advice" came up for a consideration in *Nalini Vs. Governor, State of Tamil Nadu* wherein a conclusion was,,

arrived at by the High Court of Madras that mere forwarding of materials by the COM would not amount to giving advice. It is to be understood that,,

if the COM without giving any option to the Governor as to in what manner he is to act, merely forwards the entire material and leaves it to the,,

Governor to take his own decision as per his discretion, the same may not be an aid and advice.",,,

But in the instant case, the COM in its consideration had expressed its satisfaction on both the alternative options and required the Governor to,,

exercise his discretion as to which of the two options he would opt for. In other words, either of the two options was the satisfaction of the COM.",,,

From the said point of view, we do not find it to be constitutionally impermissible for the COM to express their satisfaction on both the two available,,

options and require the Governor to opt for his option between the two. Opting for either of the two options by the Governor, would still remain the,,

satisfaction of the COM and the constitutional requirement as laid down by the Supreme Court in paragraph 48 of *Samsher Singh* (supra) that the,,

satisfaction of the Governor is the satisfaction of the COM also stands satisfied.,,,

160. A contention had also been raised by Mr. N Dutta, learned senior counsel for the petitioners by referring to the opinion of the learned Advocate",,,

General which was extracted in the note/order of the Governor dated 25.04.2020 wherein, an opinion was rendered that the Governor had no",,,

alternative other than to use his discretion as a residuary power under paragraph 16(2) of the Sixth Schedule. By referring to the said opinion of the,,

learned Advocate General, the learned senior counsel had raised the contention that residuary power of the Governor is unknown in the Constitution",,,

and perhaps the Governor had exercised a third kind of a power, other than acting as a Constitutional Governor or a Discretionary Governor. Mr. D",,,

Saikia, learned counsel for the respondents counters the said argument by referring to paragraph 35 of the pronouncement of the Division Bench of",,,

this Court in *Alphonse A Sangma* (supra) which is extracted as below:,,

35. Though, conceptually for all practical purposes the assumption of all functions and powers vested in or exercisable by the Governor under sub",,

paragraph (2) of paragraph 16 may signify the suspension of the Council the indispensable essentiality of a recommendation of a Commission,,

envisaged under paragraph 14 cannot be read into this sub paragraph. The power conceived of in sub-paragraph (2) of paragraph 16 is residuary and,,

supervening in nature exercisable by the Governor only subject to his satisfaction of the kind as stipulated therein. The distinctive features of these two,,

sub paragraphs are too self evident and no inter dependence is visualised for a valid invocation of the powers under sub-paragraph (2) of paragraph,,

16. It is not deductible either that the notification perceived of in sub-paragraph (2) of paragraph 16 is to contain the grounds and reasons in details,,

fortifying the satisfaction of the Governor.â??,,

161. A reading of paragraph 35 of Alphonse A Sangma (supra) would show that in paragraph 35, the Court was considering the power of the",,

Governor to dissolve a District or a Regional Council under Paragraph 16(1) and Paragraph 16(2) of the Sixth Schedule. While discussing the power,,

of dissolution under Paragraph 16(1) of the Sixth Schedule, it was concluded that in dissolution of the District Council under paragraph 16(1) an",,

unavoidable contingent was that the dissolution be on a recommendation by a Commission appointed under Paragraph 14 of the Sixth Schedule. But,,

while exercising the power under Paragraph 16(2), the indispensable essentiality of a recommendation of a Commission could not be read into the said",,

sub-paragraph. In the said context, the view was taken that the power conceived in Paragraph 16(2) of the Sixth Schedule is residuary and",,

supervening in nature, exercisable by a Governor subjected to his satisfaction of a kind as stipulated therein. From the said context, the reference of",,

the learned Advocate General in his opinion as extracted in the note/order of the Governor of 25.04.2020 to the exercise of power under Paragraph,,

16(2) of the Sixth Schedule, as a residuary power, would have to be read. The power under Paragraph 16(1) being circumscribed on being related to a",,

recommendation by a Commission, and there being no requirement of any such recommendation by a Commission to exercise the power under",,

Paragraph 16(2), the power under Paragraph 16(2) is held to be a residuary power. The learned Advocate General by referring to Paragraph 16(2) to",,

be a residuary power cannot be understood to have meant that a third kind of a power was recognized to be exercisable by the Governor beyond the,,

Governor acting either as a Constitutional Governor or as a Discretionary Governor by or under the Constitution.,,

162. From the above discussion, we are of the view that in causing the two notifications dated 27.04.2020 to be issued, whereby the Governor had",,,

assumed the administration of the BTAD under Paragraph 16(2) of the Sixth Schedule, the Governor had acted as a Constitutional Governor.",,,

If the Governor had acted as a Constitutional Governor, whether the requirements of Article 163(1) of the Constitution, or if the Governor had acted",,,

as a Discretionary Governor, whether the requirements of Paragraph 20BA of the Sixth Schedule, had been complied with?",,,

163. The core contention of Mr. N. Dutta, learned senior counsel for the petitioners was that the CS having put up his note on 04.04.2020 providing",,,

for two options i.e., either to extend the term of the General Council of the BTC by exercising the power under 1st proviso to Paragraph 2(6A) of the",,,

Sixth Schedule or to assume the administration of the BTAD by the Governor by exercising the power under Paragraph 16(2) and the CM by his,,

endorsement dated 24.04.2020 having approved and forwarded the two options to the Governor for his discretion, the Governor while issuing the order",,,

contained in the note dated 25.04.2020, ought to have followed the procedure applicable to that of a Governor acting as a Constitutional Governor. In",,,

other words, there ought to have been an aid and advice of the COM before the order contained in the note dated 25.04.2020 could have been issued",,,

by the Governor. According to the learned senior counsel the notifications of 27.04.2020, by which the administration of the BTAD was assumed by",,,

the Governor in exercise of the power under Paragraph 16(2) of the Sixth Schedule, were on the basis of the order of the Governor contained in the",,,

note dated 25.04.2020, which stood reiterated by the subsequent order contained in the note dated 27.04.2020. To substantiate his contention, Mr. N.",,,

Dutta, learned senior counsel relied upon the pronouncements of the Supreme Court in Samsher Singh (supra), Rameshwar Prasad (supra),",,,

Edwingson Bareh (supra) and Nabam Rebia (supra) as well as S.R. Bommai (supra).,,

164. Relevant portions of the pronouncement of the Supreme Court in Samsher Singh (supra) are extracted below:,,

27. Our Constitution embodies generally the Parliamentary or Cabinet system of Government of the British model both for the Union and the,

States. Under this system the President is the constitutional or formal head of the Union and he exercises his powers and functions conferred on him,

by or under the Constitution on the aid and advice of his Council of Ministers. Article 103 is an exception to the aid and advice of the Council of,

Ministers because it specifically provides that the President acts only according to the opinion of the Election Commission. This is when any question,

arises as to whether a Member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article,

102.,

28. Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he,

exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres,

where the Governor is required by or under the Constitution to exercise his functions in his discretion.,

30. In all cases in which the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of,

his Council of Ministers he does so by making rules for convenient transaction of the business of the Government of India or the Government of State,,

respectively or by allocation among his Ministers of the said business, in accordance with Article 77(3) and 166(3) respectively. Wherever the",

Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as",

the case may be, as for example in Article 123, 213, 311 (2), proviso (c), 317, 352(1), 356 and 360 the satisfaction required by the Constitution is not",

the personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor in the constitutional sense under,,

the Cabinet system of Government. The reasons are these. It is the satisfaction of the Council of Ministers on whose aid and advice the President or,,

the Governor generally exercises all his powers and functionsâ?|â?|..,,

44. â?|â?|..Therefore, whether the functions exercised by the President are functions of the Union or the functions of the President they have equally",

to be exercised with the aid and advice of the Council of Ministers, and the same

is true of the functions of the Government except those which he",,,
has to exercise in his discretion.,,,

48. The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and,,
functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is",,,
required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or,,
the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the",,,
personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of,,
Government, that is, satisfaction of his Council of Ministers on whose aid and advise the President or the Governor generally exercises all his powers",,,
and functionsâ?|â?|...,,

57. For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime,,
Minister at the head in the case of the Union and the Chief Minister at the head in the case of State in all matters which vests in the Executive,,
whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions,,
personallyâ?|â?|â?|â?|â?|â?|â?|â?|â?|â?|...,,

88. For the foregoing reasons we hold that the President as well as the Governor acts on the aid and advice of the Council of Ministers in executive,,
action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advise of,,
the Council of Ministers. Where the Governor has any discretion the Governor acts on his own judgment. The Governor exercises his discretion in,,
harmony with his Council of Ministersâ?|â?|â?|â?|â?|â?|â?|â?|...,,

154. We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under",,,
various articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their",,,
Minister save in a few well-known exceptional situationsâ?|â?|â?|â?|â?|â?|â?|â?|...,,

166. Relevant portions of the pronouncement of the Supreme Court in *Nabam Rebia* (supra) are extracted below:,,

150. Insofar as the instant issue is concerned, reference may also be made to the Justice Sarkaria Commission Report on "Centre - State",,,

Relations" and the Justice M.M. Punchhi Commission Report on "Constitutional Governance and Management of Centre-State Relations." The,,

conclusions drawn in both the above reports are clear and explicit. In paragraph 4.1.03 of the Justice M.M. Punchhi Commission report, the",,,

observations of Dr. B.R. Ambedkar have been highlighted to the effect, that insofar as the constitutional role of the Governor is concerned, And",,,

thereafter, in paragraph 4.2.14 and 4.2.15 of the Justice M.M. Punchhi Commission report, it is observed as under:",,,

4.2.14. In a very limited field, however, the Governor may exercise certain functions in his discretion, as provided in Article 163(1). The first part of",,,

Article 163(1) requires the Governor to act on the advice of his Council of Ministers. There is, however, an exception in the latter part of the clause in",,,

regard to matters where he is by or under the Constitution required to function in his discretion. The expression "required" signifies that the Governor",,,

can exercise his discretionary powers only if there is a compelling necessity to do so. It has been held that the expression "by or under the",,,

Constitution" means that the necessity to exercise such powers may arise from any express provision of the Constitution or by necessary implication.",,,

We would like to add that such necessity may also arise from rules and orders made "under" the Constitution.",,,

4.2.15 Thus, the scope of discretionary powers as provided in the exceptions in clause (1) and in clause (2) of Article 163 has been limited by the clear",,,

language of the two clauses. It is an accepted principle that in a parliamentary democracy with a responsible form of Government, the powers of the",,,

Governor as constitutional or formal head of the State should not be enlarged at the cost of the real executive, viz. the Council of Ministers. The scope",,,

of discretionary powers has to be strictly construed, effectively dispelling the apprehension, if any, that the area for the exercise of discretion covers",,,

all or any of the functions to be exercised by the Governor under the Constitution. In other words, Article 163 does not give the Governor a general",,,

discretionary power to act against or without the advice of his Council of Ministers "â?â?|...,,

152. We are of the considered view, that the inferences drawn in the Justice M.M. Punchhi Commission report extracted hereinabove, are in",,,

consonance with the scheme of the functions and powers assigned to the Governor, with reference to the executive and legislative functioning of the",,,

State, and more particularly with reference to the interpretation of Article 163. We endorse and adopt the same, â?|â?|â?|â?|â?|â?|â?|â??"",,,

167. Relevant portions of the pronouncement of the Supreme Court in S.R. Bommai (supra) are extracted below:-,,

280. The power conferred by Article 356 is a conditioned power, it is not an absolute power to the exercised in the discretion of the President. The",,,

condition is the formation of satisfaction â?" subjective, no doubt â?" that a situation of the type contemplated by the clause has arisen. This",,,

satisfaction may be formed on the basis of the report of the Governor or on the basis of other information received by him or both. The existence of,,

relevant material is a precondition to the formation of satisfactionâ?|â?|â?|. Having regard to the nature of the power and the situation in which it is,,

supposed to be exercised, principles of natural justice cannot be imported into the clause. It is evident that the satisfaction has to be formed by the",,,

President fairly, on a consideration of the report of the Governor and/or other material, if any, placed before him. Of course, the President under our",,,

Constitution being, what may be called, a constitutional President obliged to act upon the aid and advice of the Council of Ministers [which aid and",,,

advice is binding upon him by virtue of clause (1) of Article 74], the satisfaction referred to in Article 356(1) really means the satisfaction of the Union",,,

Council of Ministers with the Prime Minister at its head.â??,,

â??282. â?|â?| All executive action of the Government of a State is expressed to be taken in the name of the Governor, except a few functions which",,,

he is required to exercise in his discretion. He has to exercise his powers with the aid and advice of the Council of Ministers with the Chief Minister at,,

its head (Article 163).â??,,

168. From the aforesaid propositions laid down by the Supreme Court it is discernable that the Governor exercises his powers and functions conferred,,

on him by or under the Constitution on the aid and advice of the COM. Wherever the Constitution requires the satisfaction of the Governor for,,

exercise of any power or function, the satisfaction required by the Constitution is

not the personal satisfaction of the Governor but it is the satisfaction",,,

in the constitutional sense under the Cabinet system of Government. It is the satisfaction of the COM on whose aid and advice the Governor exercises,,

his powers and functions. The Governor is the constitutional or formal head and he exercises his powers and functions conferred on him by or under,,

the Constitution on the aid and advice of the COM, save and except in such spheres where the Governor is required by or under the Constitution to",,,

exercise his functions in his discretion and wherever the Constitution requires the satisfaction of the Governor, it is not the personal satisfaction of the",,,

Governor but the satisfaction of the COM on whose aid and advice the Governor generally exercises his powers and functions.,,,

The constitutional provision is that the Governor exercises his functions on the aid and advice of the COM and not required to act personally without,,

the aid and advice of the COM or against the aid and advice of the COM and the Governor exercises his functions in harmony with the COM.,,,

169. In *Nabam Rebia* (supra) also it had been approved that it is an accepted principle that in a parliamentary democracy with a responsible form of,,

Government, the powers of the Governor as constitutional or formal head of the state should not be enlarged at the cost of the real executive viz., the",,,

COM. The scope of the discretionary power has to be strictly constituted, effectively dispelling the apprehensions, if any, that the area for the exercise",,,

of discretion covers all or any of the functions to be exercised by the Governor. Article 163(1) does not give the Governor a general discretionary,,

power to act against or without the aid and advice of the COM. The said views which are found in the Justice M.M. Punchi Commission report,",,

which have been extracted hereinabove in the extraction pertaining to the pronouncement in *Nabam Rebia* (supra), are held by the Supreme Court to",,,

be in consonance with the scheme of the functions and powers assigned to the Governor and the Supreme Court had endorsed and adopted the same.,,,

170. In the instant case, it had already been held that the Governor while causing the notifications dated 27.04.2020 had acted as a Constitutional",,,

Governor. Mr. N. Dutta, learned counsel for the petitioners had raised the issue that the notifications dated 27.04.2020 by which the administration of",,,

the BTAD was assumed by the Governor under Paragraph 16(2) of the Sixth Schedule were based upon the opinion/decision of the Governor,,

contained in his orders/notes dated 25.04.2020 and 27.04.2020. There was no aid and advice of the COM available on record when the,,

opinion/decision of the Governor contained in the orders/notes dated 25.04.2020 and 27.04.2020 were made. Therefore, the contention made is that",,,

the Governor had not exercised his functions on the aid and advice of the COM and as such, there is a violation of the constitutional requirement of",,,

the Governor to act on the aid and advice of the COM.,,,

171. Per contra Mr. D. Saikia, learned senior counsel had contended that the sequence of events which led to the issuance of the two notifications",,,

dated 27.04.2020 by which the administration of the BTAD was assumed by the Governor by exercising the power under Paragraph 16(2) of Sixth,,

Schedule would show that when the Governor exercised his functions, the aid and advice of the COM was in place and therefore, the constitutional",,,

requirement of the Governor to act on the aid and advice of the COM was duly satisfied.,,,

172. Admittedly and at a cost of repeating, the note of the CS of 04.04.2020 had provided for two options, the first option being to extend the General",,,

Council of the BTC in exercise of the power under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule and the other being to assume the,,

administration of the BTAD in exercise of the power under Paragraph 16(2). By the endorsement of 24.04.2020, the CM had approved the two",,,

options contained in the note of the CS and forwarded it to the Governor to exercise his option to opt for either of the two options. The Governor by,,

the order contained in his note dated 25.04.2020 to the CM provided that he had opted for the option of assuming the administration of the BTAD in,,

exercise of the power under Paragraph 16(2) of the Sixth Schedule and for the purpose the relevant notification may be issued. When the,,

Departmental Minister had put up a contrary note on 26.04.2020 requesting that the first option of extending the term of the General Council of the,,

BTC be opted for, the Governor by his subsequent order contained in the note dated 27.04.2020 to the CM provided that he stands by his earlier",,,

decision of 25.04.2020 i.e., he stands by his decision to opt for the option of assuming the administration of the BTAD in exercise of the power under",,,

Paragraph 16(2) of the Sixth Schedule. Both the orders of the Governor contained in the notes dated 25.04.2020 and 27.04.2020 were placed before,,

the COM in its meeting held at 3:00 PM on 27.04.2020 and the COM had ratified and approved the view of the CM, i.e., the view contained in the",,,

endorsement dated 24.04.2020. Thereupon the two notifications of 27.04.2020 were issued by which the administration of the BTAD was assumed by,,

the Governor in exercise of the power under Paragraph 16(2) of the Sixth Schedule and also appointed an Administrator in exercise of the same,,

power.,,

173. The contention of Mr. N. Dutta, learned senior counsel for the petitioners was that there was a requirement on the part of the Governor to have",,,

the aid and advice of the COM prior to the orders of the Governor contained in the notes dated 25.04.2020 and 27.04.2020. Mr. D. Saikia, learned",,,

senior counsel, on the other hand, on the said question, contended that when the orders were passed by the Governor on 25.04.2020 and 27.04.2020,",,

the matter was still at a stage of deliberation between the Governor and the authorities under the Government of Assam, including the CM and",,,

therefore, the stage had not yet arrived for the constitutional requirement of the Governor to be acting on the aid and advice of the COM.",,

174. From the rival contentions the core issue would be as to at which stage of the proceedings the constitutional requirement of having the aid and,,

advice of the COM would have to be in place.,,

175. If we test the contention of Mr. N. Dutta, learned senior counsel for the petitioners that the constitutional requirement of having the aid and",,,

advice of the COM would have to be in place when the Governor passed the orders on 25.04.2020 and 27.04.2020, expressing his decision that he",,,

would assume the administration of the BTAD in exercise of the power under Paragraph 16(2) of the Sixth Schedule, a situation would have to be",,,

accepted that without the aid and advice of the COM forthcoming, the Governor can neither deliberate on an issue nor he can pass any orders",,,

expressing his views on any given issue. The Governor would have to act or react only when an aid and advice of the COM is in place and have been,,

forwarded to him for exercising his functions.,,

176. An acceptance of the position of the Governor in such manner would mean that the Governor remains an inert body, totally dysfunctional",,,

oblivious of any impending constitutional issues, till any such aid and advice of the COM is being forwarded on the issue concerned and discharge his",,,

functions in the manner as contained in the aid and advice. It had already been noted that the Supreme Court in *Samsher Singh* (supra) and *Nabam*,,

Rebia (supra) had held that the Governor cannot exercise his functions without the aid and advice, or against the aid and advice, of the COM.",,

Therefore, if we are to accept the contention raised by the learned senior counsel for the petitioners the only conceivable way would be that in respect",,

of any impending constitutional issue, the Governor would have no role to play either in the deliberation or in the process of decision making and he",,

would act in the matter only upon having the aid and advice of the COM.,,

177. The Governor exercises his power as a Constitutional Governor in accordance to the provisions of Article 163(1) of the Constitution. Article,,

163(1) of the Constitution is extracted as under:,,

Article 163(1) There shall be a council of Ministers with the chief Minister as the head to aid and advise the Governor in the exercise of his,,

functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion.",,

178. A reading of Article 163(1) shows that the Governor in the exercise of his functions is required to act on the aid and advice of the COM. The,,

expression "exercise of his functions", would have to be understood to be the exercise of any of the functions by the Governor while exercising",,

any of the powers conferred on him by or under the Constitution. In other words, the stage or the point of time at which the Governor exercises any of",,

the powers by or under the Constitution, while acting as a Constitutional Governor, the aid and advice of the COM has to be in place and the Governor",,

would have to exercise the power by or under the Constitution on the aid and advice of the COM.,,

179. In the instant case, the Governor had exercised his functions in exercise of the power under Paragraph 16(2) of the Sixth Schedule, when the two",,

notifications dated 27.04.2020 were caused to be issued, at which stage, the administration of the General Council of the BTC was assumed by the",,

Governor.,,

180. From the said point of view, we are to look into the facts and circumstances of the case as to whether the aid and advice of the COM was in",,

place when the Governor had assumed the administration of the General Council of the BTC in exercise of his power under Paragraph 16(2) of the,,

Sixth Schedule. It is at that stage, the Governor had exercised his functions under the constitutional provision of Paragraph 16(2) of the Sixth Schedule",,,

and it is that stage alone when the Governor in exercise of his functions had assumed the administration of the General Council of the BTC. We take,,

note of that it is also the submission of Mr. N Dutta, learned senior counsel for the petitioners that when the Governor exercises his functions under",,,

the Constitution, the aid and advice of the COM has to be in place.",,,

181. Admittedly, when the two notifications dated 27.04.2020 were issued, that is when the Governor had exercised his functions and assumed the",,,

administration of the General Council of the BTC under Paragraph 16(2) of the Sixth Schedule, the aid and advice of the COM was in place.",,,

182. Therefore, the conclusion that we can arrive at is that when the Governor had exercised his functions, i.e., when the Governor had assumed the",,,

administration of the General Council of the BTC in exercise of the powers under Paragraph 16(2) of the Sixth Schedule, the aid and advice of the",,,

COM for such exercise of power was in place, and, therefore, there was a compliance of the requirement of Article 163(1) of the Constitution at the",,,

time when the Governor had exercised his functions as a Constitutional Governor.,,,

183. We are of the view that when the orders of the Governor contained in the notes dated 25.04.2020 and 27.04.2020, expressing his decision that he",,,

would assume the administration of the General Council of the BTC in exercise of his power under Paragraph 16(2) of the Sixth Schedule, were",,,

issued, the Governor may have taken a decision, but he had not yet exercised his functions. The Governor had exercised his function only at the stage",,,

when the General Council of the BTC was assumed by him through appropriate notification under Paragraph 16(2) of the Sixth Schedule. The said,,

view would be further fortified from the aspect that the proposition laid down by the Supreme Court is that the Governor cannot act against the aid,,

and advice of the COM and therefore, if the decision taken by the Governor would have been contrary to the aid and advice of the COM, he still",,,

could not have exercised his functions and, therefore, expressing a decision by an order and exercising the constitutional function in exercise of any of",,,

the power conferred by or under the Constitution would be distinguishable.,,,

184. The sequence of events are such that after the endorsement of the CM

requiring the Governor to opt for either of the two given options and the,, Governor having taken a decision to opt for one of the two options, all the materials including the view of the CM contained in the endorsement dated",,, 24.04.2020 and the decision of the Governor contained in the notes to the CM dated 25.04.2020 and 27.04.2020 were placed before the COM in its,, meeting held at 3.P.M on 27.04.2020. Therefore, when the COM had ratified and approved the view of the CM, which had resulted in the decision of",,, the Governor, the satisfaction of the COM also included the decision of the Governor. It had categorically been stated by Mr. D Saikia, learned senior",,, counsel that no contrary view was taken by any of the Ministers in the COM, which again would mean that no dissatisfaction was expressed in any",,, form by the COM as regards the decision of the Governor. As required in paragraph 48 of the pronouncement of Samsheer Singh (supra), the",,, satisfaction of the Governor in the instant case was also the satisfaction of the COM.,,,

185. A contention had also been raised by Mr. N Dutta, learned senior counsel for the petitioners that there cannot be a subsequent ratification by the",,, COM after the Governor had exercised his functions by acting as a Constitutional Governor under Article 163(1) of the Constitution. For the purpose",,, a decision of the Supreme Court had been relied upon, where the Governor had made a recommendation and there was a subsequent ratification by",,, the COM, but it was held by the Supreme Court that there could not have been a ratification subsequent to the recommendation. But in the said case",,, we have taken note of that making the recommendation itself was an exercise of the function by or under the Constitution. But in the instant case, as",,, already held, the Governor had exercised his constitutional function when he had exercised his power under Paragraph 16(2) of the Sixth Schedule",,, and the aid and advice of the COM was available prior to such exercise of constitutional function. Therefore, the contention of the petitioners by",,, relying on the said proposition, that there was a subsequent ratification by the COM to the exercise of the constitutional function by the Governor is",,, unacceptable.,,,

Whether the petitioners have a locus-standi to assail the notifications dated 27.04.2020, by which the Governor has assumed the administration of the",,, BTC, and whether there is any delay and laches on the part of the petitioners in

instituting the writ petition, more particularly, with reference to the",,,
prayer No. (c) for a direction to extend the General Council of the BTC?,,
And,,

Whether the third prayer in the writ petition for a writ in the nature of mandamus directing the respondents to extend the term of the General Council,,
of the BTC can be decided in favour of the petitioners? The corollary question that would arise is whether after expiry of the term, whether an",,,
extension can be ordered and secondly, whether a writ in the nature of mandamus would be maintainable in the facts and circumstance of the present",,,
case?,,

186. Mr. D. Saikia, learned senior counsel for the respondents raised a question that the writ petition having been instituted by Mr. Nerswn Boro, who",,,
was the Deputy Speaker in the General Council of the BTC and Mr. Jagadish Sarkar, who was a Member in the General Council, they do not have a",,,
locus-standi to assail the two notifications dated 27.04.2020 by which the administration of the BTAD was assumed by the Governor in exercise of the,,
power under Paragraph 16(2) of the Sixth Schedule, nor they do have any legal right for seeking a writ in the nature of mandamus for an extension of",,,
the General Council of the BTC. According to the learned senior counsel, the petitioners were elected to the erstwhile General Council of the BTC for",,,
a term of five years, as provided in Paragraph 2(6A) of the Sixth Schedule and upon expiry of the term of five years, no further legal right remain with",,,
the petitioners to continue in the General Council. If for any reason the Governor would have extended the term of the General Council in exercise of,,
the powers under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule, they would have continued in the General Council, but no legal right flows",,,
in favour of the writ petitioners to have the term of the General Council extended.,,,

187. Mr. D Saikia, learned senior counsel also contended that as regards the third prayer in the writ petition for a writ in the nature of mandamus to",,,
extend the General Council of the BTC, firstly there was no demand being made either by the writ petitioners or by any other competent person to",,,
extend the term of the General Council of the BTC beyond the period of five years provided under Paragraph 2(6A) of the Sixth Schedule, nor the",,,
petitioners had approached the Court for such direction at a stage before the

expiry of the term of the General Council and therefore, there is a delay",,
and laches on the part of the writ petitioners to seek for a writ in the nature of mandamus to extend the term of the General Council.,,

188. Mr. N. Dutta, learned senior counsel for the writ petitioners on the other hand contended that the writ petitioners being the Deputy Speaker and a",,

Member, respectively in the General Council of the BTC, would definitely have a legal right to question any decision not to extend the term of the",,

General Council, inasmuch as, had the General Council been extended, they would have had the benefit to continue in the General Council. As regards",,

the contention of the respondents that there was a delay in instituting the writ petition for seeking the writ in the nature of mandamus for extending the",,

General Council, the learned senior counsel submitted that the occasion for the petitioners to seek the writ in the nature of mandamus to extend the",,

General Council had arisen after the notifications dated 27.04.2020 were issued and the notifications having been issued on 27.04.2020, there was no",,

delay and laches on the part of the writ petitioners in approaching the Court and the writ petition was instituted on 29.04.2020.,,

189. Wharton's Law Dictionary provides locus-standi to be the right of a petitioner to be heard upon his petition and the petitioner has a locus-,,

standi if his interest is directly hit by the orders assailed in the writ petition. In the instant case, the petitioners were the Deputy Speaker and",,

Member, respectively of the General Council of the BTC, whose term came to an end on 27.04.2020. By the two notifications assailed in the writ",,

petition both dated 27.04.2020, the Governor in exercise of the powers under Paragraph 16(2) of the Sixth Schedule had assumed himself the",,

administration of the BTAD, which again by implication would mean that the option available before the Governor to extend the term of the General",,

Council of the BTC in exercise of the power under the 1 st proviso to Paragraph 2(6A) of the Sixth Schedule was not opted for. On the contrary, had",,

the term of the General Council of the BTC been extended, both the petitioners would have continued as the Deputy Speaker or as a Member and",,

definitely the petitioners would have an interest in assailing the two notifications dated 27.04.2020.,,

190. In view of the above, we have to accept the situation that the interest of the petitioners were hit by the orders assailed, i.e. the two notifications",,

dated 27.04.2020. Accordingly, as per the meaning of the concept of locus-standi as indicated hereinabove, the petitioners do have the locus-standi to",,,

maintain the writ petition.,,,

191. But again a different consideration would have been given whether the third prayer in the writ petition for a writ in the nature of mandamus for,,

an extension of the General Council of the BTC would also be maintainable in the present form. It was the specific contention of Mr. D Saikia,",,

learned senior counsel for the respondents that there were no representations or demand either from the petitioners or from any other competent,,

person having a similar right that of the writ petitioners for an extension of the General Council of the BTC before the term came to an end on,,

27.04.2020. The said contention of the learned senior counsel for the respondents have not been disputed by the petitioners nor any material has been,,

produced by the petitioners bringing on record any such representations or demand being made for an extension of the General Council of the BTC.,,,

Even the records produced before the Court does not indicate any such representation or demand being made.,,,

192. The prayer (c) in the writ petition is extracted as under:-,,

â??Mandamus shall not be issued directing the Respondent authorities to grant extension of term to the body of the BTC Council.â??.,,

193. If the prayer (c) for a writ in the nature of mandamus directing the respondents to extend the term of the General Council of the BTC is,,

considered to be an independent prayer seeking such direction. Condition precedent for issuing a writ in the nature of mandamus is that the applicant,,

must show that he has a legal right to the performance of a legal duty, which is distinguishable from the discretion of the party against whom the",,,

mandamus is sought and such right must be subsisting on the date of the petition.,,,

194. The Supreme Court in paragraph-9 of Mani Subrat Jain â?"vs- State of Haryana, reported in (1997) 1 SCC 486 has held as under:-",,,

â??The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal,,

right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus.,,,

A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from,,

doing something.â??,,

195. The Supreme Court in Paragraphs-14 and 17 of Kalyan Singh â?"vs- State of Uttar Pradesh and others, reported in AIR 1962 SC 118 3has held",,

as under:-,,

â??14. It is necessary to bear certain facts and considerations in mind in dealing with the remaining contentions. By the scheme (clause 7) the permit,,

of the appellant was cancelled. The scheme as approved was published in the U.P. Gazette on October 8, 1960, and was to come into operation on",,

October 15, 1960 or thereafter. A notification was published on November 4, 1960 under Section 68 F(2) of the Act cancelling the appellantâ??s",,

permit with effect from November 27, 1960. The appellant therefore ceased to have any right to ply his vehicles on the route and he had no right to",,

object to the vehicles of the State transport undertaking plying on that route. If the scheme was validly promulgated and became final within the,,

meaning of Section 68 D(3), it had the effect of extinguishing all rights of the appellant to ply his vehicles under his permit. After cancellation of his",,

permit, he could not maintain a petition for a writ under Article 226 because a right to maintain such a petition postulates a subsisting personal right in",,

the claim which the petitioner makes and in the protection of which he is personally interested. It is true that the appellant did at the date of the petition,,

filed in the High Court hold a permit which was to enure till 27th November, 1960. But if the permit was validly terminated from the date specified, he",,

will not be entitled to relief even if he had on the date of the petition a subsisting right. Ground 2 must therefore fail.,,

17. We are not called upon to consider whether the State owned buses are being validly plied without obtaining permits under Section 68 F(1) of the,,

Act. If the right of the appellant to ply his buses is lawfully extinguished, he is not entitled to maintain an appeal challenging the right of the State",,

Transport Undertaking to ply their buses with or without permits. Nor is any fundamental right of the appellant infringed by the State Transport,,

Undertaking plying its buses without permits, and a petition under Article 32 of the Constitution cannot be maintained unless a fundamental right of the",,

appellant is infringed.â??,,

196. From the aforesaid two propositions laid down by the Supreme Court in respect of issuing a writ in the nature of mandamus, it is discernible that",,,
 for a mandamus to be maintainable, there must be a judicially enforceable right which must be a legally protected right before a person suffering from",,,
 a legal grievance can ask for a mandamus, where a person can be said to be aggrieved only when he is denied his legal right by someone who has a",,,
 legal duty to do something or to abstain from doing something. The other requirement of a writ in the nature of mandamus to be maintainable would be,,
 that on the date when the petition for issuing a writ in the nature of mandamus is filed, the legal right which is alleged to be violated must be subsisting",,,
 as on the said date.,,

197. To examine the aspect whether the judicially enforceable right which also is a legally protected right was in existence, in the facts and",,,
 circumstances of the present case, we take note of that the power of the Governor to extend the term of a District Council is provided in the 1st",,,
 proviso to Paragraph 2(6A) of the Sixth Schedule. In paragraphs-9 & 10 of J atan Kumar Thaosen and another â?vs- State of Assam and others,",,
 reported in 2007 (3) GLT 42, the Division Bench of this Court has held as follows:-",,,

â??9. â?|â?|.. Para 2 (6a) of the Sixth Schedule provides that the members of the District Council shall hold office for a term of five years, unless the",,,
 District Council is sooner dissolved as provided in para-16 and a member is nominated to hold office at the pleasure of the Governor. First proviso to,,
 this paragraph empowers the Governor to extend the said period for a period not exceeding one year at a time. â?|â?|â?| The power to extend the,,
 term of the Council is, therefore, discretionary and could be exercised by the Governor in his discretion provided he is of the opinion that the",,,
 circumstances exist which render the holding of the election impracticable.,,

10. â?|â?|.The word â??mayâ? incorporated in sub-para (6a) quoted above clearly shows that the extension of term is discretionary even when the,,
 Governor is of the opinion that the holding of election is not practicable.â?,,

198. Apparently, it has been held by the Division Bench that the power of the Governor to extend the term of a District Council is a discretionary",,,
 power subject to the condition precedent provided therein being fulfilled. When we look it from the point of view that the power to extend the term of,,

a District Council under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule is a discretionary power and further there being no aid and advice,,

by the COM that the Governor is required to extend the term of the General Council of the BTC in exercise of the power under the 1st proviso to,,

Paragraph 2(6A) of the Sixth Schedule alone, the same cannot lead to an inference that the Governor had a legal duty to extend the term. A discretion",,,

being vested and a duty being entrusted cannot co-exist and if there is discretion, it can at the best be a legal duty to either do something or to abstain",,,

from doing something in exercise of such discretion.,,,

199. Further a Division Bench of this Court in WA 262/2007, (Juri Bhattacharyya and others â?"vs-State of Assam and others) in paragraphs 8, 9 and",,,

10 has held as follows:-,,

â??8. We have considered the pleadings on record and the documents available therewith in the context of the arguments advanced. The sequence of,,

events as recited hereinabove in a nutshell is not in dispute. That by the date on which the State Government had made a request to the Commission to,,

extend the validity of the select list, the same had already expired on 30.5.2003 is amply testified by the aforementioned communication. It is, thus, an",,,

admitted fact that the select list dated 29.5.2002 stood expired on 30.5.2003. The date of the letter dated 20.10.2003 attests the fact that the request,,

for extension of the select list was made almost after a lapse of five months from the expiry thereof. The letter dated 18.11.2003 of the Deputy,,

Secretary of the Commission according approval to the extension of the validity of the select list as requested by the State Government is a clear,,

pointer to the fact that the decision was taken on a date which is almost six months after the date of expiry of the select list. Noticeably, however, the",,,

extension was granted with effect from 29.5.2003.,,,

9. The Apex Court in Provash Chandra Dalui (supra) while dealing with the purport of the expression extension and renewal vis-Ã -vis the term,,

lease/tenancy as involved therein referred to the dictionary meaning of these words. Alluding to the Blackâ??s Law Dictionary their Lordships,,

observed that the word extension means enlargement of the main body; addition of something smaller than that to which it is attached; to lengthen or,,

prolong. The Apex Court thus propounded that extension ordinary implies the

continued existence of something to be extended. According to their,,
 Lordships, the distinction between "extension" and "renewal" is chiefly that in case of renewal, a new lease is required, while in the case,,
 of extension the same lease continues in force during the additional period by the performance of the stipulated act. In K. Thulaseedharan (supra) the,,
 Apex Court was confronted with a challenge against the refusal of the Kerala Public Service Commission to extend the validity of a list that has since,,
 expired. The fifth proviso to Rule 13 of the Kerala Public Service Commission Rules of Procedure, as is evidence from the contextual facts therein,,
 empowered the Commission to keep alive the lists which were normally due to expire during the said period to such periods as might be decided by it,,
 subject to a maximum period of three months or for such further periods but not exceeding one year in the aggregate. Their Lordships with specific,,
 reference to the fifth proviso to the aforementioned rules refused to interfere with the decision of the jurisdictional High Court sustaining the decision,,
 of the Commission.,,,
 10. Having regard to the concept of extension as has been expounded by the Apex Court in Provash Chandra Dalui (supra), we are of the considered,,
 opinion that in the facts and circumstances of the present case the State Government had no authority in law to request for extension of the term of,,
 the select list dated 29.5.2002 after a lapse of five months from the date of expiry thereof. The decision of the Commission to accord approval to the,,
 extension, in our view consequently cannot be sustained as well as by the analogy of the aforementioned reasons. Our attention has not been drawn to,,
 any law or executive instructions having the force thereof empowering the Commission to grant extension of the validity of a select list already expired,,
 with retrospective effect. It is trite on this day to observe that having regard to the notion of extension as is acceptable and understood in the absence,,
 of any principle of law or otherwise, it per se pre-supposes existence of the state or condition of which an enlargement either in point of time or,,
 otherwise is sought to be effected by an order to that effect. The same concept pervades, amongst others, service jurisprudence. The tenure of,,
 service once over cannot be extended and the only arrangement thereafter feasible is by way of re-employment. In other words, the concept of,,
 extension is not available vis-à-vis anything that had ceased to exist.â??,,

200. From the pronouncement of the Division bench in WA 262/2007, it is discernible that a term of a body cannot be extended once the earlier term",,, comes to an end inasmuch as, the concept of extension is not available to anything that had ceased to exist. In the instant case also, we take note of",,, that the term of the General Council of the BTC came to an end on 27.04.2020, whereas the writ petition was instituted on 29.04.2020 i.e. after the",,, term came to an end. Therefore, as held by the Division Bench, the concept of extension is unavailable to the petitioner as the earlier term of the",,, General Council of the BTC already came to an end and had ceased to exist.,,,

201. As it is a pre-requisite for issuing a writ in the nature of mandamus that there must exist an enforceable legal right and at the time of institution of",,, the petition the legal must subsist and the person who is required to carry out the legal right has a legal duty to do so, in the instant case we find that",,, the term of the General Council of the BTC having come to an end on 27.04.2020, there was no subsisting legal right of the petitioners as on",,, 29.04.2020 when the writ petition was instituted for claiming a direction to extend the term of the Council and further, the power of the Governor for",,, extending the term of a District Council being discretionary under the 1st proviso to Paragraph 2(6A) of the Sixth Schedule, it cannot be said that the",,, Governor has a legal duty to extend the term.,,,

202. In view of such conclusion, we are of the view that no case has been made out by the writ petitioners for acceding to the third prayer in the writ",,, petition for a writ in the nature of mandamus to extend the term of the General Council of the BTC.,,,

203. But, however a writ in the manner of mandamus is also available against any public authority including administrative and local bodies and it",,, would lie against any person who is under a duty imposed by a statute to do a particular act. It may be used to do justice when there is wrongful",,, exercise of power or a refusal to perform duties. From the said point of view, a prayer seeking for a writ in the nature of mandamus can also be",,, looked from the point of view whether such prayer is correlated to any other prayer in the same petition. Although a writ in the nature of mandamus,, may not be maintainable as an independent prayer for such writ, but, if the writ sought for is correlated and is a consequence of a declaration of there",,, having been a wrongful exercise of power, and in respect of such other prayer a

conclusion is arrived as regards a wrongful exercise of power, in",,,

such situation, as a consequential relief a writ in the nature of mandamus may be maintainable.",,,

204. In the event a writ in the nature of mandamus would be maintainable as a consequence of there being a declaration of there having been a,,

wrongful exercise of power, however, ordinarily the court will not exercise the power of a statutory authority and at a first instance would allow the",,,

authorities to perform their own functions and would not assume the jurisdiction itself. In this respect the proposition of the Supreme Court in,,

Paragraph 32 & 33 in Union of India vs. S.B. Vohra reported in (2004) 2 SCC 150 is referred and extracted as below:,,

â??32. It is not possible to lay down the standard exhaustively as to in what situation a writ of mandamus will issue and in what situation it will not. In,,

other words, exercise of its discretion by the Court will also depend upon the law which governs the field, namely, whether it is a fundamental law or",,,

an ordinary law.,,,

33. It is, however, trite that ordinarily the Court will not exercise the power of the statutory authorities. It will at the first instance allow the statutory",,,

authorities to perform their own functions and would not usher the said jurisdiction itself.â??,,

205. Accordingly, as also provided in the Shorter Constitution of India by Prof. D.D. Basu, we are to infer that in respect of issuance of a writ of",,,

mandamus which may be correlated to a decision having arrived at that there was a wrongful exercise of power, the Court should not ordinarily issue",,,

a writ in the nature of mandamus and ought to refer the matter back to the authorities with suitable directions pointing out the irrelevant factors which,,

are required to be excluded in taking a decision and the relevant factors which are required to be considered for the purpose. The statutory duties,,

should be allowed to be performed by the statutory authorities at a first instance and only in exceptional cases the Courts may interfere on the judicial,,

site and in doing so it must be exercise with care and circumspection,,

206. In the instant case, a conclusion had already been arrived that no case was made out of any wrongful exercise of power in causing the",,,

notifications dated 27.04.2020, whereby the administration of the BTAD was assumed by the Governor in exercise of the power under Paragraph",,,

16(2) of the Sixth Schedule. It being so, no case has been made out even for issuing a writ in the nature of mandamus which may be in correlation to",,

any other conclusion arrived at as regards wrongful exercise of power.,,

207. In view of the conclusion arrived we do not find any merit in the writ petition for interfering with the notifications dated 27.04.2020 of the,,

Commissioner & Secretary to the Govt. of Assam in the WPT & BC Department, by which the Governor had exercised his functions to assume the",,

administration of the BTAD in exercise of the power under Paragraph 16(2) of the Sixth Schedule to the Constitution and had appointed an,,

administrator.,,

Writ petition accordingly stands dismissed.,,