
(2005) 09 GAU CK 0091
In the Gauhati High Court
Case No : Writ Petition (C) No. 3755 of 2005

North Cachar Hills Autonomous Council and Another	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 02-09-2005

Acts Referred:

Assam Executive Business Rules, 1968 — Rule 14, 15, 21, 27(3), 7
Constitution of India, 1950 — Article 14, 15, 15(1), 16, 164(2)
Government of India Act, 1935 — Section 59(1), 59(2)

Citation : (2005) GLT 321 Supp

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : A.M. Mazumdar, N.H. Mazarbhuiyan, J.U.N.M. Laskar and S. Parveen Hussain, for the Appellant; K.N. Chowdhury, I. Chowdhury and H.R.A. Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—The two Petitioners, namely North Cachar Hills Autonomous Council (in short "N.C. Council"), the Petitioner No. 1 and Karbi Anglong Autonomous Council (in short "KAA Council"), the Petitioner No. 2 are the Autonomous Council constituted under 6th (Sixth) Schedule of the Constitution of India and the rules framed thereunder, vested with power to run administration within their areas and the jurisdiction and to manage all development works under various Government Departments as well as the Council. The Petitioners have challenged two orders No. CON. 13/2005/90 dated 3.5.2005 Annexure-3 and another order dated 10.5.2005 Annexure-4 issued by the Commissioner and Special Secretary to the Government of Assam, Department of Public Works Department (in short called "P.W.D.") reorganizing Division and Sub-division and transferring/shifting number of P.W.D. Sub-Divisions from North Cachar and Karbi Anglong District mainly on the ground that such arrangement are made without prior consultation and consent of these two "Council, of said two Hill Districts as required under rules in derogation to the

provisions of 6th Schedule of the Constitution as well as in defiance to the Memorandum of Understanding dated 31.12.1996 (in short called "M.O.U.") and in utter disregard to the procedures indicated in The Assam Rules of Executive Business, 1968 (in short called "Rules of Business") issued by the Government of Assam and thereby threatening to disturb all activities of Public Works Department in the said two districts.

2. Heard Mr. A.M. Mazumdar, learned senior counsel assisted by Mr. N.H. Mazarbhuiyan, Mr. J.U.N.M. Laskar and Mrs. S. Parveen Hussain, for the Petitioners and Mr. K.N. Chowdhury, learned Additional Advocate General for the State of Assam along with Mr. I. Chowdhury, Mr. H.R.A. Chowdhury, learned senior Counsel with Mr. N. Islam, learned Counsel appearing for the Respondent No. 3, Sri Gobinda Ch. Langthasa Member of State Cabinet.

3. Following pleadings have been made on behalf of the Petitioners:

(i) As per existing provisions of the Constitution of India as well as the existing policy of the Government of Assam as expressed in the aforesaid office Memorandum dated 31.12.1996 the Public Works Department is the transferred subject to the N.C. Council and the KAA Council and these councils are entrusted with the task of construction and maintenance of road communications, bridges etc. within the council areas and the powers of the Government of Assam have been ceased about these matters. The Government of Assam is simply responsible for allocation of funds, however, by the impugned notification dated 3rd May, 2005 and 10th May, 2005 issued by Respondent No. 2, the Haflong NEC Division situated at Haflong, has now been re-designated at Karimganj NEC Division, and the existing works are attached to Umrangso NEC Division, Likewise Road Division is re-designated as Dhubri State Road Division at Dhubri and its existing works are attached to Umrangso NEC Division. By the same Notification, Maibong Survey Sub-Division and Mahur Road Sub-Division are re-designated as Dhubri State Road Sub-Division I and II respectively at Dhubri under Dhubri State Road Division, Haflong NEC Sub-Division and Gunjung NEC Sub-Division are re-designated at Karimganj NEC Sub Division I and II respectively at Karimganj under Karimganj NEC Division Mahur NEC.

(ii) Both the North Cachar Hills and the Karbi Anglong districts are situated at High Hills terraces where the road communication facilities are poor and particularly in monsoon season it is difficult to maintain the road links and supply of essential commodities. The left-out Divisions and Sub Divisions after the aforesaid re-organisation shall be insufficient to bear the work load of the two districts and to control remote and long distant areas under the same which is bound to affect road communication, building constructions and maintenance works in two Hills districts. The re-organization of PWD division and Sub-Divisions are quite unreasonable and absurd. The people residing in these two Hills districts are strongly opposed to such unreasonable shifting which is likely to affect them, however, no heed was taken by the State of Assam to the joint Memorandum dated 8.5.2005 for and on behalf of the respected concerned

persons to the Hon"ble Chief Minister of Assam, praying to stop implementation of the aforesaid re-organization of PWD Division and Sub-Divisions particularly in the two Hills Districts of Assam.

(iii) As per the memorandum of understanding and office Memorandum dated 1.4.1995 and 31.12.1996, PWD, is an entrusted department to both above Councils, however, the said councils have not been consulted in respect of shifting of the PWD Division and Sub-Divisions and such action of the Respondents are against the letter and spirit of the provisions of the Sixth schedule of the Constitution of India and the office Memorandum dated 31.12.1996.

4. The State Government of Assam, Hill Areas Department, had issued an Office Memorandum dated 31.12.1996 in reference to the Memorandum of Understanding (MOU) arrived after deliberation between the Chief Minister of Assam, Autonomous State Demand Committee, Karbi Students' Association, N.C. Hills Students' Federation and Dimasa Students' Union on 1st April, 1995 in New Delhi, in the presence of the Union Home Minister, granting greater autonomy to the "KAA Council" and "N.C. Council" within the framework of the Sixth Schedule to the Constitution of India (Annexure-1 to the writ petition). The said "MOU" also indicates that the executive powers could extend to thirty (30) subjects/departments listed in Annexure-1 and to that extent the executive powers of the State were entrusted and delegated to the above mentioned councils and accordingly, Government of Assam had entrusted the functioning related to thirty subjects/departments to which executive power of State of Assam extended with the consent of N.C. Council in exercise of powers conferred under sub para 2 of para-6 of 6th Schedule to the Constitution.

The Office Memorandum dated 31.12.1996 refers the modalities and administrative changes as below:

(A) In order to enable the N.C. Hills Autonomous Council to finance the expenditure of the entrusted and delegated functions of the thirty subjects/departments without difficulty, the State Government shall make funds available as advance under the Head K. Deposits Advances, Part-III Advance not bearing interest Departmental Advance Special Advance. The Administrative Departments of the State Government shall release the funds on a six monthly basis in April and October of each financial year. It shall be the duty of the Council to submit separate detailed accounts every month to the Accountant General, Assam to make necessary adjustment by debit to the appropriate head of Account of the State Budget.

(B) It shall be the responsibility of the Council to ensure that the existing Rules, instructions, norms, guidelines, etc. of the Government of India and the State Government, governing the implementation of the plan schemes relating to the entrusted subjects/Departments and other matters including the non-plan matters relating to the entrusted subjects/departments are followed strictly till

the Council frames Rules on the same in terms of the provisions of the Sixth Schedule to the Constitution of India, it being understood that the Rules, directions, etc. of the Government of India, Comptroller and Auditor General of India and other sound financial managements/principles shall always be followed.

(C) The State Government shall consult the Council, while posting and transferring the Officers of the entrusted subjects/departments in or out of the Council. Under no circumstances, the Officers and staff not released by the Council shall be accepted by the State Government. Before deputing any Officer or staff the Government shall provide a panel of names, enabling the Council to select and accept the same. The State Government shall take necessary action under the relevant rules and procedure against the officers and staff, found involved in any prima facie case of misconduct/dereliction of duty etc. during the period of deputation to the Council even after they are repatriated to the State Government.

5. The Public Works Department (PWD) has been shown as serial No. 5 in Annexure-1 enclosed with Office Memorandum dated 31.12.1996 dealing with the departments for entrustment to the N.C. Council and KAA Council under the Sixth Schedule to the Constitution of India. Annexure-3 has covered 23 districts of State of Assam. However, the Petitioners are only concerned about grievance of re-designation and re-organization of P.W.D. Division and Sub-Division only of N.C. Council and KAA Council only. According to the Petitioners, Annexure-2 provides that the laws relating to List III of the Seventh Schedule of the Constitution enacted by the Councils shall be reserved for consideration and approval of the President. The Petitioners as well as the Respondent No. 3 has placed reliance upon "Rules of business" enclosed as (Annexure-A to the affidavit in opposition of Respondent No. 3) said to have been issued by a Notification dated 5.3.1969 by the State Government of Assam in exercise of the powers conferred to the Governor under Clauses (2) and (3) of Article 166 of the Constitution of India.

6. The relevant provisions of "Rules of Business" are extracted as below:

PART-I: ALLOCATION AND DISPOSAL OF BUSINESS

4. The business of the Government shall be transacted in the different Departments specified in the First Schedule.

5. The Governor shall, on the advice of the Chief Minister, allot among the Ministers, the business of the Government by assigning one or more Departments to the charge of a Minister.

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7. The Council shall be collectively responsible for all executive orders in the name of the Governor in accordance with these Rules, whether such orders are authorized by an individual Minister on a matter pertaining to his portfolio or as the result of discussion at a meeting of the Council, or of the Cabinet or

otherwise.

8. Subject to the orders of the Chief Minister under Rule 14 all cases referred to in the Second Schedule to these Rules shall be brought before the Cabinet in accordance with the provisions of the Rules contained in Part II.

9. Without prejudice to the provisions of Rule 7, the Minister-incharge of a Department shall be primarily responsible for the disposal of the business appertaining to that Department.

10.(1) No Department shall, without previous consultation with the Finance Department, authorize any orders (other than orders under any Act or Rules made thereunder, or pursuant to any general or specific delegation made by the Finance Department) which-

(a) either immediately or by their repercussion, will affect the finances of the State, or which, in particular-

(i) involve any grant of land or assessment of revenue or concession, grant, lease or licence of mineral or forestrights or a right to water power or any casement or privilege in respect of such concession.

(ii) in any way involve any relinquishment of revenue; or

(b) relate to the number or grading of cadre of posts or the emoluments or other conditions of service or posts;

(c) involve the addition of a post in the public service or the variation of emoluments of any post;

(d) involve the sanction of an allowance or special or personal pay for any posts or class of posts or to any employee of the Government of Assam;

(e) involve an expenditure for which no provision has been made in the Appropriation Act or which is in excess of the provision made in the Act.

(2) No proposal which requires the previous consultation with the Finance Department under this Rule, but in which the Finance Department has not concurred, may be proceeded with unless a decision to that effect has been taken by the Cabinet.

(3) No re-appropriation shall be made by any Department other than the Finance Department, except in accordance with such general delegation as the Finance Department may have made.

(4) Except to the extent that power may have been delegated to the Departments under rules approved by the Finance Department, every order of an Administrative Department conveying a sanction to be enforced in audit shall be communicated to the audit authorities by the Finance Department.

(5) Nothing in this Rule shall be construed as authorizing any Department

including the Finance Department, to make re-appropriations from one grant specified in the Appropriation Act to another such grant or from a charged Appropriation to a votable Appropriation.

PART-II: PROCEDURE OF THE CABINET

13. X X X X

14. All cases referred to in the Second Schedule shall be submitted to the Chief Minister after consideration by the Minister, with a view to obtaining his orders for circulation of the case under Rule 15 or for bringing it up for consideration at Andhra Pradesh High Court meeting of the Cabinet.

15(1) The Chief Minister may direct that any case referred to in the Second Schedule may, instead of being brought up for discussion at a meeting of the Cabinet, be circulated to the Ministers for opinion and if all the Ministers are unanimous and the Chief Minister thinks that a discussion at a meeting of the Cabinet is unnecessary, the case shall be decided without such discussion. If the Ministers are not unanimous or if the Chief Minister thinks that a discussion at a meeting is necessary, the case shall be discussed at a meeting of the Cabinet.

PART-III: DEPARTMENTAL DISPOSAL OF BUSINESS

A-General

21. Except as otherwise provided by any other Rule, cases shall ordinarily be disposed of by or under the authority of the Minister in charge of the Department who may, by means of standing orders, give such directions as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Governor and the Chief Minister.

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27(1) The Chief Minister may, call for records of any case relating to any Department.

(2) The Chief Minister may, in consultation with the Minister-in-charge of the Department, pass such orders in any case as he considers necessary or may direct that the matter shall be placed before the Cabinet.

(3) The Chief Minister may pass orders in a case relating to any Department when the case is referred to him by the Minister-in-charge of the Department.

F: HILLAREAS DEPARTMENT

54.B(1) This Department is primarily responsible for administration and development programmes in the Autonomous Districts.

(2) Without affecting the generality of the foregoing clause, a Department shall consult the Hill Areas Department in regard to the following matters, namely-

(a) Cases involving questions of policy or of sufficient importance in relation to

Autonomous Districts.

(b) Cases which affect or are likely to affect the interests of the Scheduled Castes, Scheduled Tribes and Backward Classes in Hill Areas and Autonomous Districts.

(c) Cases involving changes in area or boundaries of any Autonomous Districts, matters relating to application of Acts of Parliament or of the State Legislature to the Autonomous Districts.

(d) Proposals relating to the administration of justice, cases relating to the grant of licences or leases for prospecting for, or extraction of minerals, etc. in the Autonomous Districts and

(e) Payment of share of the royalties from licences or leases etc. to District Councils.

PART-IV: SUPPLEMENTARY

55. The Secretary of the Department concerned is, in each case, responsible for the proper transaction of business and the careful observance of these rules and when he considers that there has been any material departure from them he shall personally bring the matter to the notice of the Minister-in-charge and the Chief Secretary.

SECOND SCHEDULE

18. Proposals involving any major policy or practice.

7. The relevant provisions of the Constitution necessary for the adjudication of the present writ petition are given below:

Part X of Constitution deals with "The Scheduled and Tribal Areas"

Article 244: Administration of Scheduled Areas and Tribal Areas-(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam (Meghalaya, Tripura and Mizoram).

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram.

Article 275: Grants from the Union to certain States.- (1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums maybe fixed for different States.

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as maybe necessary to enable that State to meet the costs of such Schemes of

development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State.

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to-

(a) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 20 of the Sixth Schedule; and

(b) the costs of such schemes of development as maybe undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

SIXTH SCHEDULE

(1) Autonomous districts and autonomous regions.-(1) Subject to the provisions of this paragraph, the tribal areas in each item of (paras I, II and II-A and in part III) of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification divide the area or areas inhabited by them into autonomous regions.

(3) The Governor may, by public notification-

(a) Include any area in any of the parts of the said table.

(b) Exclude any area from any of the parts of the said table.

(c) Create a new autonomous district.

(d) Increase the area of any autonomous district.

(e) Diminish the area of any autonomous district.

(f) Unite two or more autonomous districts or parts thereof so as to form one autonomous district.

(g) Alter the name of any autonomous district.

(h) Define the boundaries of any autonomous district.

Provided that no order shall be made by the Governor under Clauses (c), (d), (e) and (f) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule.

[Provided further that any order made by the Governor under this sub-paragraph may contain such incidental and consequential provisions (including any amendment of paragraph 20 and of any item in any of the parts of the said table) as appear to the Governor to be necessary for giving effect to the provisions of the order.]

2. Constitution of Districts Councils and Regional Councils.-

(1) xxxx

(2) xxxx

(3) xxxx

(4) xxxx

(5) xxxx

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing Tribal Councils or other representative tribal organizations within the autonomous districts or regions concerned, and such rules shall provide for-

(a) The composition of the District Councils and Regional Councils and the allocation of seats therein;

(b) The delimitation of territorial constituencies for the purpose of elections to those Councils;

(c) xxxx

(d) xxxx

(e) xxxx

(f) xxxx

(g) xxxx

(h) xxxx

(7) The District or the Regional Council may after its constitution make rules with the approval of the Governor with regard to the matters specified in subparagraph (6) of this paragraph and may also make rules with like approval regulating-

(a) The formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and

(b) Generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be;

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under subparagraph (6) of

this paragraph shall have effect in respect of elections to the officers and staff of, and the procedure and the conduct of business, in each such Council.

(3) Powers of the District Councils and Regional Councils to make laws.

(4) Administration of justice in autonomous districts and autonomous regions-

(5) xxxx

(6) xxxx

6. Powers of the District Council to establish primary schools etc.-(1) The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district and may, with the previous approval of the Governor, make regulations for the regulation and control thereof and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

(2) The Governor may, with the consent of any District Council, entrust either conditionally or unconditionally to that Council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the State extends, (emphasis supplied).

(7) xxxx

(8) xxxx

(9) xxxx

(10) xxxx

(11) xxxx

(12) xxxx

(13) xxxx

14. Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions.-(1) The Governor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, including matters specified in Clauses (c), (d), (e) and (f) of subparagraph (3) of paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on-

(a) The provision of educational and medical facilities and communications in such districts and regions;

(b) The need for any new or special legislation in respect of such districts and

regions; and

(c) The administration of the laws, rules and regulations made by the District and Regional Councils and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by (the Government of the State)

(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State.

8. Affidavit-in-opposition of Respondent No. 3 filed in support of the cause of the Petitioners reveals that the Notifications dated 3.5.2005 and 10.5.2005 issued by the Commissioner and Special Secretary to the Government of Assam, Department of PWD intending to reorganize and redesignate the Divisions and Sub-Divisions are matter of major policy of the State Government of Assam and such a matter is referred in item No. 18 of the Second Schedule of the Rules of Business, as such, the matter ought to have been brought before the State Cabinet under Rule 8 of the aforesaid "Rules of Business" but the same has ever been done. The proposal for such reorganization and redesignation has not also been circulated amongst the Cabinet-members as required under Rule 14 and 15 of the aforesaid "Rules of Business". The Commissioner and Special Secretary, PWD. has issued the impugned orders at his own whims and caprice in utter disregard to the provisions of "Rules of Business" and norms of democratic system.

9. It has been argued on behalf of the Respondent No. 3, that the matter of reorganization of P.W.D. Divisions and Sub- Divisions in Hill Areas of Assam is a matter exclusively under the jurisdiction of P.W.D. (Hills) Department, as such, the impugned orders dated 3.5.2005 and 10.5.2005 could not have been legally issued without the consent and approval of the concerned Cabinet Minister of P.W.D. Hills in Assam primarily responsible for disposal of business pertaining to this department and there are blatant violation of the Rule 9 and 21 of the "Rules of Executive Business". Shri Langthasa, the Respondent No. 3 herein is a member of the State Cabinet in Assam and Minister of PWD (Hills) and Hill Area Development Department, Assam, the appropriate Minister but he was also kept in dark in respect of re- organization of P.W.D. Divisions and Sub-Divisions of the two Hills districts. Similar arguments have also been advanced for and on behalf of the Petitioners inter alia submitting as below:

(i) The two orders dated 3.5.2005 and 10.5.2005 are without jurisdiction, illegal and in violation of the provision of 6th Schedule of the Constitution.

(ii) The re-designation and reorganisation through Annexure-3 and 4 are discriminatory as are being made to the above two districts councils only.

(iii) The two notifications/orders are in violation of Rules of Business" as these have been issued without consultation of the Minister-in-charge of Hill Area i.e., the Respondent No. 3.

(iv) The Commissioner and Special Secretary to the Government of Assam, Public Works Department was not empowered and competent to issue the said Notifications/orders dated 3.5.2005 and 10.5.2005.

(v) The said two Notifications are illegal for lack of following the procedures of prescribed for taking policy decision as required under "Rules of Business".

(vi) The said two Notifications are defective for the reasons that before issuance neither of these were placed before the Council of Ministers nor was initiated at the instance of the concerned competent Minister of Hill in-charge of State of Assam.

(vii) In the facts and circumstances only option open the State Government is to make a fresh deliberation and consult with the Minister of Hill Area (i.e., Respondent No. 3 herein) and other relevant persons of two Councils in question.

10. Reliance has been made on behalf of the Petitioners on Jogeswar Borah v. State of Assam and Ors. (1999) 3 GLR 104 where this Court has observed that the transfer of writ Petitioner while posted as Research Officer in the office of Additional Director of Education (Hills), Haflong under the administrative control of the NC Hills Autonomous District Council by an order of the Secretary to the Government of Assam, Education Department without consultation (emphasis applied) with the District Council was illegal. According to the State Respondent this decision shall not protect the cause of Petitioners by virtue of having been passed over different issues. In case of Jogeswar Borah (su-pra) the conditions indicated in para "4" of OM dated 31.12.1996 (as referred in para-graph 4 of this judgment) where consultation was a pre- condition in the matter of transfer of the official whereas, in present case, there is no such precondition as such defiance of any clause of OM dated 31.12.1996 is forth coming.

11. In reference to Ewanlangki-E-R ymbai and Ors. v. Jaintia Hills District Council and Ors. 2003 (3) GLT 66 it has been argued by the Petitioners" that the present redesignation and reorganization through Annexure 3 and 4 is illegal and for this purpose reliance has been placed on para 22 of Ewanlangki-E-Rymbai (supra) as below:

Para 22.-In the matter of Edwingson Bareh Vs. State of Assam and Others, the Appellant who was elected as a Chief Executive Member of the District Council of United Khasi-Jaintia Hills District Council had challenged the notification issued by the Governor of Assam creating new autonomous district to be called the Jowai District by excluding the Jowai Sub-division of the United Khasi-Jaintia Hills District with effect from 1st December, 1964 whereunder the boundaries of the Jowai district were declared to be the boundaries of the Jowai Sub-Division of the United Khasi-Jaintia Hills District. In paragraph 11 of the judgment delivered by

Justice Gajendragadkar, C.J. as he then was, for majority of Constitution Bench, has dealt broadly with the scheme of the Sixth Schedule which contains the provisions in relation to the administration of the tribal areas in Assam and said that "Article 244(2) provides that the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam; and that means that tribal areas in Assam would be governed not by the other relevant provisions of the Constitution which apply to the other constituent State of Union of India but by the provisions contained in the Sixth Schedule (underline supplied). These provisions purport to provide for a self-contained code for the governance of the tribal areas forming part of the Assam and they deal with all the relevant topics in that behalf.

Relying on what has been said in this paragraph it is contended by Mr. A. Sarma, learned Addl. Advocate General, Meghalaya that the notice dated 4.9.2001 issued by the Executive Committee of the Jaintia Hills Autonomous District Council, Jowai is in exercise of the powers vested in the District Council under the Sixth Schedule and thus cannot be contended to be in violation of Articles 14, 15 and 16 of the Constitution of India. This argument has been advanced by the counsel in reply to the submissions made by the learned Counsel for the Petitioners that exclusion of the Christians from contesting election of the office of Dolloiship in Eiaka Jowai is in breach of Article 15(1) of the Constitution of India wherein State has been restrained from discriminating against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. The notice dated 4.9.2001 does not permit the Christian to contest the election and thus here is a discrimination against the Christians only on the ground of their religion.

12. According to the learned Counsel for the State the observations in Edwingson Bareh (supra) as indicated in para 22 above are in different context where the notification regarding creation of new autonomous district was in question which was subject-matter of test as indicated in para 1(3)(c) of Sixth Schedule which deals "create a new autonomous district", whereas, facts of present case are different and distinguishable.

13. It has been argued by Shri K.N. Chowdhury, learned Additional Advocate General inviting attention of this Court to the affidavit-in-opposition of the State that evaluation/analysis was carried out by the State Government of Assam in Public Works Department, and other relevant aspects were considered in detail, thereafter only proposal for re-organization and re-designation of Divisions and Sub-Divisions in the State of Assam was worked out, consequent upon the Chief Minister of Assam recommended for constitution of a seven members Committee to examine the purpose, therefore at his instance a Notification No. RBEB. 88/2005/2 dated 20.4.2005 was issued by the order of Governor. The extract of Notification dated 20.4.2005 (Annexure-C to the affidavit-in-opposition) are given below:

GOVERNMENT OIF ASSAM PUBLIC WORKS DEPTT. (ESTT.B) BRANCH ORDERS BY

THE GOVERNOR OF ASSAM NOTIFICATION

The Governor of Assam is pleased to constitute a Committee to examine the proposal for reorganization of divisions under P.W. Deptt. with the following members.

1. Dr. Bhumidhar Barman, Minister Health & Family Welfare Deptt., Chariman
2. Sri Bharat Narah, Minister W.P.T. and B.C. etc. Deptt., Member
3. Sri Gautam Roy Minister Social Welfare Deptt., Member
4. Sri Ripun Bora Minister of State, P and R.D. Deptt., Member
5. Sri Pradyut Bordoloi Minister of State (Ind) Forest Deptt., Member
6. Smti. Ajanta Neog Minister of State, P.W. Deptt., Member
7. Sri Himanta Biswa Sarma Minister of State, P.W.D. Deptt., Member

Sd/-A.P. Borgohain, Commissioner and Spl. Secy. To the Government of Assam, Public Works Deptt.

Memo No. RBEB.88/2005/2-A,

Dated Dispur, the 20th April, 2005.

Copy to:

1. PP.5. to C.M. for favour of information of Hon?ble C.M.
2. P.S. to Chief Secy., for information of C.S.
3. P.S. to Minister, Health and Family Welfare.
4. P.S. to Minister W.P.T. and B.C.
5. P.S. to Minister, Social Welfare
6. P.S. to Minister of State P and RD
7. P.S. to Minister of State, Forest (md)
8. P.S. to Minister of State, P.W.D.
9. P.S. to Minister of State P.W.D.
10. p.s. to Commissioner and Special Secretary,
PWD for information of Commissioner and Special Secretary.
11. P.S. To Secy. P.W.D. for information of Secretary.

By order etc. SdJ- Deputy Secy. To the Government of Assam, Public Works Deptt. (Estt. B) Branch.

14. The aforesaid Committee so constituted held a meeting on 25.4.2005 and

after long deliberations, recommended for reorganization/re-designation of the Divisions and Sub-Divisions of the State of Assam. It is only after such in depth and elaborate exercise, the said policy decision as reflected in the order dated 3.5.2005 was taken, entirely in tune with the funds to be made available to the State Government of Assam by the World Bank and the Asian Development Bank. It has also been submitted that it was the policy decision in respect of the entire P.W.D. area of the State of Assam and the Chief Minister of State who is also the Minister-in-Charge in the State Cabinet for the PWD besides there being an another separate State Minister for PWD, whereas, the Respondent No. 3, is Cabinet Minister however, looking after only the Hills Area of the State of Assam. According to Mr. Chowdhury in reference to Rule 7 of "Rules of Business," the Chief Minister being the Cabinet Minister, in charge of PWD also has initiated the said proposal of re- organization and re-designation and thereafter constituted a Committee to examine the proposal, where Cabinet Minister of Health and Family Welfare was a Chairman along with six other members. According to Mr. Chowdhury decision has been taken by the Chief Minister which shall be categorized in "otherwise" category as provided in Rule 7. As per remarks of the Chief Minister himself re-organization and re-designation matter was not to be placed before the "Cabinet". Since the Chief Minister was himself empowered to pass order relating to any matter of the department in reference to Rule 27(3) of the "Rules of Business", therefore, the decisions in question taken at his instance are in consonance to the provisions of "Rules of Business". On careful consideration I find force in the contentions of the learned Counsel for the State.

15. According to Mr. Chowdhury, the contentions of the Petitioners calling the decisions in a question having been made in violation to the provisions and procedure of the "Rules of Business" are mis-conceived when issue of reorganization and re-designation has been placed before the Chief Minister who being the relevant concerned Minister of the PWD Department also had decided as a policy matter to proceed to adopt the modalities and for making administrative changes in reference to Office Memorandum dated 31.12.1996. It has further been asserted by Mr. Chowdhury, that neither N.C. Council or KAA Council had framed the rules or norms or guidelines or has issued instructions, therefore, until the rules were framed, the existing rules/norms of the State of Assam are to be observed in reference to Clause (B) of O.M. dated 31.12.1996. For the sake of repetition para 6(2) of Sixth Schedule of Constitution reads as below:

6.(1)

(2) The Governor may, with the consent of any District Council, entrust either conditionally or unconditionally to that Council or to its officers functions in relation to agriculture, animal husbandry, community projects, co-operative societies, social welfare, village planning or any other matter to which the executive power of the State extends.

16. According to Mr. Chowdhury, para 6(2) of Sixth Schedule does not deal the

PWD, either directly or indirectly more, when so, when the Petitioners could not establish that any function entrusted under para 6(2) of Sixth Schedule or in relation to the subject mentioned therein has been interfered with. The Petitioners may have some case when they could prove that any subject of para 6(2) was infringed. According to Mr. Chowdhury para 2(6) and (7) of Sixth Schedule are not relevant for adjudication of the issues in question as the policy decision has been taken by the State in the peculiar facts and circumstances, therefore, it cannot be said that there are procedural infirmities or deficiencies in issuance of the Notifications dated 5.3.2004 and 10.5.2005. The contentions of the Petitioners that para 14 of Sixth Schedule dealing the Commission to enquire into report on the decision of Autonomous Districts before the Governor is in reference to the matters in (c), (d), (e) and (f) of sub-paragraph (3) of paragraph 1 of Sixth Schedule. Such above contentions of Petitioners are controverted by the learned Counsel for the State by saying that the re-organization and re-designation of the PWD area shall not be covered under para 1(3) and (c), (d), (e), (f) of para 3(1) of Sixth Schedule. For the purpose of making evaluation/analysis so carried out by the Government of Assam in Public Works Department, and on other relevant aspects, a detailed proposal for re-organization and re-designation of Divisions and Sub-Divisions throughout the State of Assam was prepared, thereafter, at the instance of the Chief Minister of Assam was constituted which had examined the proposal by convening meeting on 25.4.2005 for re-organization and re-designation of Divisions and had submitted its recommendations. Consequently, a Notification dated 20.4.2005 was issued Divisions and Sub-Divisions. It is only after such an in-depth and elaborate exercise that the said policy decision as reflected in the order dated 3.5.2005 and 10.5.2005 could be taken. According to the learned Counsel for the State, serial No. 13 of Annexure-B to the affidavit-in-opposition of the State reveals that in respect of Karbi Anglong for 10 (ten) existing PWD Divisions, only, six were required to be redesignated and in fact six only were re-designation. At serial No. 18 of Annexure-B for N.C. Hills for 6(six) divisions existing only four were required and four Divisions were only re-designated.

The facts and figures pertaining to Karbi Anglong Autonomous Council and N.C. Hills/N.C. Council are given herein below:

KARBI-ANGLONG

Sector Existing Required Re- Designation

Rural Road Division	State Road Division	Building Division	National Highway Division	AACP Border Roads	NEC	8	1	1	3	1	1	1	3	1	1	1
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Total 10 6 6

Sector Existing Required Re- Designation

Rural Road Division	State Road Division	Building Division	National Highway Division	AACP Border Roads	NEC	3	1	1	2	1	1	1	1	1	1	1
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17. According to Mr. Chowdhury, the Petitioners have not demonstrated all the factual aspects or have not brought any material or have not indicated any reason as to how the re-designation in question are effecting the Petitioners economically. According to the State, this Court (Division Bench) by an order dated 4.3.2005 has not interfered with in the petition P.I.L. No. 2/2005, before this Court where the writ Petitioner had prayed for issuance of a writ of mandamus commanding the Respondent-State for implementing the Government order contained in two Notifications for shifting P.W.D. Division at Katigorah, however, this Court vide order dated 4.3.2005 was pleased to observe that the Government is the best authority to decide as to whether the PWD Division should be shifted or not, therefore, in respect to the allegations made, this Court declined to make judicial review of the decision of State Government in absence of express violation of any fundamental right of the writ Petitioner.

18. Mr. K.N. Chowdhury, learned Addl. Advocate General, Assam appearing on behalf of the Respondents while placing reliance on the decisions of Hon'ble Supreme Court in BALCO Employees Union (Regd.) Vs. Union of India and Others, has submitted that the Court is not to interfere with the policy and economic decision of the State Government and has not to make judicial review of the decision of the State Government unless the decision is contrary to any statutory provision or the Constitution. The Court cannot also examine relative merits of different economic policies and cannot strike down a policy merely on the ground that another policy would have been fairer and better. For the purpose relevant paragraph 46 of Balco Employees Union (supra) is quoted below:

46. It is evident from the above that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our Courts inclined to strike down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

19. Mr. K.N. Chowdhury, learned Addl. Advocate General has invited attention of this Court that though the Respondent No. 3 was Cabinet Minister-in-charge of Hill Area, however, the Chief Minister is overall in-charge and has the control over all the departments of State and by reason of the responsibility and accountability to the people, the Chief Minister was empowered to take decision on any of the matter pertaining to any department or relating to any of the Minister as the allotment of a subject to a particular Minister is for convenient transaction of the business at various levels because the ultimate object with the State Government is to secure, impartial, efficient, better administrative decision and in the present case according to Mr. Chowdhury, the Chief Minister in the great public interest and the interest of the area of the two Councils has become instrumental for issuance of the said Notifications in question. For this purpose

reliance has been made on *Gulabrao Keshavrao Patil and Others Vs. State of Gujarat and Others*, the Hon''ble Supreme Court observed in paragraph 14 as follows:

14. The responsibility of Council of Ministers under Article 164(2) of the Constitution embodies the political responsibility of the Ministry headed by the Chief Minister. Collective responsibility makes each Minister responsible to the Legislature for the acts of himself and other members of the Council of Ministers. Since the Council of Ministers would stay in office as long as it commands the majority of the Legislative Assembly, the Council of Ministers is politically responsible as one entity. In case it loses its confidence the Ministry as a whole is required to resign. The responsibility to the Governor and accountability to the people collectively by the Council of Ministers is through and by the Chief Minister. It would therefore, be clear that the decision of a Minister under the Business Rules is not final or conclusive until the requirements in terms of Clauses (1) and (2) of Article 166 are complied with. Before the action or the decision is expressed in the name of the Governor in the manner prescribed under the Business Rules and communicated to the party concerned it would always be open by necessary implication, to the Chief Minister to send for the file and have it examined by himself and to take a decision, though the subject was allotted to a particular Minister for convenient transaction of the business of the Government. The subject though exclusively allotted to the Minister, by reason of the responsibility of the Chief Minister to the Governor and accountability to the people, has implied power to call for the file relating to a decision taken by a Minister. The object of allotment of the subject to a Minister is for the convenient transaction of the business is to secure an impartial, pure and efficient administration as propounded by Dr. Ambedkar in the Constituent Assembly vide Constituent Assembly Debates, Vol. VIII p. 546.

20. According to learned Counsel for the State the two Notifications/orders dated 3.5.2005 and 10.5.2005 were issued by the signature of Commissioner and Special Secretary, PWD but in the name of State by the order of the Governor of Assam as such the orders are validly issued for this purpose reliance has been made on *State of Uttar Pradesh Vs. Om Prakash Gupta*, the Supreme Court has observed as follows:

17. this Court has repeatedly held that the provisions of Article 166(1)(2) [similar to subsections (1) and (2) of Section 59 of the Government of India Act, 1935], are directory and substantial compliance with those provisions is sufficient See *P. Joseph John Vs. The State of Travancore-Cochin*, and *R. Chitralekha and Another Vs. State of Mysore and Others*, in this case the impugned order was made in the name of the State Government. It was signed by the Chief Secretary. Therefore prima facie it is a valid order. We need not go further into that question in view of our conclusion that the Respondent has failed to prove that he was appointed by an authority higher in rank than the Chief Secretary of the State.

21. I have heard the learned Counsel for the parties and have perused the documents. The present controversy was not in respect of creation of new autonomous district as such it is not derogation to para 1(3)(c) of 6th Schedule. The present controversy is in respect of re-organization and re-designation of Divisions and Sub-divisions of PWD of the State of Assam pertaining to above two Councils and for the purpose, the Chief Minister of the State had constituted seven members Committee vide Notification dated 20.4.2005 which had convened a meeting on 25.4.2005 and after long deliberations and scrutiny taking into consideration all relevant aspects and after taking assistance from different agencies and being Minister-in-charge in the State Cabinet for PWD in reference to the provision of matter in "otherwise category" as provided in Rule 7 "Rules of Business," the Chief Minister has decided not to place the matter of re-organization and re-designation before the Cabinet and by virtue of being empowered under Rule 27(3) of Rules of Business" he got the above two orders issued as policy matter and since no rules, norms or guidelines were framed by Councils in reference to Office Memorandum dated 31.12.1996 therefore, the existing rules or the norms of the State Government were made applicable. There is no infringement of para 6(2) of 6th Schedule of the Constitution as PWD is directly or indirectly has not been indicated in para 6(2) of 6th Schedule where the Governor was to entrust any matter to any Council in exercise of the executive power of the State. I find force in the contention of the learned Counsel for the State that re-organization and re-designation of the Divisions and Sub-Divisions of PWD shall not be covered under para 1(3) and (c), (d), (e), and (f) of para 3(1) of 6th Schedule. For the purpose of evaluation/analysis so carried out by the Government of Assam in Public Works Department, and on other relevant aspects, a detailed proposal for re-organization and re-designation of Divisions and Sub-Divisions throughout the State of Assam was prepared, thereafter at the instance of the Chief Minister of Assam Committee, was constituted which had examined the proposal by convening meeting and had submitted its recommendations. It is only after such in-depth and elaborate exercise the said policy decision as reflected in the order dated 3.5.2005 and 10.5.2005 was taken. In respect of both Councils number of re-designation from the existing PWD Divisions were made which has been demonstrated correctly by the State Government. The Respondent No. 3 though is a Cabinet Minister-in-charge for Hill Area, however, the Chief Minister is overall in-charge and has control over all the departments under State and by reason of responsibility and accountability to the people, the Chief Minister was empowered to take decision on any of the matter pertaining to any department or relating to any of the Ministers. The allotment of a subject to a particular Minister is for convenient transaction, as the main object of the State Government is to secure, impartial, efficient, better administration and the welfare of the public. Therefore, in the great public interest and in the interest of area of two Councils, the Chief Minister has rightly initiated for re- designation and re-organization of Divisions and Sub Divisions of PWD and the procedures for issuance of the order dated 3.5.2005 and 10.5.2005 are in consonance to the "Rules of Business" and within the

power and jurisdiction of the State Government and no provision of the 6th Schedule of the Constitution are found to have been violated. The Chief Minister to the best of his wisdom was not obliged to consult a particular Minister specifically the Respondent No. 3 when he was overall in-charge of the PWD and other department of the State of Assam. The present case is a matter of policy and is relatable to the economic aspect of the State Government and this Court has not to interfere and make a judicial review in the policy decision of the State Government as no material has been brought before this Court by way of the present writ petition where any statutory provision of the Constitution are said to have been violated. This Court is not interested in examining the merits of an alternative policy decision only merely on the ground that another policy decision could be fairer or better. Therefore, in the present facts and circumstances and in the light of the observations of the Supreme Court made in *A.M. Allison Vs. B.L. Sen*, this Court is not inclined to invoke its jurisdiction under Article 226 of the Constitution when the Court is satisfied that there is no failure of justice.

22. In view of the above observations, the writ petition is dismissed.