

(2020) 09 MAN CK 0004

In the Manipur High Court

Case No : Writ Petition (c) No. 317, 16 Of 2018, Public Interest Litigation No. 10, 7, 9 Of 2017

Surjakumar Okram

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision : 17-09-2020

Acts Referred:

Repealing Act, 2018 — Section 2(2), 2(3), 2(5)
Government Of India Act, 1935 — Section 143(2)
Bombay Prohibition Act, 1949 — Section 13(b)
Indian Penal Code, 1860 — Section 338
Bombay Prohibition Act, 1949 — Section 13(b), 66(b)
Evidence Act, 1872 — Section 105
Constitution Of India, 1950 — Article 13(1), 164(1A), 132, 145(3), 228, 246

Citation : (2020) 09 MAN CK 0004

Hon'ble Judges : Ramalingam Sudhakar, CJ;Ahanthem Bimol Singh, J

Bench : Division Bench

Advocate : N. Ibotombi, N. Kumarjit, M. Hemchandra

Judgement

Ramalingam Sudhakar, CJ

[1] Heard Mr. N. Ibotombi, learned senior counsel appearing for the petitioners in W.P. (C) No. 317 of 2018 and Mr. M. Hemchandra, learned senior counsel appearing for the petitioner in PIL No. 16 of 2018 & PIL No. 9 of 2017. Heard also Mr. N. Kumarjit, learned Advocate General appearing for the State respondents in all the cases. None appears for the petitioner in PIL No. 10 of 2017 and PIL No. 7 of 2017.

[2] (A) The prayers in W.P. (C) No. 317 of 2018 are as follows :-

"iii) to issue a writ in the nature of Certiorari or any other appropriate writ declaring the Manipur Parliamentary Secretary (Appointment, Salary And Allowances and Miscellaneous Provisions) Repealing Act, 2018 as unconstitutional and ultra-vires to Article 164(1A) of the Constitution of India and quash the

same;

iv) to pass an appropriate order quashing the impugned Repealing Act of 2018 as a piece of colorable legislation and without competency;

v) to pass an order declaring the impugned Repealing Act of 2018 as a direct violation of the conclusive judgment rendered by the Hon'ble Apex Court in Bimolangshu Roy case."

(B) The prayers in PIL No. 10 of 2017 are as follows :-

"ii) The impugned Manipur Parliamentary Secretary (Appointment, Salary and Allowances and miscellaneous Provisions) Act, 2012, be declared unconstitutional and illegal.

iii) To issue a writ to set aside and quash the appointment of twelve Parliamentary Secretaries, by passing an appropriate order."

(C) The prayers in PIL No. 16 of 2018 are as follows :-

"iii) To issue a writ in the nature of certiorari or any other appropriate writ directing the respondents declaring the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Repealing Act, 2018 as unconstitutional and ultra-vires to Article 164(1A) of the Constitution of India and quash the same.

iv) To issue a writ in the nature of certiorari / mandamus or any other appropriate writ / order quashing the impugned Repealing Act of 2018 as a piece of colourable legislation and without competency.

v) To pass an appropriate order declaring the impugned Repealing Act of 2018 as a direct violation of the conclusive judgment rendered by the Hon'ble Apex Court in Bimolangshu Roy case.

(D) The prayers in PIL No. 7 of 2017 are as follows :-

"i) to quash and declare Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provision), Act, 2012 as ultra vires and void ab initio (Annexure A/2)

ii) to cancel and quash the notification/appointment order dated 23-03-2017 being No. 15/1/2017-CON issued by the Hon'ble Chief Minister (Annexure A/1)

[E] The prayers in PIL No. 9 of 2017 are as follows :-

"iii) to issue a writ in the nature of Certiorari / Mandamus / Prohibition / Quo-Warranto or any other appropriate writ / directions / orders, directing the respondent to quash and set-aside the impugned "The Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012" in view of the facts and circumstances of the present petition.

iv) to issue a writ in the nature of Certiorari / Mandamus / Prohibition / Quo-

Warranto or any other appropriate writ / directions / orders, directing the respondent to quash and set-aside the impugned Notification No. 15/1/2017-CON: dated 23/03/2017 (at Annexure-A/2) for appointment of 12(twelve) Parliamentary Secretaries having the rank and status of Minister of State in view of the facts and circumstances of the present petition.

v) To issue a writ in the nature of Certiorari / Mandamus / Prohibition / Quo-Warranto or any other appropriate writ / directions / orders, directing the respondent to quash and set-aside the impugned Notification dated 24/03/2017 (at Annexure-A/3) for allocation of portfolio / departments in view of the facts and circumstances of the present petition.

[2] The writ petition and PILs have been filed for quashing The Manipur Parliamentary Secretary (Appointment, Salary And Allowances and Miscellaneous Provisions) Repealing Act, 2018 and The Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012. Another relief which is sought for in PIL No. 7 of 2017 and PIL No. 9 of 2017 for quashing Notification No. 15/1/2017-CON dated 23.03.2017 for appointment of 12 (twelve) Parliamentary Secretaries [(Annexure-A/1 in PIL No. 7 of 2017) / (Annexure-/2 in PIL No. 9 of 2017)] has become irrelevant at this point of time as their appointment has been discontinued by orders dated 17.07.2017 & 25.10.2017 [Annexure R/1 & R/2 of Reply affidavit dated 15.11.2017 filed by respondents in both PIL No. 7 of 2017 and PIL No. 9 of 2017]

[3] On 04.08.2012, the Government of Manipur enacted the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 (Manipur Act No. 10 of 2012), hereinafter referred to as the main Act, 2012, enabling the Chief Minister to appoint Members of Manipur Legislative Assembly as Parliamentary Secretary with the status and rank of a Minister of a State. The Parliamentary Secretary will perform his duties and function as may be specified in the Official Gazette by the Chief Minister. Certain procedures have been laid down in the said act for this purpose. The Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 (Manipur Act No. 10 of 2012) reads as follows :-

**GOVERNMENT OF MANIPUR SECRETARIAT : LAW & LEGISLATIVE AFFAIRS
DEPARTMENT NOTIFICATION**

Imphal, August 4, 2012

No. 2/41/2012-Leg/L :- The following Act of the Legislature, Manipur received the assent of the Governor of Manipur on August 3, 2012, and is hereby published for general information:-

**THE MANIPUR PARLIAMENTARY SECRETARY (APPOINTMENT, SALARY AND
ALLOWANCES AND MISCELLANEOUS PROVISIONS) ACT, 2012**

(Manipur Act No. 10 of 2012)

An

Act to provide for the appointment, salary and allowances and other miscellaneous provisions of the Parliamentary Secretary in the State of Manipur.

Be it enacted by the Legislature of Manipur in the Sixty-third Year of the Republic of India as follows:-

1. (1) This Act may be called the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012.

(2) It extends to the whole of the State of Manipur.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires;-

(a) 'Chief Minister' means the Chief Minister of Manipur;

(b) 'Member' means a Member of the Manipur Legislative Assembly;

(c) 'Parliamentary Secretary' means a Member of the Manipur Legislative Assembly appointed as the Parliamentary Secretary under this Act by the Chief Minister.

3. The Chief Minister may, having regard to the circumstances and the need of the situation, at any time appoint such number of Parliamentary Secretary.

4. A Parliamentary Secretary shall be of the rank and status of a Minister of State.

5. The functions and duties of a Parliamentary Secretary shall be such as may be specified, by notification in the Official Gazette, by the Chief Minister.

6. The Parliamentary Secretary shall, before entering upon his office, make and subscribe before the Chief Minister an oath of office and secrecy according to the form set out for the purpose in the Schedule appended to this Act.

7. A Parliamentary Secretary shall be entitled to such salary and allowances as are admissible to a Minister of State under the Salaries and Allowances of Ministers (Manipur) Act, 1972.

8. A Parliamentary Secretary shall not, while he draws salary and allowances for his office as such Parliamentary Secretary, be entitled to any salary or allowances as a Member of the Manipur Legislative Assembly.

9. A Parliamentary Secretary shall not, during his office as such Parliamentary Secretary, practice any profession or engage in any trade or commerce, profession etc. and undertake for remuneration any employment other than his duties as such Parliamentary Secretary.

10. The Manipur Parliamentary Secretary (Salary and Allowances) Act, 1972 is hereby repealed.

SCHEDULE

(Section 6)

I

Form of oath of office for a Parliamentary Secretary

?I,, do swear in the name of God/ solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Parliamentary Secretary and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will?.

II

Form of oath of secrecy for a Parliamentary Secretary

?I,, do swear in the name of God/ solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Parliamentary Secretary except as may be required for the due discharge of my duties as such Parliamentary Secretary?.

Sd/-

TH. KAMINIKUMAR SINGH, Deputy Secretary (Law), Government of Manipur."

[4] Akin to the above happened, in the State of Assam, the State legislature passed the Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004, gazetted on 29.12.2004. This was challenged before the Gauhati High Court on 13.04.2005 by filing Writ Petition (PIL) No. 30 of 2005. It was thereafter transferred to the Hon'ble Supreme Court to be heard along with SLP No. 22038 of 2005 (State of HP v. Citizen Rights Protection Forum). The transferred case from Assam was numbered as Transferred Case (Civil) No. 169 of 2006. In this case, the Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004 was challenged on the ground that it violated the Constitutional mandate under Article 164 (1-A) and it is an overreach on the mandate of the Constitution 91st Amendment. The State of Assam, inter alia, pleaded that it has legislative competence to pass the impugned legislation in terms of Schedule VII list II Entry 39 of the Constitution. The competence of the State of Assam to pass the Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004 was considered in the case of Bimolangshu Roy (Dead) through Legal representatives vs. State of Assam and Another reported in (2018) 14 SCC 408 and the scope of the power of the State legislature to pass the impugned enactment was considered in the light of Article 194(3) and Scope of Entry 39 of List II Schedule VII and Article 246 of the

Constitution. The question that was post by the Court is as follows :-

"39. The distinction between the scheme of Article 262 Entry 56 of List I and Entry 17 of List II and the scheme of Article 194 and Entry 39 of List II is this that in the case of inter-State water disputes neither of the abovementioned two Entries make any mention of the adjudication of water disputes and only Article 262 deals with the topic. In the case on hand, the relevant portion of the text of Article 194(3) and Entry 39 of List II are almost identical and speak about the "powers, privileges and immunities" of the House, its members and Committees.

40. The question therefore is - Whether the text of Article 194(3) and Entry 39 is wide enough to authorise the legislature to make the Act ?"

[5] In answer to the above issue, the Court held that the scheme of Article 194 does not expressly authorize the State legislature to create office such as that of the Parliamentary Secretary. The Court held that creation of new office by legislation will be wholly irrational while construing the scope of Article 194(3) and Entry 39 of List II. It held that the powers, privileges and immunities contemplated by Article 194(3) and Entry 39 are those of legislatures qua legislatures and declared the Assam Act as unconstitutional.

"41. In view of the fact that the text of both Article 194(3) and the relevant portion of Entry 39 are substantially similar, the meaning of the clause "the powers, privileges and the immunities of a House of the Legislature of a State and of the Members of a House of such Legislature" must be examined.

42. In ascertaining the meaning of the clause, the scheme of Article 194 and the setting in which the said clause is placed is relevant. Article 194 occurs in Chapter III of Part VI of the Constitution which deals with the States. Chapter II of Part VI deals with the State Executive. Chapter III deals with the State Legislature. Various articles of Chapter III provide for establishment of a legislature (either unicameral or bicameral), the composition of such legislative bodies, the qualifications for membership of the legislative bodies and their durations, the offices of the legislature and their powers and responsibilities and all other allied matters.

43. Article 194 deals exclusively with the powers and privileges of the legislature, its Members and committees thereof. While clause (1) declares that there shall be freedom of speech in the legislature subject to the limitations enumerated therein, clause (2) provides immunity in favour of the Members of the legislature from any legal proceedings in any court for anything said or any vote given by such Members in the legislature or any committees etc. Clause (3) deals with the powers, privileges and immunities of a House of the Legislature and its Members with respect to matters other than the ones covered under clauses (1) and (2).

44. Thus, it can be seen from the scheme of Article 194 that it does not expressly authorise the State Legislature to create offices such as the one in

question. On the other hand, Article 178 speaks about the offices of Speaker and Deputy Speaker. Article 179 deals with the vacation of those offices or resignations of incumbents of those offices whereas Article 182 and 183 deal with the Chairman and Deputy Chairman of the Legislative Council wherever the Council exists. In our opinion, the most crucial article in this Chapter is Article 187 which makes stipulations even with reference to the secretarial staff of the legislature. On the face of such elaborate and explicit constitutional arrangement with respect to the legislature and the various offices connected with the legislature and matters incidental to them to read the authority to create new offices by legislation would be a wholly irrational way of construing the scope of Article 194(3) and Entry 39 of List II. Such a construction would be enabling the legislature to make a law which has no rational connection with the subject-matter of the entry.

"The powers, privileges and immunities" contemplated by Article 194(3) and Entry 39 are those of the legislators qua legislators.

45. For the above-mentioned reasons, we are of the opinion that the Legislature of Assam lacks the competence to make the impugned Act. In view of the above conclusion, we do not see it necessary to examine the various other issues identified by us earlier in this judgment. The Writ Petition is allowed. The impugned Act is declared unconstitutional."

[6] After this judgment was delivered on 26.07.2017, and in the light of the Hon'ble Supreme Court's decision, the State of Manipur passed the Manipur Parliamentary Secretary (Appointment, Salary And Allowances and Miscellaneous Provisions) Repealing Act, 2018 (Manipur Act No. 6 of 2018) hereinafter referred to as Repealing Act, 2018 and the same reads as follows :

**GOVERNMENT OF MANIPUR SECRETARIAT: LAW & LEGISLATIVE AFFAIRS
DEPARTMENT NOTIFICATION**

Imphal, the 4th April, 2018 No. 2/10/2018-Leg/L : The following Act of the Legislature, Manipur which received assent of the Governor of Manipur on April 4, 2018 is hereby published in the Official Gazette:

THE MANIPUR PARLIAMENTARY SECRETARY (APPOINTMENT, SALARY AND ALLOWANCES AND MISCELLANEOUS PROVISIONS) REPEALING ACT, 2018 (MANIPUR ACT NO. 6 OF 2018) AN ACT to repeal the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 (Manipur Act No. 10 of 2012).

Whereas, it is expedient to repeal the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 in light of the ruling of the Hon'ble Supreme Court of India in Transfer Case (Civil) No. 169 of 2006 (Bimolangsu Roy (Dead) through LRs Vs. State of Assam & Another), and in the process of being a responsible Government which upholds the Rule of Law.

BE it enacted by the Legislature of Manipur in the Sixty-ninth Year of the Republic of India as follows:

1. (1) This Act may be called the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Repealing Act, 2018.

(2) It shall come into force with immediate effect.

2. (1) The Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 (Manipur Act No. 10 of 2012) is hereby repealed.

(2) Notwithstanding the repeal of the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012, the repeal shall not affect -

(a) the previous operations of the repealed Act or anything duly done in pursuance of the Act so repealed including anything done in official discharge of their duties by the Parliamentary Secretaries; or

(b) any right, privilege or obligation incurred under the repealed Act.

Sd/-

NUNGSHITOMBI ATHOKPAM

Secretary (Law)

Government of Manipur.

The Repealing Act, 2018 is also under Challenge.

[7] According to the petitioners, the main Act, 2012, Manipur Act No. 10 of 2012 lacks legislative competence as in the case of Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004, the same has to be declared as unconstitutional following the ratio of the decision rendered by the Hon'ble Supreme Court in the case of Bimolangshu Roy (Dead) through Legal Representatives vs. State of Assam and Another reported in (2018) 14 SCC

408. Further, the Manipur Parliamentary Secretary (Appointment, Salary And Allowances and Miscellaneous Provisions) Repealing Act, 2018 is a colourable legislation for safeguarding an unconstitutional Act by exercise of power which the State legislature does not have. It lacks of legislative competence to pass the repeal Act also. Once it lacks of legislative competence to enact the Manipur Act No. 10 of 2012, it lacks legislative competence to pass the Repealing Act 2018 also.

[8] The second limb of the contention on behalf of the petitioners is that the Repealing Act, 2018, Manipur Act No. 6 of 2018 is also bad for the reason that it provides for a saving clause in Section 2(2). The State attempts to justify and

safeguard the illegality committed by appointing Parliamentary Secretaries by virtue of an unconstitutional Act. When there is no power for the State legislature to enact the Manipur Act No. 10 of 2012 or the Repealing Act, Manipur Act No. 6 of 2018, the saving clause in the Repealing Act, Manipur Act No. 6 of 2018 is a devious method to safeguard and justify the illegality committed by virtue of the Manipur Act No. 10 of 2012 which is constitutionally invalid.

[9] The State Government has filed a reply affidavit on behalf of respondent No. 1 & 2 on 25.09.2018 on several aspects, some of which may not be relevant for the purpose of the issue considered in the present set of cases. However, what is relevant is Para 12 where it is stated that in view of the decision of the Hon'ble Supreme Court in of India in Transfer Case (C) No. 169 of 2006 {Bimolangshu Roy (Death) through his LRs Vs State of Assam & Another}, the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Repealing Act, 2018 was passed with effect from 04.04.2018. The respondents reiterated that the State legislature has got jurisdiction to repeal an existing Act which was enacted earlier by the State legislature even if the earlier enactment was without jurisdiction. This was pleaded stating that Repealing Act, 2018 is an annulment and removal of earlier enactment.

[10] The primary issue that arises for consideration is whether the State is competent to pass the Repealing Act, 2018 in the light of the law laid down by the Hon'ble Supreme Court in the case of Bimolangshu Roy (Dead) through Legal Representatives vs. State of Assam and Another reported in (2018) 14 SCC 408 and whether Manipur Act No. 10 of 2012 is valid.

The hon'ble Supreme Court has very clearly held in para 44 that in the scheme of Article 194, the Assam State legislature does not have the authority to create office as contemplated by the Assam Act which is pari materia to the Manipur Act No. 10 of 2012. It held that the legislature lacked competence to make such an enactment and that it was unconstitutional. It is therefore, evident that when the State Government did not have the power to legislate and enact Manipur Act No.10 of 2012 on the principles laid down by the hon'ble Supreme Court in the case of Bimolangshu Roy (Dead) through Legal Representatives vs. State of Assam and Another reported in (2018) 14 SCC 408, the question of repealing an invalid Act does not arise. The State Government does not have such a power. Hence, Manipur Act No. 10 of 2012 is unconstitutional.

[11] As to whether the State Government has the power to repeal an Act which has been declared unconstitutional will have to be tested on the basis of the law laid down by the Hon'ble supreme court in the following cases:-

[I] In the case of Mahmadhusen Abdulrahim Kalota Shaikh(2) vs. Union of India and Others: (2009) 2 SCC 1, the Hon'ble Supreme Court was considering that the power and competence of the Parliament to makes laws covered by the legislative fields committed to it, carries with it the power of repeals on those subjects. This is a general principle of law which is not in dispute. However, it

makes it evident that where the Parliament or State legislature does not have the power and competence to make an enactment, it does not have the power to repeal an unconstitutional enactment.

While considering the scope of power and competence of the parliament, the Hon'ble Supreme Court held as follows:-

"34. The following well settled principles have to be kept in view while examining the constitutional validity of Sections 2(3) and (5) of the Repealing Act :

.....

.....

(d) The power and competence of Parliament to make laws in regard to the subjects covered by the legislative fields committed to it, carries with it the power to repeal laws on those subjects. The power of the Parliament to repeal a law is coextensive with the power to enact such a law. (See Justice G.P. Singh's Principles of Statutory Interpretation - 11th Edition, Page 633)."

(Emphasis supplied)

(II) M/s Ram Krishna Ram Nath v. Janpad Sabha reported in AIR 1962 SC 1073 : This case relates to levy of terminal tax on proprietary concerned carrying on business, inter alia, in manufacturing and selling bidis which were exported to various places outside the territorial limits of Janpad Sabha, Gondia. The Janpad Sabha, Gondia demanded and collected taxes when the export took place from railway stations within its territorial jurisdiction between January 26, 1950 and June 30, 1952. The proprietary concerned resisted the collection of terminal tax by Janpad Sabha, Gondia on the ground that after coming into force the Constitution, the imposition and collection of terminal tax by Janpad Sabha, Gondia was illegal. On notice, it appears that Janpad Sabha discontinued collection of tax, but refused to refund the tax already collected. Thereafter, civil suits were filed for recovery of the amount and these suits were tried by the High Court invoking Article 228 of the Constitution for deciding the substantial question of law, and on 13.04.1955, the suits were dismissed and certificate was granted under Article 132 of the Constitution.

On that case, the issue arose in the following manner :-

"The Provincial Legislature of C.P. and Berar, in exercise of its legislative power under Sch. 7 List 2 Item 13, Government of India Act, 1935, enacted the C.P. and Berar Local Government Act, 1948, and validly repealed the C.P. and Berar Local Self Government Act of 1920. Under the latter Act certain terminal tax (which was later on impugned) was validly levied prior to the commencement of Part III of the Government of India Act, 1935, on 1-4-1937, by a District Council and later on after 1-4-1937 by the Janapad Sabhas which replaced the District Council, by virtue of S. 143(2) of Government of India Act, 1935. The new Act of 1948, which came into force on 11-6-1948, however, did not continue the

provisions of the repealed Act of 1920, under which the impugned tax was levied, so as to enable "the newly created Janpad Sabhas to exercise the fiscal powers of the District Councils which they replaced. There was, no doubt, a saving under the proviso to S. 192 but the saving was confined to the recovery of taxes which had accrued due on the date of the repeal but which still remained uncollected. Later on, the Provincial Legislature effected an amendment to S. 192 by the C.P. and Berar Local Government (Amendment) Act, 1949, by which the saving was extended to include the right of the Janpad Sabhas to continue to levy the impugned tax and this amendment was given retrospective effect as from June 11, 1948. It was contended that the amending Act was beyond the competence of the Provincial Legislature."

The Hon'ble Supreme Court considered the issue in the light of Article 143(2) of the Government of India Act, 1935, which reads as follows :-

"143(2) Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the Province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty-five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature."

The effect of repeal was considered by the Hon'ble Supreme Court referring to case of Attorney-General for Ontario v. Attorney-General for the Dominion, 1896 AC348 at p. 366, in which decision it was observed as follows :-

"There is no doubt that the general principle is that the power of a legislative body to repeal a law is co- extensive with its power to enact such a law, as would be seen from the following passage in the judgment by Lord Watson in Attorney-General for Ontario v. Attorney-General for the Dominion, 1896 AC 348 at p. 366;

"Neither the Parliament of Canada nor the provincial legislatures have authority to repeal statutes which they could not directly enact."

In the above case, the Hon'ble Supreme Court, however, upheld the validity of amending Act in the light of Section 143(2) of the Government of India Act. The core issue that is relevant in the present case is that the Hon'ble Supreme Court accepted the principle that power of the legislative body to repeal a law is co- extensive with power to enact such law, also meaning thereby that the provincial legislature has no authority to repeal a statute which they could not enact. The same principle applies to the facts of the present case.

[III] In the case of Behram Khurshid Pesikaka v. State of Bombay reported in AIR 1955 SC 123, the Constitution Bench upon a reference under Article 145 (3) of the Constitution of India considered the terms of reference as follows :-

"41. A Bench of that Court hearing an appeal under the provisions of Chapter IV

of the Constitution has referred, under Article 145(3) of the Constitution, for the opinion of the Constitution Bench the following point.

"What is the effect of the declaration in ?AIR 1931 C 318S (B)? , that Clause (b) of Section 13 of the Bombay Prohibition Act, 1949, is void, under Article 13(1) of the Constitution, in so far as it affects the consumption or use of liquid medicinal or toilet preparations containing alcohol, on the ground that it infringes Article 19(1) of the Constitution?"

It was a case of an officer who was charged with offence under Section 338, IPC (rash driving) and Section 66(b) of the Bombay Prohibition Act, who in defence pleaded that he had taken medicinal preparation B.G. Phos which contained 17% of alcohol according to its formula, and he did not consume any liquor. It was a medicinal preparation which he can validly consume.

The learned Presidency Magistrate acquitted the appellant on both counts and the State of Bombay appealed against the appellant to the High Court and the High Court confirmed the acquittal in regard to the charge under Section 338 IPC but reversed the order acquitting him of the charge under Section 66(b) of the Bombay Prohibition Act and sentenced him to one month's rigorous imprisonment and a fine of Rs. 500.

An appeal was filed against this order and the appeal was admitted to Hon'ble Supreme Court. It was heard by a Bench of 3(three) Judges but the 3 (three) Judges could not reach unanimous decision and expressed different and divergent opinions and a reference to the Constitution Bench was made.

The Constitution Bench while answering reference observed as follows :-

"54. Our learned brother, Jagannadhadas J., took the view that the only appropriate way of giving effect to the judgment in ?Balsara?s case (B)? was by engrafting an exception or proviso to Section 13(b) in the light of that decision and that the onus of proving the exception lay on the accused person. This, in our judgment, is again not a true approach to the question. As pointed out by the learned Judge himself, the Court has no power to re-write the section. It has to be kept intact. The Court therefore has no power to engraft an exception or a proviso on section 13(b) of the Bombay Prohibition Act.

Apart from this circumstance it seems plain that unless there is a power to make a law consistent with the provisions of Part III of the Constitution, there can be no power to engraft an exception of the nature suggested by our brother. An exception or proviso can only be engrafted for the purpose of excluding from the substantive part of the section certain matters which, but for the proviso would be within it. But when there is no power to enact at all what is proposed to be embodied in the exception, there is no power to enact an exception by enacting a law which the Legislature is not competent to make. The State has no power to make a law abridging fundamental rights and therefore there is no power to engraft an exception, by taking something out of a law which cannot be enacted.

It is therefore difficult to treat what was declared void in ?Balsara?s case (B)? as an exception to Section 13(b) of the Bombay Prohibition Act and apply the rule enunciated in section 105 of the Evidence Act to the case of the appellant. The only correct approach to the subject is to ignore the part of the section declared void by this Court in ?Balsara?s case (B) and see if the prosecution has succeeded in bringing the offence home to the accused on the part of the section that remains good law."

(emphasis supplied)

From the above decisions, it is apparent that the State of Manipur does not have the power to repeal the Manipur Act No. 10 of 2012 because it lacks the legislative competence to enact the aforesaid Act. Moreso, in view of the decision rendered by the Hon'ble Supreme Court in the case of Bimolangshu Roy (Dead) through Legal Representatives vs. State of Assam and Another reported in (2018) 14 SCC 408, where the Hon'ble Supreme Court has held that the Assam legislature lacked competence to enact the 2004 Act. This is identical to Manipur Act No. 10 of 2012. The question of repealing the Manipur Act No. 10 of 2012 does not arise because the Manipur Act No. 10 of 2012 itself is unconstitutional for it lacks legislative competence.

[IV] On the implication of the Manipur Act No. 10 of 2012 and the Repealing Act, Manipur Act No. 6 of 2018, the issue can be summarized in the words of the Hon'ble Supreme Court where it is lucidly stated in the case of Deep Chand Vs. The State of Uttar Pradesh and Ors. reported in AIR 1959 SC 648 as follows :-

23. If Arts. 245 and 13(2) define the ambit of the power to legislate, what is the effect of a law made in excess of that power ? The American Law gives a direct and definite answer to this question.

Cooley in his "Constitutional Limitations" (Eighth Edition, Volume I) at page 382 under the heading "Consequences if a statute is void" says :-

"When a statute is adjudged to be unconstitutional, it is as if it had never been.And what is true of an act void in toto is true also as to any part of an act which is found to be unconstitutional, and which, consequently, is to be regarded as having never, at any time, been possessed of any legal force."

24. In Rottschaefer on Constitutional Law, much to the same effect is stated at.

"The Legal status of a legislative provision in so far as its application involves violation of constitutional provisions, must however be determined in the light of the theory on which Courts ignore it as law in the decision of cases in which its application produces unconstitutional results. That theory implies that the legislative provisions never had legal force as applied to ceases within the clause."

25. In "Willis on Constitutional Law", at page 89 :

"A judicial declaration of the unconstitutionality of a statute neither annuls nor

repeals the statute but has the effect of ignoring or disregarding it so far as the determination of the rights of private parties is concerned. The Courts generally say that the effect of an unconstitutional statute is nothing. It is as though it had never been passed"

26. "Willoughby on Constitution of the United States", Second Edition, Volume I, "The Court does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognize it, and determines the rights of the parties just as if such statute had no application."

[12] A reading of the above decisions will make it clear that where the Parliament has the competence to make laws on subjects covered by the legislative field, it carries with it the power to repeal a law on that subject and not otherwise. The key word is co-extensive. The State legislature in the present case did not have the legislative competence to pass the Manipur Act No. 10 of 2012. As a corollary, it does not have the competence to pass the Repealing Act, 2018. When it has no competence to pass an Act, it does not have the authority to repeal it, as well. Both the Acts have no legal force and have to be ignored and disregarded.

In the present case, another relevant factor is that the Repealing Act, 2018 is also invalid and unconstitutional for the reason that it provides for a saving clause in Section 2(2). The saving clause provides that the repeal shall not affect the previous operations of the repealed Act or anything duly done in pursuance of the Act so repealed including anything done in official discharge of their duties by the Parliamentary Secretaries; and safeguards the right, privilege or obligation incurred under the repealed Act. The State legislature cannot provide for saving clause in the Repealing Act, 2018 to justify acts, deeds, privileges which are impermissible under the Manipur Act No. 10 of 2012 which is unconstitutional. No right, in any manner, can subsist under the Manipur Act No. 10 of 2012 and in any event, it cannot be saved by Repealing Act, Manipur Act No. 6 of 2018. What the State legislature cannot do directly, cannot be done indirectly. On this aspect also, it has to be clearly held that the Repealing Act, 2018 is invalid and unconstitutional.

[13] In the light of the decision of the Hon'ble Supreme Court in the case of Bimolangshu Roy (Dead) through Legal representatives vs. State of Assam and Another reported in (2018) 14 SCC 408, and in view of our findings as above, the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 is declared unconstitutional and as a sequitur, the Manipur

Parliamentary Secretary (Appointment, Salary And Allowances and Miscellaneous Provisions) Repealing Act, 2018 is also invalid and unconstitutional.

The writ petition and PILs are ordered accordingly. No Costs.