
(2000) 11 GAU CK 0016

In the Gauhati High Court

Case No : Civil Rule No. 4711 of 1998 and WP (C) No. 2448 of 1999

Ram Sing Ronghang

APPELLANT

Vs

Karbi Anglong Autonomous Council and Others

RESPONDENT

Date of Decision : 08-11-2000

Acts Referred:

Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 — Rule 12, 15, 16, 17, 20
Constitution of India, 1950 — Article 164, 164(1), 166, 226, 244
General Clauses Act, 1897 — Section 16

Citation : (2000) 3 GLT 611

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A.K. Phukan, S.S. Sarma, N. Chakraborty and M. Bhuyan, for the Appellant; P.G. Barua, A.G., P.K. Goswami, H. Roy, B. Goswami, P.J. Phukan and R.K. Borah, for the Respondent

Judgement

1. These are two writ petitions filed under Article 226 of the Constitution of India relating to removal of a Member of the Executive Committee of the Karbi Anglong Autonomous Council (hereinafter referred to as "the Council") and appointment of a Member to the Executive Committee of the said Council in his place. Since common questions of fact and law arise in these writ petitions, they are being disposed of by this common judgment.

2. The relevant facts briefly are that on 18.7.1996 nine members of the Executive Committee of the Council including the petitioner in Civil Rule No. 4711/98, Sri Ram Sing Ronghang, were appointed by notification issued by orders of the Governor of Assam. Sri Ram Sing Ronghang was given charge of the Food & Civil Supplies Department along with other Departments. Thereafter, differences arose between Sri Ram Sing Ronghang and the Chief Executive Member of the Council, and a notification was issued on 2.12.1997 by the Chief Executive Member of the Council relieving Sri Ram Sing Ronghang from the Executive Committee of the Council. In the said notification dated 2.12.1997, it

was also stated that the subjects allotted to Sri Ram Sing Ronghang would now be dealt by the Chief Executive Member of the Council until further orders. Aggrieved by the said notification dated 2.12.1997, Sri Ram Sing Ronghang has filed Civil Rule No. 4711/98 with the prayers to the court to quash the said notification dated 2.12.1997 and to prohibit the respondents from filling up the post of Executive Member of the Council held by him. On 18.9.1998, this court while issuing notice on the respondents passed orders on the prayer for interim orders that if the post of Executive Member of the Council is filled up during the pendency of the writ petition, it would be subject to decision in the writ petition.

3. On 20.4.1998, the Deputy Secretary i/c of the Council wrote to the Commissioner & Secretary to the Government of Assam, Hill Areas Department that the Chief Executive Member has inducted Sri Jeevan Pathak and Sri Mangal Sing Teron, who were Members of the Council, as Members of the Executive Committee of the Council and requested the Commissioner & Secretary to the Government of Assam to convey the approval of the Governor accordingly. Again on 8.6.1998 the Deputy Secretary 1/c of the Council wrote to the Commissioner & Secretary to the Government of Assam, Hill Areas Department requesting to move the Governor of Assam for appointment of Sri Jeevan Pathak and Sri Mangla Singh Teron as Members of the Executive Committee of the Council. When no approval of the Governor was conveyed, the Deputy Secretary i/c of the Council wrote another letter dated 31.7.1998 requesting him to convey the necessary approval of the Governor of Assam to the appointment of Sri Jeevan Pathak and Sri Mangal Sing Teron as Members of the Council. By letter dated 28.5.1999, approval of the Governor to the appointment of Sri Mangal Sing Teron as Member of the Executive Committee of the Council was communicated by the Secretary to the Governor, and by notification dated 1.6.1999 of the Government of Assam in the Hill Areas department Sri Mangal Sing Teron was appointed as a Member of the Executive Committee of the Council. Since the petitioner in W.P. (C) No. 2448/99, Sri Jeevan Pathak, was not appointed as a Member of the Executive Committee of the Council, he has filed the said writ petition with a prayer to the court to issue a mandamus to the respondents to approve/appoint him as a Member of the Executive Committee of the Council immediately, in the aforesaid writ petition, W.P.(C) 2448/99, Sri Jeevan Pathak has also prayed for an interim order directing the respondents to allow him to function as an Executive Member of the Council during the pendency of the writ petition. On 24.5.1999, this court issued notice and granted sometime to the learned Government advocate, Assam, to obtain certain instructions, and on 1.6.1999 after hearing the counsel for the petitioner, the learned Government Advocate and the learned counsel for the Council passed interim order directing that the petitioner, Sri Jeevan Pathak, would be allowed to function as a Member of the Executive Committee of the Council until further orders.

4. The aforesaid two writ petitions were heard on 3.4.2000 and adjourned to 9.5.2000. On 9.5.2000, 18.5.2000 and 23.5.2000, hearing of the cases was adjourned. The two cases were finally heard analogously on 25.5.2000 and

30.5.2000 at the admission stage as agreed by counsel for the parties.

5. At the hearing, Mr, SS Sarma, learned counsel for the petitioner in Civil Rule No. 4711 /98, submitted that the petitioner, Sri Ram Sing Ronghang, was appointed as a Member of the Executive Committee of the Council by the Governor by notification dated 18.7.1996 in exercise of his power under rule 20(1) of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951, (hereinafter referred to as "the 1951 Rules") and, therefore, it is only the Governor of Assam who can dismiss or remove him from the post of Member of the Executive Committee of the Council, but the Governor has not passed any order for removal or dismissal of the petitioner from the said post of Member of the Executive Committee of the Council. He further argued that the petitioner, Sri Ram Sing Ronghang, had not submitted any resignation from the post of Member of the Executive Committee of the Council to the Chief Executive Member under rule 21(l)(b) of the 1951 Rules. He contended that there was no rule in the 1951 Rules empowering the Chief Executive Member to remove a member of the Executive Committee and, therefore, the impugned notification dated 2.12.1997 issued by the Chief Executive Member of the Council reliving the said petitioner was illegal and liable to be quashed. He referred to the representation dated 18.8.1998 of the petitioner, Sri Ram Sing Ronghang to the Government of Assam in the Hill Areas Department wherein he has stated that he was removed without any specific reason and requested the Government to look into the matter and to give him back the post of Executive Member of the Council along with the portfolio. According to Mr. Sharma, advice of the Chief Executive Member of the Council to remove the said petitioner from the post of Member of the Executive Committee of the Council was not final and it was for the Governor of Assam to accept or not to accept the said advice of the Chief Executive Member of the Council, and since the Governor has not accepted the said advice of the Chief Executive Member, this Court should issue appropriate writ or direction to the Council and the Chief Executive Member of the Council to reinstate him in the post of Member of the Executive Committee of the Council.

6. Mr. AK Phukan, learned senior counsel appearing for the petitioner, Sri Jeevan Pathak, in Writ Petition (Civil) No. 2448/99, on the other hand, submitted that rule 21(1)(b) of the 1951 Rules provides that the resignation of a Member of the Executive Committee of the Council is to be submitted to the Chief Executive Member and not to the Governor and, therefore, the Chief Executive Member is competent under the said Rules to remove a Member of the Executive Committee. Accordingly to Mr. Phukan, there was no infirmity in the impugned notification dated 2.12.1997 issued by the Chief Executive Member reliving Sri Ram Sing Ronghang from the post of Member of the Executive Committee of the Council. Mr Phukan argued that under rule 20(1) of the 1951 Rules Members of the Executive Committee of the Council other than the Chief Executive Member from are to be appointed by the Governor on the advice of the Chief Executive member amongst the Members of the Council and once the Chief Executive Member has tendered his advice to the Governor to appoint the writ petitioner,

Sri Jeevan Pathak, as a Member of the Executive Committee of the Council, the Governor of Assam has no option but to act on that advice and appoint Sri Jeevan Pathak as a Member of the Executive Committee of the Council. Mr. Phukan cited the decision in *Samsher Singh Vs. State of Punjab* and Another, wherein it has been held that the President as well the Governor act on the aid and advice of the Council of Ministers in executive action and are not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. He also relied on the decision of this court in *Satyeshwar v. Government of Assam* AIR 1974 Gau 20 - 1974 ALR 1, in which a Division Bench of this Court has held that the Autonomous Districts of the State of Assam are within the Executive authority of the Government of Assam and, as such, the Governor, except in those matters where he is to act in his discretion, must act with the aid and advice of his Council of Ministers. According to M Phukan, the words "on the advice of the Chief Executive Member" in rule 20(1) of the 1951 Rules have to be interpreted consistently with the aforesaid decisions of the Supreme Court and this court and so interpreted the Governor will have to appoint Members of the Executive Committee of the Council on the advice of the Chief Executive Member of the Council. Mr. Phukan contended that since the Chief Executive Member of the Council has already tendered his advice through the communications dated 20.4.1998, 8.6.1998 and 31.7.1998 of the Deputy Secretary i/c of the Council to the Commissioner & Secretary to the Government of Assam, Hill Areas Department for appointing the petitioner, Sri Jeevan Pathak as a Member of the Executive Committee of the Council, the Governor of Assam has to appoint Sri Jeevan Pathak as a Member of the Executive Committee of the Council and, accordingly, appropriate direction or writ should be issued by this court.

7. The aforesaid contentions of Mr. AK Phukan were also supported and developed by Mr. PK Goswami, learned senior counsel appearing for respondent No. 6, Sri Jeevan Pathak in Civil Rule No. 4711/98 who is also the petitioner in W.P.(C) No. 2448/99. Mr Goswami explained that the scheme of rules 20, 21 and 31 of the 1951 Rules would clearly show that it is the Chief Executive Members of the Council who is vested with the power to select other Member of the Executive Committee and, therefore, where a Member of the Executive Committee has lost the confidence of the Chief Executive Member, the Chief Executive Member can remove such other Members of the Executive Committee and the Governor has no option but to accept the advice of the Chief Executive Member in the matter of appointment and removal of other Members of the Executive Committee of the Council. According to Mr. Goswami, once the Chief Executive Member has decided to relieve Sri Ram Sing Ronghang and appoint Sri Jeevan Pathak any writ or direction issued by this court to continue Sri Ram Sing Ronghang until the Governor takes a decision in the matter would be futile because the Governor has no option but to accept the advice of the Chief Executive Member to remove Sri Ram Sing Ronghang and to appoint Sri Jeevan Pathak as a Member of the Executive Committee of the Council. He cited the decision of this court in

Jogendra Nath Hazarika Vs. State of Assam and Others, In which the learned Single Judge of this court refused a writ in the nature of quo warranto on the ground that such a writ would be futile. He also cited the decision of Kerala High Court in K.C. Chandy Vs. R. Balakrishna Pillai, in which a Full Bench of Kerala High Court has held that a writ of quo warranto or a writ by way of information in the nature of quo warranto cannot issued in cases when a post is held at pleasure as such a writ can be defeated immediately by the mere exercise of an executive will. Mr. Goswami argued that since a Member of the Executive Committee of the Council holds office at the pleasure of Chief Executive Member of the Council, once the Chief Executive Member loses confidence on such a Member and decides to remove him, no writ or direction can be issued by the court. According to Mr. Goswami, these are matters which are strictly political and the court cannot interfere in such matters by issuing any writ or direction, finally, Mr. Goswami submitted that any interpretation of the 1951 Rules so as to take away the discretion of the Chief Executive Member of the Council in appointing and removing other Members of the Executive Committee of the Council will affect the autonomous functioning of the Council and would frustrate the scheme of Article 244(2) read with the Sixth Schedule to the Constitution.

8. Mr. H. Roy, learned Standing Counsel for the Council and the Chief Executive Member of the Council, supported the aforesaid contention of Mr. AK Phukan and Mr. PK Goswami. He however added that it is only the nominated Members of the Council who hold office during the pleasure of the Governor as would be clear from rule 6(3) of the 1951 Rules, but so far as the Members of the Executive Committee of the Council are concerned, they hold office at the pleasure of the Chief Executive Member of the Council. He relied on the affidavit-in-opposition filed by the Secretary to the Council in Civil Rule No. 4711/98 to show that Sri Ram Sing Ronghang had ceased to enjoy the confidence of the Chief Executive Member and was therefore removed from the Executive Committee of the Council by the impugned notification dated 2.12.1997. He further argued that while Sri Ram Sing Ronghang was removed by the impugned notification on 2.12.1997. he filed the writ petition. Civil Rule No. 4711/98, on 16.9.1998 after about 9 months of his removal. According to Mr. Roy, the writ petition was liable to be dismissed on the ground of delay and laches on the part of the petitioner. He further submitted that although no affidavit-in-opposition has been filed by the Council and the Chief Executive Member in W.P.(C) No.2448/99, the Council and the Chief Executive Member supported the case of the petitioner in the said writ petition. He submitted that in Samsher Singh's case and Satyeswar's case (supra), the Supreme Court and this court respectively had held that discretion of the Governor was confined to 3 areas :- (i) choice of Chief Minister; (ii) dismissal of the Government ; and (iii) dissolution of Assembly. According to Mr. Roy, so far as appointment and removal of Ministers are concerned, the Governor has no option but to accept the advice of the Chief Minister. He cited the decision of the Calcutta High Court in Biman Chandra Bose Vs. Dr. H.C. Mukherjee, Governor and Others, for the proposition that unless a particular provision

expressly so provides, an obligation to act in his discretion cannot be imposed on the Council by mere implication. He also referred to paragraph 20-BA introduced into the Sixth Schedule to the Constitution by the Sixth Schedule to the Constitution (Amendment) Act, 1995, in which it has been provided that the Governor in the discharge of his functions under the various sub-paragraphs of the Sixth Schedule to the Constitution mentioned in said paragraph 20-BA shall consult the Autonomous Council before taking any action as he considers necessary in his discretion.

9. Mr. PG Barua, learned Advocate General, Assam, raised a preliminary point that under Article 361 of the Constitution, the Governor is not answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. He cited the decision of this court in *Nabin Chandra Kalita v. State of Assam* (2000) 1 GLR 96, in support of his contention that the action or inaction of the Governor with regard to removal of Sri Ram Sing Ronghang from the post of Member of the Executive Committee of the Council and appointment of Sri Jeevan Pathak to the said post cannot be questioned before this court. Mr. Barua referred to paragraphs 1 and 2 of the Sixth Schedule to the Constitution to show that the Governor has overall control over the District Councils under the Sixth Schedule to the Constitution. He contended that the 1951 Rules have been framed under paragraph 2(6)(h) of the Sixth Schedule to the Constitution by the Governor. Mr. Barua submitted that from a reading of various provisions of the 1951 Rules including rules 12, 15, 16, 17, 20, 21 and 22 it would be clear that the Governor has been vested with wide powers. According to Mr. Barua these powers are to be exercised by the Governor in his own discretion. He placed before the court a portion of the Anundoram Barooah Law Lectures (Second series) of Sri M. Hidayatullah, Former Chief Justice of India, on the Fifth and Sixth Schedules to the Constitution of India, wherein he has expressed a view that the executive powers in matters within the authority of the Autonomous Districts must be exercised by the Governor in his discretion and not on the advice of the Council of Ministers of the Government of Assam. Mr. Barua submitted that even in *Satyewar's* case this court held that the Governor may be required, in appropriate circumstances, to use his discretion in the appointment of the Chief Minister, dissolution of the Legislature, right to advice, warn and suggest and withhold the assent from a Bill. According to Mr. Barua, therefore, it is not as if the Governor has to always act on the advice of the Council of Ministers with regard to matters within the Executive authority of the State Government or on the aid and advice of the Chief Executive Member and the Executive Committee of the Council with regard to matters within the executive authority of the Council. He further submitted that just as under Article 164 of the Constitution a Minister holds office during the pleasure of the Governor, under rules 20 and 21 of the 1951 Rules a Member of the Executive Committee of the Council holds office at the pleasure of the Governor. He pointed out that rule 20(1) of the 1951 Rules made it clear that

Members of the Executive Committee other than the Chief Executive Member are to be appointed by the Governor and hence the power to appoint a Member of the Executive Committee of a Council vests in the Governor. Section 16 of the General Clauses Act, 1897, provides that where by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to dismiss any person appointed in exercise of that power. According to Mr. Baruah, therefore, rule 20(1) of the 1951 Rules read with section 16 of the General Clauses Act, 1897, made it amply clear that since the Governor has the power to appoint a Member of the Executive Committee other than the Chief Executive Member, the Governor has also the power to remove such a Member of the Executive Committee other than the Chief Executive Member of the Council. Mr. Barua cited the decision in *Asher v. Secretary of State* (1974) 2 ALL ER 156, in support of his argument that if in law it was open to an authority to take a possible course of action, the courts should not interfere save for good reason and disagreeing with the decision of the authority is not in itself a good reason. On this point Mr. Barua also relied on DL Keir and FH Lawson "Cases in Constitutional Law" pp.391-392, wherein the principle has been explained that officers of Government must be allowed a choice as to when, how and whether they will act. Mr. Barua vehemently argued that in the present case the affidavit filed by the State Government in both the cases would show that the Governor has decided not to approve the appointment of Sri Jeevan Pathak as an Executive Member of the Council till Civil Rule No. 4711/98 filed by Sri Ram Sing Ronghang is decided by this court. According to Mr. Barua this was a possible course of action that has been chosen by the Governor within his own discretion and the court cannot in exercise of its power of judicial review interfere with such course of action simply because the court disagreed with the said course of action adopted by the Governor. Finally, Mr. Barua contended that choice of Sri Jeevan Pathak for the post of a "Member of the Executive Committee of the Council made by the Chief Executive Member of the Council is at best a recommendation and cannot confer any right on Sri Jeevan Pathak to be appointed as a Member of the Executive Committee of the Council. In support of this submission, Mr. Barua relied on the decisions of the Supreme Court in *Shankarsan Dash Vs. Union of India*, *State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986* and others, and *H. Mukherjee v. Union of India 1994* (1) SCC 250, for the proposition that a recommendation made by a selecting authority cannot confer a right on the selected candidate for being appointed to service. Mr. Barua also referred to the provisions of the Assam Rules of Executive Business, 1968, and in particular rule 12 of the said Rules to show that every order or instrument of the Government of the State has to be expressed to be made in the name of the Governor, and relied on the decision of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, in which it has been held that before something amounts to an order of the State Government it has to be expressed in the name of the Governor as required by clause (i) of Article 166 of the Constitution and then it has to be

communicated to the party concerned. According to Mr. Barua, therefore, unless an order is made in the name of the Governor accepting removal of Sri Ram Sing Ronghang from the post of Executive Member of the Council and appointing Sri Jeevan Pathak to the post of Member of the Executive Committee of the Council and the said order/orders communicated to the concerned persons, there is no binding legal decision with regard to the aforesaid matters.

10. The preliminary point raised by Mr. PG Barua, learned Advocate General, Assam, that in view of the protection given to the Governor under Article 361 of the Constitution the court cannot examine and interfere into the matter will have to be decided first. In the case of *Nabin Chandra Kalita v. State of Assam* (supra) cited by Mr. Barua, the Division Bench of this court quoted the views of HM Seervai in his book *Constitutional Law of India*, Fourth Edition, Volume-2, that if the court can decide a matter without the Governor being called upon to justify his action, the Governor's action can be examined by the court on the basis of the objective facts placed before the court, but where a matter cannot be decided without requiring the Governor personally to account to the court for his action, as where he is alleged to have acted mala fide and he alone can deal with such allegation of mala fide, the court will not require the Governor to answer personally the allegation against him. In the said case of *Nabin Chandra Kalita*, the Division Bench of this court also quoted the observations of the Full Bench of Bombay High Court in *State of Bombay v. KM Nanavati*, 1960 Bombay Law Reporter. Vol. LXII-383, to the effect that Article 361 of the Constitution only gives personal protection to the Governor and that where there is no proceeding in the court against the Governor and that the Governor is not being asked to answer for anything done by him, the legality of his order can be examined only in order to determine whether there is a valid return to the writ issued by the court. Thus, it has been held by the Division Bench of this Court in *Nabin Chandra Kalita* (supra), so long as the Governor is not a party in a case before the court or is not required personally to appear before the court and answer the personal allegation against him such an allegation of mala fide, the court can always examine the legality of any order and any action or inaction on the part of the Governor on the basis of objective facts placed before the court by the State Government or by the Secretary to the Governor. In the present cases, the Governor of Assam has not been impleaded as a party-respondent, and no allegation has been made against the Governor personally such as allegation of personal mala fide. Hence, the Governor is not required to appear before the court in person and answer any allegation of personal mala fide. The action or inaction of the Governor with regard to removal of a Member of the Executive Committee of the Council or appointment of a Member of the Executive Committee of the Council has to be examined on the basis of objective facts which have been placed before the court in the affidavits-in-opposition filed by the State Government and in the light of the provisions of law. In my considered opinion, therefore, the preliminary objection raised by Mr. PG Barua, learned Advocate General, Assam, that the court cannot examine and interfere in the

matter in the present two cases has no merit.

11. Corning now to the merits of the case, the only two questions which require decision in these cases are as to whether Sri Ram Sing Ronghang could be removed from the post of Member of the Executive Committee of the Council by the Chief Executive Member of the Council without any orders for such removal passed by the Governor of Assam, and as to whether Sri Jeevan Pathak has to be appointed as a Member of the Executive Committee of the Council by the Governor in view of the advice given by the Chief Executive Member of the Council to appoint him as a Member of the Executive Committee of the Council. On these two questions, no decision either of the Supreme Court or of this court has been cited at the Bar. The decision of the Supreme Court in Samsher Singh's case is on the provisions of the Constitution relating to powers and discretion of the President of India and Governor of a State vis-a-vis the Council of ministers of Union of India and the States, but does not relate to the powers and discretion of the Governor vis-a-vis the Chief Executive Member and the Members of the Executive Committee of a District Council or Regional Council constituted under the Sixth Schedule to the Constitution.

12. It is not disputed that by virtue of Article 244 of the Constitution read with paragraph-20, Part-I of the Constitution, as amended from time to time, the Sixth Schedule to the Constitution is applicable to the Karbi Anglong Autonomous Council. The Sixth Schedule to the Constitution itself does not provide for an Executive Committee of a District Council or Regional Council and, accordingly, does not provide for a Chief Executive Member or Member of Executive Committee of a District Council or Regional Council. Sub-paragraph (6) of Part-II of the Sixth Schedule to the Constitution, however, provides that 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 organisations within the autonomous districts or regions concerned, and such rules shall provide for, inter alia, the procedure and the conduct of business in the District and Regional Councils. It is in exercise of such power under sub-paragraph (6) of Part-II of the Sixth Schedule to the Constitution that the Governor has made the 1951 Rules. Chapter-IV of Part-II of the 1951 Rules deals with the Executive Committee of District Councils. In the said Chapter-IV, rules 20 and 21 which provide for election of Chief Executive Member and appointment of other members of the Executive Committee of a District Council, and for vacation of offices of members of Executive Committee, are as follows:

"20.(1) The Chief Executive Member shall be elected by the District Council and the other Members shall be appointed by the Governor on the advice of the Chief Executive Member from amongst the members of the District Council :

Provided that the Chairman and the Deputy Chairman of a District Council shall not be eligible to hold office either as Chief Executive Member or as a Member of the Executive Committee of the District Council.

(2) The Election of the Chief Executive Member shall be conducted according to the procedure provided for the election of the Deputy Chairman in rule 10.

21. (1) a member holding office as Chief Executive Member or a Member of the Executive Committee -

(a) shall vacate his office if he ceases to be a member of the District Council ;

(b) may at any time by writing under his hand submit his resignation, if such member is the Chief Executive Member, to the Governor through the Chairman, and if such member is a Member of the Executive Committee to the Chief Executive Member. On his resignation being accepted by the Governor, such Chief Executive Member shall be deemed to have vacated office.

(2) When the Chief Executive Member vacates or resigns his office under sub-rule (1), the other Members of the Executive Committee shall also cease to hold office as such, and a new Executive Committee shall be constituted in accordance with the provisions of the rule 20 :

Provided that until a new Chief Executive Member has been elected and the Executive Committee reconstituted, the Governor may, notwithstanding anything contained in sub-rule (1) of rule 19, authorise any one member or more than one member of the District Council to carry on the duties of the Executive Committee, or may make such other arrangements as he thinks proper for carrying on the work of the District Council."

On a plain reading of rule 20(1) of the 1951 Rules quoted above, it would appear that the Chief Executive Member is to be elected by the Council. This provision in rule 20(1) of the 1951 Rules is unlike the provision in Article 75 of the Constitution which provides that the Prime Minister shall be appointed by the President. This provision in rule 20(1) is also unlike the provision in Article 164 of the Constitution which provides that the Chief Minister shall be appointed by the Governor. Thus, while the President and the Governor may have some discretion with regard to choice of Prime Minister and Chief Minister respectively, as has been held by the Supreme Court in *Samsher Singh's* case and by this court in *Satyewar's* case, the Governor has no choice with regard to appointment of Chief Executive Member of a District Council under rule 20(1) of the 1951 Rules. The choice of Chief Executive Member of a Council is left to the Council and not to the Governor.

13. Rule 20(1) of the 1951 Rules quoted above further provides that other Members of the Executive Committee of a District Council "shall be appointed by the Governor on the advice of the Chief Executive Member" from amongst the members of the District Council. Thus, although the power to appoint the other members of the Executive Committee of a Council has been vested in the Governor, the power to choose a Member of the Executive Committee of the Council from amongst the members of the Council has been vested in the Chief Executive Member. There is therefore no discretion left with the Governor with

regard to choice of a Member of the Executive Committee to be appointed by him and he has to follow the advice of the Chief Executive Member with regard to appointment of a Member of the Executive Committee of the Council. There is a similar provision in Article 75 of the Constitution which states that other Ministers shall be appointed by the President on the advice of the Prime Minister. There is also similar provision in Article 164 of the Constitution which provides that other Ministers shall be appointed by the Governor on the advice by the Chief Minister. Thus, the President and the Governor of a State have hardly any discretion with regard to choice of Ministers to be appointed by them and it is the Prime Minister or Chief Minister of a State who have the power under Articles 75 and 164 of the Constitution respectively to choose their own Ministers. The principle in rule 20(1) of the 1951 Rules and Articles 75(1) and 164 of the Constitution that the Chief Executive Member will choose the other Members of the Executive Committee of a Council or the Prime Minister or the Chief Minister of a State will choose other Ministers of their Council of Ministers is a principle of a Cabinet System of Government which exists in England. Sir Ivor Jennings in his famous book "Cabinet Government", Third Edition, published by Cambridge University Press, 1969, has written:

The nomination of ministers rests with the Prime Minister. This does not mean that the Sovereign may not have considerable influence. Examples will presently be cited where Royal influence has been excluded persons from office. But as against the Queen the Prime Minister has the final word. He must have a Government which can work together and which can secure the support of the House of Commons. If he says that for this reason he must have the assistance of a certain person, the Queen must either give way or find another Prime Minister. The Queen cannot commission another member of the same party; for that is to interfere with the internal affairs of the party and is contrary to precedent. She must, therefore, find another party which can secure the support of the House of Commons, and it must be a strange House that is willing to support alternative Governments." (at page 61)

14. Rule 21(1)(b) of the 1951 Rules provides that the Chief Executive Member may at any time submit his resignation to the Governor through the Chairman of the Council, but a Member of the Executive Committee other than the Chief Executive Member is to submit his resignation to the Chief Executive Member. Thus, there is an express provision in rule 21(1)(b) that a Member of the Executive Committee other than the Chief Executive Member is to submit his resignation to the Chief Executive Member and not to the Governor, Rule 21(1)(b) states that on his resignation being accepted by the Governor, such Chief Executive Member will be deemed to have vacated office. It only speaks of the resignation of the Chief Executive Member being accepted by the Governor, but it does not anywhere state that the resignation of a Member of the Executive Committee other than the Chief Executive Member is to be accepted by the Governor. Since the said rule expressly provides that the resignation of a Member of the Executive Committee other than the Chief Executive Member is to be

submitted to the Chief Executive Member, the only intent behind the rule can be that resignation by a Member of the Executive Committee is to be accepted by the Chief Executive Member to whom it is submitted. Rule 21(1) of the 1951 Rules contemplates only two situations when a Member of the Executive Committee of a Council vacates his office : (i) when he ceases to be a Member of the Council; and (ii) when he submits his resignation. Rule 21 (2) contemplates a third situation when a Member of the Executive Committee ceases to hold office on the resignation or vacation of office by the Chief Executive Member. Sri Ram Sing Ronghang has not ceased to be a Member of the Council. The Chief Executive Member of the Council has also not resigned or vacated his office. First and third situations, as indicated above, therefore, do not exist in the present case. The present case is one where the Chief Executive Member, as per the affidavit-in-opposition filed on behalf of the Council, has lost confidence in Sri Ram Sing Ronghang. In such a situation, Sri Ram Sing Ronghang has to resign by submitting his resignation to the Chief Executive Member and the Chief Executive Member is to accept the said resignation under rule 21(l)(b) of the 1951 Rules.

15. It is true that under rule 20(1) of the 1951 Rules a Member of the Executive Committee of the Council is appointed by the Governor. Hence, normally and by virtue of what has been provided in section 16 of the General Clauses Act, 1897, a Member of the Executive Committee of the Council could be removed or dismissed by the Governor. But section 16 of the General Clauses Act itself makes it clear that the principle that an authority having power to make an appointment will also have the power to dismiss such person appointed by him will not apply where a different intention appears from the provisions of law sought to be interpreted. A different intention appears in the 1951 Rules. Although under rule 20(1) member of the Executive Committee other than the Chief Executive Member is appointed by the Governor on the advice of the Chief Executive Member, under rule 21(1)(b) such Member of the Executive Committee is to submit his resignation to the Chief Executive Member and not to the Governor. Thus, the intent of the rule 21(1)(b) is that the Chief Executive Member can remove a Member of the Executive Committee by accepting his resignation. This provision is unlike the provision in Article 75(2) of the Constitution which provides that a Minister shall hold office during the pleasure of the President. This provision in rule 21(1)(b) is also different from Article 164(1) that a Minister shall hold office during the pleasure of the Governor. There is no provision in the 1951 Rules that Members of the Executive Committee of the Council will hold office during the pleasure of the Governor.

16. In any case, in a Cabinet System of Government even where a Minister holds office at the pleasure of Head of the State, such as, the President or the Governor or the Queen, once the Prime Minister or the Chief Minister loses confidence in his Minister and wants to drop him from his Council of Ministers, the President or the Governor or the Queen cannot possibly stand in his way and insist that the Minister who has lost the confidence of the Prime Minister or the

Chief Minister must continue in office. Sir Ivor Jennings in his book "Cabinet Government" (supra) has stated this position in the following words:

"The Dismissal of Ministers.

The Prime Minister's power of appointing Ministers with the consent of the Queen and his power to dissolve a Government by a personal resignation are referred to in Ch.III. He possesses also the power to advise the Sovereign to dismiss a Minister. According to law, the minister holds his office at the pleasure of the Crown. He can, therefore, be dismissed, according to law, at any moment: and this prerogative is exercised solely on the advice of the Prime Minister. Such advice would be required only in the most extreme cases, where the minister insisted on retaining office and would not allow the Prime Minister to say that he had resigned...."(at page-207)

"The conclusion seems "to be that the Prime Minister possesses the right to ask a minister to resign or to accept another office. This right arises from the necessary pre-eminence of the Prime Minister in his Cabinet. It is, usually, not necessary to use the Crown's power of dismissal. There is a tradition - a kind of public -school fiction - that no minister desires office, but that he is prepared to carry on for the public good. That tradition implies a duty to resign when a hint is given. But, in the last resort, the Prime Minister could advise the Queen to dismiss any recalcitrant minister....." (at pp.214-215)

17. The aforesaid analysis of the principles of the Cabinet System of Government and the relevant provisions of the 1951 Rules which incorporate the aforesaid principles of the Cabinet System of Government would show that it is the Chief Executive Member of the Council who is to choose the other members of the Executive Committee of the Council and that a Member of the Executive Committee of the Council who has lost the confidence of the Chief Executive Member has a duty to resign from the post of Member of the Executive Committee of the Council, and he cannot be retained as a member of the Executive Committee. The aforesaid analysis would further show that once the Chief Executive Member of the Council decides to take a particular Member of the District Council as a Member of the Executive Committee of the Council and tenders his advice to the Governor to appoint him as a Member of the Executive Committee of the Council, the Governor has to appoint such person chosen by the Chief Executive Member as a Member of the Executive Committee of the Council.

18. Thus, once the Chief Executive Member of the Council has lost his confidence in Sri Ram Sing Ronghang, and does not want to retain him in his Executive Committee, Sri Ram Sing Ronghang cannot continue as a Member of Executive Committee of the Karbi Anglong Autonomous Council even though the Governor has not passed orders for removal of Sri Ram Sing Ronghang from the Executive Committee of the Council. No writ or direction, therefore, can be issued to the Karbi Anglong Autonomous Council or the Chief Executive Member of the said

Council to continues Sri Ram Sing Ronghang in the Executive Committee of the Council until the Governor passes orders for his removal or dismissal from the Executive Committee.

19. Coming now to Writ Petition (Civil) No. 3448/99 filed by Sri Jeevan Pathak, by interim order passed by this court on 1.6.1999 said Sri Jeevan Pathak was allowed to function as a Member of the Executive Committee of the Council until further orders. Mr. H. Roy, learned Standing Counsel for the Karbi Anglong Autonomous Council, has informed the court that after the hearing of the writ petitions on 30.5,2000, the Chief Executive Member of the Council who had earlier tendered his advice to the Governor to appoint the petitioner, Sri Jeevan Pathak, as a Member of the Executive Committee of the Council has been replaced by another Chief Executive Member, and Sri Jeevan Pathak has been included in the Executive Committee of the Council by the said new Chief Executive Member. So long as Sri Jeevan Pathak continues to enjoy the confidence of the new Chief Executive Member he will continue as a Member of the Executive Committee of the Council and in case any formal orders are necessary to that effect, the State Government and the Secretary to the Governor of Assam will place the relevant file before the Governor for such formal orders.

20. With the aforesaid observations, the two writ petitions stand disposed of. Considering however the entire facts and circumstances of the case, the parties shall bear their respective costs.