IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)
SHILLONG BENCH

W.P. (C) No. 330 (SH) of 2010

1. Shri Roynath D Sangma
Elected from 18 Batabari GDC Constitutency
R/o Village Bangranggre
PO Masangpani
West Garo Hills, District

2. Shri Boston Ch Marak
Elected from 12 Nogorpara GDC Constituency
R/o Najing Bazar
PO Araimile, Tura
West Garo Hills District

3. Shri Ranjit Rabha
Elected from 21 Naguapara GDC Constituency
R/o Village Odalguri
PO Tikrikilla
West Garo Hills District

4. Shri Silgra Marak
Elected from 6 Barengapara GDC Constituency
R/o Village Koinadubi
PO Barengapara
West Garo Hills District

5. Shri Kredithson Ch Marak
Elected from 16-Asanang GDC Constituency
R/o Village Goramara
PO Garobadha
West Garo Hills District

6. Shri Orlendro R Marak
Elected from 5-Gasuapara GDC Constituency
R/o Village Sempara
PO Gasuapara
South Garo Hills District

7. Shri Larson N Sangma
Elected from 11-Boldamgre GDC Constituency
R/o Village Bainapara
PO Betasing
West Garo Hills District

8. Shri Purno K Sangma
Elected from 22-Jengjal GDC
Constituency
R/o GDC Quarter No. 2,
Hawakhana, Tura
West Garo Hills District

9. Shri Dipul R Marak
Elected from 15-Rochonpara
GDC Constituency
R/o Village and PO Garobadha
West Garo Hills District

10. Shri Locksley Robinhood Cheran
Momin
Elected from 9-Tura
GDC Constituency
R/o GDC Quarter No. 1
Hawakhana Tura
West Garo Hills District

11. Shri Denang T Sangma
Elected from 29-Williamnagar
GDC Constitutency
R/o Balsrigitim
PO Williamnagar
East Garo Hills District

12. Shri Widnald D Marak
Elected from 8-Amongpara
GDC Constituency
R/o Village Danakgre
PO Tura-Araimile
West Garo Hills District

13. Shri Willy D Shira
Elected from 4-Rongrikkimgre
GDC Constituency
R/o Village & PO Gangganggre
South Garo Hills District

14. Shri Sengbath R Marak
Elected from 3-Silkigre
GDC Constituency
R/o Village & PO Sibbari
South Garo Hills District

15. Shri Cherak W Momin
Elected from 26-Karkutta
GDC Constituency
R/o Village Chotcholja
PO Karmutta
East Garo Hills District

16. Shri Sukharam K Sangma
Elected from 23-Rongrong
GDC Constituency
R/o Tura RC Road
PO Lower Chandmari
Tura ,
West Garo Hills District

17. Shri Lahitson M Sangma
Elected from 27-Samandagre
GDC Constituency
R/o Village Rongreng-Baija
PO Rongrengre
East Garo Hills District

18. Shri Freederson N Sangma
Elected from 2-Wagesik
GDC Constituency
R/o Bolsal Ading
PO Baghmara
South Garo Hills District :: Petitioners

Versus

1. State of Meghalaya
represented by the Principal
Secretary to the Govt. of
Meghalaya, District Council
Affairs Department, Shillong.

2. Deputy Commissioner,
West Garo Hills District and
Administrator, Garo Hills
Autonomous District
Council at Tura

3. Garo Hills Autonomous District
Council, represented by its
Secretary to the Executive
Committee, Tura :::: Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

For the Petitioners	:::	Mr AM Mazumdar, Sr Adv Mr SS Dey, Ms SG Momin, Advs
For the Respondents	:::	Mr KS Kynjing, Addl AG, Megh Mr ND Chullai, Sr GA Megh Mr S Dey, SC, GHADC
Date of hearing	:::	25.10.2010
Date of judgment	:::	16.11.2010

JUDGMENT AND ORDER

The legality of the Notification dated 17-9-2010 issued by the Governor of Meghalaya, in exercise of his powers under sub-paragraph (2) of Paragraph 16 of the Sixth Schedule to the Constitution of India, extending his rule ("Governor's Rule") in the Garo Hills Autonomous District Council by another six months *w.e.f.* 1st October, 2010, unless terminated earlier or extended further. This Notification was preceded by the Notification dated 1-4-2010 whereby the Governor had been satisfied, on the basis of the reports received by him, that changes of allegiance of the Members of Garo Hills District Council ("MDCs" for short) and the non-compliance of his orders, had made the functioning of the Council untenable, which resulted in a situation where the administration of the Garo Hills Autonomous District Council ("the District Council" for short) could not be carried on in accordance with the provisions of the Constitution of India and had, therefore, in exercise of the powers conferred on him by sub-paragraph (2) of Paragraph 16 of the Constitution of India, assumed to himself the administration of the District Council and all the functions and powers vested in or exercisable by the same, etc. The relevant portions of the impugned notifications dated 1st April, 2010 and dated 17-9-2010 run thus:

"GOVERNMENT OF MEGHALAYA
DISTRICT COUNCIL AFFAIRS DEPARTMENT
ORDERS BY THE GOVERNOR
NOTIFICATION
Dated Shillong the 1st April, 1020.

No. DCA.18/2004/Pt/80:- Whereas the Governor of Meghalaya has received reports that changes of allegiance of the Members of the Garo Hills District Council are taking place and Orders of the Governor have not been complied with, which has made the function of the Council untenable and is satisfied that this has resulted in a situation where the administration of the Garo Hills Autonomous District Council cannot be carried on in accordance with the provisions of the Sixth Schedule to the Constitution of India.

Now, therefore, the Governor of Meghalaya in exercise of the powers conferred by sub-paragraph (2) of Paragraph 16 of the Sixth Schedule to the Constitution of India is pleased:-

a) To assume to himself the administration of the said Autonomous District and all functions and powers vested in or exercisable by the Garo Hills Autonomous District Council;

b) To declare that all functions and powers vested in or exercisable by the Executive Committee, Chief Executive Member, Deputy Chief Executive Member, Chairman, Deputy Chairman and Executive Members of the aforesaid District Council under the Sixth Schedule or any law in force in the said District, shall, subject to his superintendence, direction and control, be exercisable by officers of the State Government and/or by such person or authority as the Government may, by notification appoint in this behalf and that the Chairman and the Deputy Chairman, of the said District Council shall during the period of assumption of the administration of the District Council by the Governor to himself under this Order, cease to exercise the functions and powers aforesaid.

c) To direct that during the period of operation of this Order:-

i. No sitting of the District Council shall unless so directed by the Governor be called, held or convened at any time during the said period;

ii. All references to in the Sixth Schedule or in any laws, regulations or orders to the "District Council" shall in relation to the said district in so far as it relates to the functions and powers vested in or exercisable by the District Council be construed, unless the context otherwise requires, as references to the "Governor of Meghalaya" and references in any laws, rules and regulations or orders in force in that District to the "Executive Committee", "Chief Executive Member", "Chairman, "Deputy Chief Executive Member", "Deputy Chairman" and "Executive Member" be construed unless the context otherwise requires as references to such officer, person or authority referred to in paragraph (b) of this order.

This order shall take immediate effect and shall, unless terminated or extended further, remain in force for a period of six months.

Sd/- C./D. Kynjing
Principal Secretary to the Govt. of Meghalaya,District Council Affairs Department.

GOVERNMENT OF MEGHALAYA
DISTRICT COUNCIL AFFAIRS DEPARTMENT

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Shillong, the 17th Sept., 2010.

No.DCA.18/2004/Pt/141:- Whereas the Governor of Meghalaya, in exercise of the powers conferred by sub-paragraph (2) of Paragraph 16 of the Sixth Schedule to the Constitution of India, has assumed to himself the administration of the Garo Hills Autonomous District vide order published by Government Notification No. DCA.18/2004/Pt/80 dated Shillong, the 1st April, 2010.

And, whereas the period of six months that the said order would remain in force will expire on 30th September, 2010;

Now, therefore, the Governor of Meghalaya in exercise of the powers conferred by proviso to sub-paragra (2) of paragraph 16 of the Sixth Schedule to the Constitution of India is pleased to extend the operation of the said initial order by a period of six months w.e.f. 1st October, 2010, unless terminated earlier or extended further.

Sd/-(F. Kharlyingdoh)
Secretary to the Govt. of Meghalaya
District Council Affairs Department."

2. Before proceeding further, the material facts leading to the filing of this writ petition may be briefly noticed. The petitioners numbering 19 of them were elected as Members of the said District

Council together with the other MDCs in the election held on 12-2-2009. The District Council has the total strength of 30 Members out of which 29 are elected Members with one seat to be filled up by a nominated Member, and has a term of five years with effect from the date of the first meeting of the District Council after the general election. The first meeting of the newly constituted House of the District Council was held on 18-2-2009. The genesis of this case starts with the Notification dated 30-3-2010 issued by the Governor, who, in exercise of the powers conferred upon him under Rule 36(5) of the Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951 ("the Rules" for short), summoned a special session of the District Council to meet on 31-3-2010 at 10.30 AM for proving the majority of the Executive Committee on the floor of the House. It is the case of the petitioners that at that particular period of time, the House was already in session as it was discussing and considering the budget proposals, and there was, therefore, absolutely no necessity for convening a special session of the House and that the Notification dated 30-3-2010 is ex facie, arbitrary, unreasonable and is a product of utter non-application of mind. Notwithstanding the unwarranted summons, claims the petitioners, the then Chairman of the Council promptly convened the special session on 30-3-2010 and sent his report to the Governor on 30-3-2010 revealing therein the support of majority of 16 Members in a House of 30 Members in favour of the Executive Committee headed by Mr. P.K. Sangma vide his letter dated 30-3-2010.

3. It is the further case of the petitioners that the real facts and circumstances working behind the issue of the aforesaid dated

30-3-2010 in the name of the Governor became public when a caveat in respect of the aforesaid Notification was lodged in this Court. Thereafter, the Governor issued the said Notification dated 1-4-2010 imposing "Governor's Rule" in the Council and took over the administration of, and assumed the power of, the District Council by himself. This Notification was followed by another Notification dated 1-4-2010 of the Governor appointing Deputy Commissioner of West Garo Hills District (respondent 2) to exercise all the functions and powers exercisable by the authorities of the District Council as per his directions issued from time to time. By the impugned Notification, the life of the Governor's Rule came to be extended by another six months *w.e.f.* 1-10-2010. According to the petitioners, at any given date since the date of the first meeting of the Council, the Members of the District Council owing allegiance to the Nationalist Congress Party (NCP) consisting of the petitioners had enjoyed an overwhelming majority in the District Council, and even on the date of filing of the writ petition, the petitioners have 18 Members in a House of 29 Members: the seat of the nominated Member has become vacant on the withdrawal of the nomination of Smt. Ethel Witty Ch. Marak. Aggrieved by the action of the Governor, the majority Members of the District Council jointly submitted a memorandum to him on 8-5-2010 for revoking the Notification dated 1-4-2010 and for restoring the Executive Committee headed by Shri P.K. Sangma as the Chief Executive Member of the Council. This was followed by their memorandum to the Minister of the District Council Affairs. These together with their other representations to the State-respondents did not evoke positive response. They even claim to have paraded themselves en *bloc* before the Governor to demonstrate their majority

in the House but to no avail. This ultimately promoted them to file this writ petition.

4. The writ petition is contested by the State-respondents, who have now filed their affidavit-in-opposition. They deny that the writ petitioners have the support of majority in the House, but admit that the nomination of Mrs. Ethel Witty Ch. Marak was withdrawn by the Governor. According to them, the State Government, after having examined the petition as submitted by 16 members but only signed 15 Members of the Council, in the best interest of democratic norms and taking into consideration the norm and practices in this regard, recommended to the Governor for convening a special session under Rule 36(5) of the Rules for proving majority by the then Executive Committee on the floor of the House. This was, as already noticed, done by the Governor, who had authorized the Chairman of the Council to preside over the special session. It is further stated by the answering respondents that in response to the said notification, the Chairman of the Council submitted the letter dated 30-3-2010 to the Governor seeking clarification of his order by indicating therein that the Council had already been in session and that 16 Members had been supporting the Executive Committee: the Chairman should have complied with the direction of the Governor to prove majority by the Executive Committee on the floor of the House on 31-3-2010, but he refused to do so. The State-respondents, on receipt of the information that the re-convening of the meeting of the Council, which had earlier been adjourned *sine dine* on 26-3-2010, was done hurriedly on 20-3-2010. The order of the Governor, it is further claimed by the answering respondents, was ignored by the Chairman of the Council,

and democratic norms had not been followed inasmuch as 4 Members were not allowed to cast their votes, which is in violation of the spirit of the Sixth Schedule and the Rules framed thereunder: this can be seen from the proceedings of the House dated 30-3-2010. It is contended by the answering respondents that the aforesaid circumstances left the Governor with no option but to take over the administration of the Council by invoking the provisions of sub-paragraph 2 of paragraph 16 of the Sixth Schedule to the Constitution of India and to appoint the respondent No. 2 as the administrator of the Council.

5. It is the further case of the answering respondents that they received the petition dated 8-5-2010 from a group of Nationalist Congress Party-led alliance under the leadership of Shri P.K. Sangma and 16 other Members requesting the Governor for installation of a popular rule in the District Council and also to revoke the Notification dated 1-4-2010 and that another petition dated 21-5-2010 was also received from 15 Members of the Indian National Congress-led alliance under the leadership of Besterfield N. Sangma for installation of popular rule in the Council. Subsequently, another petition dated 23-8-2010 was received wherein it was requested to install a popularly elected Executive Committee in the District Council. This group was formed under the leadership of the writ petitioner (?) who claimed to have the majority and also for installing a popular Executive Committee in the District Council. This, according to the answering respondents, imply that there was horse trading for formation of the Executive Committee. In the meantime, they received reports on the irregularities in the District Council, which needs to be

investigated. A fair investigation cannot be held unless there is a free and fair environment for holding the same and, more so, where there is claim and counter-claim for popular rule. Considering all these aspects into consideration, the Cabinet recommended the extension of the Governor's Rule by another 6 months and also that a Commission of Enquiry be constituted under paragraph 14 of the Sixth Schedule to the Constitution. According to the answering respondents, it was brought to their notice that the Council could not pay the salary of their staff for 6 months, and these irregularities have taken place with the consent and approval of the then Executive Committee. It is also alleged by the State-respondents that the Mining & Geology Department released Rs. 5,29,28,241/- during 2009-10 while Forest and Environment Department and the Transport Department released Rs. 1,73,22,867/- and Rs. 49,99,883/- respectively during 2009-10 in their attempts to solve the problems. The Mining & Geology Department has also released Rs. 3 crores being the share of the Garo Hills District Council during the year 2010-11. It is also pointed out by the answering respondents that in exercise of the power conferred under paragraph 14 of the Sixth Schedule to the Constitution, the Governor has constituted a Commission of Inquiry to inquire into and report on the affairs and the prevailing situation in the administration of the Garo Hills District Council. These are the sum and substance of the case of the State-respondents.

6. Unfolding his arguments, Mr. S.S. Dey, the learned counsel for the petitioners, firstly contends that the impugned notification dated 1-4-2010 proclaiming Governor's Rule in the District Council on the ground of reports of changes of allegiance of

Members of the Council taking place, even assuming without admitting such allegations to be true, is bad in law and is not contemplated by, and is a gross abuse of, the constitutional scheme under paragraph 16(2) of the Sixth Schedule to the Constitution: the constitutional scheme does not visualize a purely party based polity. In fact, so submits the learned counsel, the application or extension of the principles of the Tenth Schedule to the Constitution banning defection has been held to be impermissible by the Division Bench of this Court, which was not interfered with by the Apex Court in the special leave petition filed thereagainst. He next contends that the convening of the special session directed by the Governor purportedly in exercise of the power conferred by Rule 36(5) of the Rules when the House was already in session not being sanctioned by, and is unknown to, law, the non-compliance with such an order cannot entail penal consequence and as there was no breach of constitutional system, the invoking of the powers under paragraph 16(2) of the Sixth Schedule is unjustified and unwarranted. He maintains that the impugned orders have been issued to keep MDCs owing allegiance to the NCP out of power and to ensure successful horse trading at the instance and support of the ruling power in the State of Meghalaya: the impugned orders are, therefore, vitiated by mala fides and are evidently a colourable exercise of power, which cannot be sustained in law. He also contends that as the grounds for issuing the first impugned order dated 1-4-2010 were non-existent and/or otherwise untenable in law, the second impugned order dated 17-9-2010 can have no independent reason to survive or continue. It is the further submission of the learned counsel that the discretion of the Governor under paragraph 16(2) has to be based on his subjective satisfaction

personally and not on the aid and advice of the Council of Ministers: as he has acted on the dictates of his Council of Ministers, this has rendered the impugned orders illegal and unconstitutional. He, therefore, submits that the facts and circumstances available on record clearly warrant immediate cancellation of the impugned orders and a direction to the respondent No. 2 to convene a special session for floor test to prove majority of the petitioners in the House. He draws the attention of this Court to the decisions of the Apex court in *Jagdambika Pal v. Union of India, (1999) 9 SCC 95, Anil Kumar Jha v. Union of India, (2005) 3 SCC 150* and *Arun Munda v. Governor of Jharkhand, (2005) 3 SCC 399* in support of his submissions.

7. Countering the submissions of the learned counsel for the petitioners, Mr. K.S. Kynjing, the learned Advocate General of Meghalaya, contends that the shifting loyalties of the Members of the District Council to a particular party has posed serious threat to the proper and effective functioning of the District Council, and the reports received by the Governor revealed a situation whereby the administration of the District Council could not be carried on in accordance with the provisions of the Sixth Schedule to the Constitution warranting the imposition of Governor's Rule thereon. Moreover, contends the learned Advocate General, the District Council refused to comply with the order of the Governor under sub-rule (5) of Rule 36 of the Rules for convening a special session to prove majority by the then Executive Committee on the floor of the House leaving the Governor with no alternative but hold that the administration of the District Council could not be carried on in accordance with the

provisions of the Sixth Schedule: the District Council has the obligation to comply with the direction issued by the Governor under sub-rule (5) of Rule 36 of the Rules on the pain of their suspension under paragraph 16(2) if such direction is defied. It is also the contention of the learned Advocate General that after the administration of the District Council was taken over by the Governor, it has come to light that massive financial irregularities as well as misappropriation of public funds have been committed by the District Council, which resulted in the appointment of a Commission of Enquiry headed by Justice P.G. Agarwal (a retired Judge of Gauhati High Court) to inquire into the same, and, as such, it is imperative that the District Council should continue to be administered by the Governor through the respondent No. 3 so as to facilitate fair and impartial enquiry and smooth conduct of the Commission of Inquiry. He also submits that the State Legislature has already approved the impugned order and once the proclamation of Governor's Rule has been so approved, the validity of such orders cannot be challenged. Lastly, it is submitted by the learned Advocate General that as the subjective satisfaction of the Governor for invoking sub-paragraph (2) of paragraph 16 was based on objective materials, this Court would be loath to interfere with the impugned orders.

8. In order to appreciate the controversy, it will be apposite to refer to the provisions of paragraph 16 of the Sixth Schedule to the Constitution, which reads thus:

> **"(1) Dissolution of a District or a Regional Council.— (1) The Governor may on the recommendation of a Commission appointed under**

paragraph 14 of this Schedule by public notification order the dissolution of a district or a Regional Council, and —

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months:

Provided that when an order under clause (a) of this paragraph has been made, the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh election:

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.

(2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification assume to himself all or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and may declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months:

Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.

(3) Every order made under sub-paragraph (2) of this paragraph with the reasons therefor shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the orders, unless, before expiry of that period it has been approved by that State Legislature."

I may also reproduce paragraph 14 of the Sixth Schedule, which is as under:

"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 sub-paragraph (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;

the need for any new or special legislation in respect of such district and regions;

(b) the administration of the laws, rules and regulations made by the District and Regional Councils;

and define 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.

9. On a plain reading of sub-paragraph (2) of paragraph 16, it becomes clear that the condition precedent for issuance of proclamation under the aforesaid provision is that the Governor must be satisfied that in fact a situation has arisen in which the administration of the autonomous district council cannot be carried on in accordance with the provisions of the Sixth Schedule. In the constitutional set-up as obtained in this country, the satisfaction of the Governor can only mean the subjective satisfaction of the Council of Minsters who aid and advice him in the discharge of his duties and functions. Secondly, having regard to the normal meaning of the word “satisfied”, it should not be the personal whim, wish, view or opinion or the ipse dixit of the Governor without material: there must be material, which is otherwise relevant, from which legitimate inference can be drawn that a situation has arisen whereby the administration

of the District Council cannot be carried on in accordance with the provisions of the Sixth Schedule. In other words, the satisfaction of the Governor has to be based on objective material. Once such material is shown to exist upon which legitimate inference can be drawn that a situation has arisen whereby the administration of the district council cannot be carried on in accordance with the provisions of the Sixth Schedule, the satisfaction of the Governor based on such material is not open to question in a Court of law. However, if there is no objective material before the Governor or the material placed before him cannot reasonably suggest that the administration of the District Council cannot be carried on in accordance with the provisions of the Sixth Schedule, the invocation of paragraph 16(2) can be subjected to challenge in a Court of law.

10. In the instant case, the initial proclamation of Governor's Rule under paragraph 16(2) of the Sixth Schedule has spent its force on 30-9-2010 by efflux of time. Moreover, when this proclamation was not challenged by the petitioners before the expiry of the said proclamation, it will only be academical to examine the validity thereof on the principle that a court of law does not decide a case on vacuum. Therefore, the first question which falls for consideration in this writ petition is whether there is any material on record to justify the order dated 17-9-2010 extending the Governor's Rule in the Garo Hills District by another six months. Though the proviso to paragraph 16(2) does not indicate as to under what circumstances the Governor's Rule should be extended, the exercise of such discretionary power, like any other discretionary powers, should not be based on whim or caprice of the Governor. For example, the Governor must consider whether the

facts and circumstances prompting him to issue the proclamation under paragraph 16(2) still exist warranting the extension of the initial proclamation. This is, however, without prejudice to the power of this Court to examine the validity of even the initial proclamation: this Court refrains from doing so now as the proclamation was not challenged in time. Though definite principles for invoking paragraph 16(2) are yet to be laid down by the Apex Court, the Governor, while considering the question of invoking paragraph 16(2), is expected to refer to, and take aid of, the illustrations to the various situations given in the Report of Sarkaria Commission on Centre-State relations which may not amount to failure of the constitutional machinery in the State inviting Presidential power under Article 356(1), which were more or less approved by the Apex Court in *S.R. Bommai v. Union of India, (1994) 3 SCC 1*:

> *"(i) A situation of maladministration in a State where a duly constituted Ministry enjoying majority support in the Assembly, is in office. Imposition of President's rule in such a situation will be extraneous to the purpose for which the power under Article 356 has been conferred. It was made indubitably clear by the Constitution-framers that this power is not meant to be exercised for the purpose of securing good governance.*
>
> *(ii) Where a Ministry resigns or is dismissed on losing its majority support in the Assembly and the Governor recommends, imposition of President's rule without exploring the possibility of installing an alternative Government enjoying such support or ordering fresh elections.*
>
> *(iii) Where, despite the advice of the a duly constituted Ministry which has not been defeated on the floor of the House, the Governor declines to dissolve the Assembly and*

without giving the Ministry and opportunity to demonstrate its majority support through the "floor test", recommends its supersession and imposition of President's rule merely on his subjective assessment that the Ministry no longer commands the confidence of the Assembly.

(iv) Where Article 356 is sought to be invoked for superseding the duly constituted Ministry and dissolving the State Legislative Assembly on the sole ground that, in the General Election to the Lok Sabha, the ruling party in the State, has suffered a massive defeat.

(v) Where in a situation of 'internal disturbance', not amounting to or verging on abdication of its governmental powers by the State Government, all possible measures to contain the situation by the Union in the discharge of its duty, under Article 355, have not been exhausted.

(vi) The use of power under Article 356 will be improper if, in the illustrations given in the preceding paragraphs 6.4.10, 6.4.11 and 6.4.12, the President gives no prior warning or opportunity to the State Government to correct itself. Such a warning can be dispensed with only in extreme urgency where failure on the part of the Union to take immediate action, under Article 356, will lead to disastrous consequences.

(vii) Where in response to prior warning or notice or to an informal or formal direction under Article 256, 257, etc. the State Government either applies the corrective and thus complies with the direction, or satisfies the Union Executive that the warning or direction was based on incorrect facts, it shall not be proper for the President to hold that 'a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution'. Hence, in such a situation, also, Article 356 cannot ne properly invoked.

(viii) The use of this power to sort out internal difference or intra-party problems of the ruling party would not be constitutionally correct.

(ix) This power cannot be legitimately exercised on the sole ground of stringent financial exigencies of the State.

(x) This power cannot be invoked, merely on the ground that there are serious allegations of corruption against the Ministry.

(xi) The exercise of this power, for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution would be vitiated by legal mala fides."

11. It will also be illuminating to refer to the observations of the Apex Court in *Rameshwar Prasad v. Union of India, (2006) 2 SCC 1*, which are at paragraphs 145, 165 and 166:

"145. In the present case, like in Bommai case, there is no material whatsoever except the ipse dixit of the Governor. The action which results in preventing a political party from staking claim to form a Government after election, on such fanciful assumptions, if allowed to stand, would be destructive of the democratic fabric. It is one thing to come to the conclusion that the majority staking claim to form the Government, would not be able to provide stable Government to the State, but it is altogether a different thing to say that they have garnered majority by illegal means and, therefore, their claim to form Government cannot be accepted. In the latter case, the matter may have to be left to the wisdom and will of the people, either in the same House, it being taken up by the Opposition or left to be determined by the people in the elections to follow. Without highly cogent material, it would be wholly irrational for a constitutional authority to deny the claim made by a majority to form the Government only on the ground that the majority has been obtained by offering allurements and bribes, which deals have taken place in the cover of darkness, but his undisclosed sources have confirmed such deals. The extraordinary emergency power of recommending dissolution of a Legislative

Assembly is not a matter or course to be resorted to for good governance or cleansing of the politics for the stated reasons without any authentic material. These are matters better left to the wisdom of others including the Opposition and the electorate."

* * * * * *

"165. If a political party with the support of other political party or other MLAs stakes claim to form a Government and satisfies the Governor about its majority to form a stable Government, the Governor cannot refuse formation of the Government and override the majority claim because of his subjective assessment that the majority was cobbled by illegal and unethical means. No such power has been vested with the Governor. Such a power would be against the democratic principles of majority rule. The Governor is not an autocratic political ombudsman. If such a power is vested in the Governor and/or the President, the consequences can be horrendous. The ground of maladministration by a State Government enjoying a majority is not available for invoking power under Article 356. The remedy for corruption or similar ills or evils lies elsewhere and not in Article 356(1). In the same vein, it has to be held that the power under the Tenth Schedule for defection lies with the Speaker of the House and not with the Governor. The power exercised by the Speaker under the Tenth Schedule is of judicial nature. Dealing with the question whether power of disqualification of members of the House vests exclusively with the House to the exclusion of the judiciary which in Britain was based on certain practices of the British Legislature, as far as India is concerned, it was said in Kihoto case that (SCCp. 705, para 94)

"94. It is, therefore, inappropriate to claim that the determinative jurisdiction of the Speaker or

Chairman in the Tenth Schedule is not a judicial power and is within the non-justiciable legislative area."

166. The Governor cannot assume to himself the aforesaid judicial power, and based on that assumption come to the conclusion that there would be violation of the Tenth Schedule and use it as a reason for recommending dissolution of the Assembly."

(Underlined for emphasis)

12. On reading and re-reading the observations of the Apex Court extracted above, it becomes crystal clear that maladministration by a State Government enjoying majority support in the Assembly cannot be a ground for dismissing a Ministry. Similarly, cobbling up a majority by illegal means cannot be a ground for denying the group claiming majority to form a government. However, if a legitimate inference cannot be drawn from objective facts and circumstances that the majority staking claim to form the government would not be able to provide a stable Government to the State, this can be a relevant factor for proclamation of President's Rule in the State or for extending the duration of the President's Rule. In my opinion, there is absolutely no reason not to extend the aforesaid observations of the Apex Court to a District Council, which is also modelled on the line of Parliamentary/Cabinet system of government. It may be noted that there is no anti-defection law in the District Councils of the State of Meghalaya, which is corresponding to the Tenth Schedule to the Constitution. Therefore, ordinarily, defection per se, howsoever abhorring and despicable it may be, cannot be a ground for continuation of the Governor's Rule. However, if the degree of the defections or their frequencies indulged in by the

Members of the District Council are such that no group is likely to form a stable Executive Committee in the District, it may be reasonable to conclude that a situation has, *ipso facto*, arisen in which the administration of the district council cannot be carried on in accordance with the provisions of the Sixth Schedule thereby warranting the proclamation by the Governor under paragraph 16(2) of the Constitution. In my opinion, this is also one of the factors which should be taken into account by the Governor for extension of the proclamation under the proviso to paragraph 16(2). The term "cannot" in the phrase "cannot be carried on in accordance with the provisions of the Constitution" in the context of Article 356(1) of the Constitution has been explained by their Lordships of the Apex Court, Jeevan Reddy and Agrawal, JJ (Pandian, J. concurring) in *Bommai case* (*supra*) to mean that it is not each and every non-compliance with a particular provision of the Constitution that calls for the exercise of the power under Article 356(1) and that the non-compliance should be such as to lead to or given rise to a situation where the Government of the State cannot be carried on in accordance with the provisions of the Constitution. In my judgment, the construction by their Lordships of the Apex Court on the phrase "cannot be carried on" appearing in Article 356(1) will, *proprio vigore*, be applicable to the same phrase appearing in paragraph 16(2) of the Sixth Schedule to the Constitution. In the case at hand, the reason for extending the Governor's Rule is not mentioned in the impugned order. However, the learned Advocate General has placed before me a copy of the Cabinet Memorandum recommending the extension of the Governor's Rule, which is reproduced herein:

"GOVERNMENT OF MEGHALAYA
DISTRICT COUNCIL AFFAIRS DEPARTMENT

No. DCA.18/2004/Part/ Dtd Shillong, the 6th Sept, 2010.

CABINET MEMORANDUM

(To be circulated under the Rule 17 pf the Executive Business of the Government of the State of Meghalaya)

Subject : The Administration of Garo Hills Autonomous District Council, Tura.

1. Certain developments were set in Garo Hills Autonomous District Council since the 23rd March, 2010 due to the withdrawal of support by 4(four) MDCs on the 23rd March, 2010 and subsequent withdrawal by another 2(two) MDCs of the Executive Committee of the Garo Hills Autonomous District Council led by NCP under the leadership of Shri P.K. Sangma, MDC, which ultimately led to a situation where the administration of the Council could not be carried on in accordance with the provision of the Sixth Schedule to the Constitution of India.

2. His Excellency the Governor of Meghalaya on the recommendation of the State Government has assumed to himself the administration under Para 16(2) of the said Schedule and the Deputy Commissioner, West Garo Hills District, Tura, was designated as the "Administrator" with effect from 1-4-2010 vide Notification No. NCA. 18/2004/Pt/80, dt. 1-4-2010 and Notification No. DCA.18/2004/Pt/81, dt. 1-4-2010 respectively annexed as Annexure I and II.

3. One month later when the Garo Hills Autonomous district council was under animated suspension, 2(two) joint

petitions/representations dated 8-5-2010 from Shri P.K. Sangma the leader of the NCP led alliance and 16 (sixteen) other MDCs and another one dated 21-5-2010 from 15 (fifteen) MDCs of the Congress led alliance were received by the Government and annexed as Annexure III and IV respectively both claiming that they are in a position to form the Executive Committee of the Garo Hills Autonomous District Council and request the Government to restore back the administration to the elected representatives. The Government on examination from the above petitions/representations decided that presently the atmosphere is not conduciv3 for withdrawal of the Administrator's rule.

4. Recently, another joint petition dated 23-8-2010 was received by the Government duly signed by 18 (eighteen) MDCs of the Garo Hills Autonomous District Council from the NCP Group under the leadership of Shri Roynath D. Sangma, MDC (Annexure V) stake claim that they are having a majority to form the Executive Committee of the Garo Hills Autonomous District Council and request the Government to withdraw the Administrator's rule and restore back the administration to the elected representatives of the GHDAC since the staff of the Council and the people of the Garo Hills have suffered for 5(five) months from the Administrator's rule. The matter was processed and still under consideration of the appropriate authorities.

5. The Deputy commissioner and Administrator of Garo Hills Autonomous District Council, West GaroHills District, Tura have submitted a report dated 28th August, 2010 to the Chief Secretary to the Government of Meghalaya on the financial

position of the GHADC (Annexure VI) based on the complaint petition by Shri Besterfield N. Sangma, MDC relating to misappropriation of funds in the Office of the GHADC, Tura (Annexure-VII).

6. The Deputy Commissioner and Administrator of the Garo Hills Autonomous District Council, West Garo Hills District, Tura had issued a letter to the Secretary, Executive Committee, GHADC, Tura (Annexure VII) with a direction to submit a detail report on the complaint petition of Shri Besterfield N. Sangma, MDC.

7. The Secretary, Executive Committee of the Garo Hills Autonomous District council, Tura vide his letter dt. 29th June, 2010 have submitted a detailed report to the Deputy Commissioner, West Garo Hills, Tura (Annexure IX) on the controversial and illegal appointment made in various Departments of the GHADC, misappropriation of fund, controversial and illegal promotions made by the Executive Committee, misappropriation of fund by the Chairman of the Growers Association, improper settlement of lessee for the toll gates, hats, weighbridges, etc. reemployment of retired employees for more than 2 (two) times, appointments of number of officers below the rank of Secretary of the Executive Committee, cancellation of Laskars and Village Court staff without reasons and unequal distribution of funds meant for the developmental schemes for MDCs.

8. The Secretary of the Garo Hills Autonomous District Council on having not satisfied with the report submitted by he Executive Committee as stated in Annexure IX, Sri Ricardo Marak, Jt. Secretary, GHADC i/s Secretary, CJGCB

Growers Association, Tura have conducted an enquiry at the office of the Cotton, Jute, Ginger, Cashew nuts and Betel nut Grower's Association into receipts, deposits and expenditures for the year 2008 to 2010 and submitted the report to the Deputy Commissioner, West Garo Hills District, Tura which indicates that there are many financial irregularities committed leading to misappropriation of public funds.

9. The Deputy Commissioner & administrator of the GHADC, West Garo Hills District, Tura however had constituted a team headed by the Treasury Officer, Tura and issued an order to check the financial stability of the GHADC, Tura. In this regard, a preliminary report submitted by the enquiry team headed by Shri D.K. Newar, Treasury Officer, Tura stated that the report may be treated as preview and not final. The Enquiry team during inspection found from different Department of the GHADC like Civil Works Department, Officer of Cotton/Jute/Betel Nut and Cashew Nut trade regulation under GHADC, General Administration Department, Forest Department, Taxation and Land Reforms Department that there are misappropriation of funds from the Government Grants-in-aid and irregularities in maintaining the accounts of the Council.

10. However, the enquiry team from the above findings stated that a clear picture accounts can only emerge after thorough examinations of the accounts and records by a Government agency like Examiner of Local Accounts.

11. As per provision of paragraph 16(2), the Governor may assume to himself all or any of the functions and powers vested in or

exercisable by the Autonomous District Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf for a period not exceeding six months at a time.

12. In view of the facts and circumstances stated in the foregoing paragraphs, the matter is placed before the Cabinet for consideration the following and to make recommendation to the Governor:

(i) To extend the period of Administrator's rule in the GHADC under paragraph 16(1)(b) (?) of the Sixth Schedule which is due to expire on 30-09-2010 on completion of the period of 6 (six) months.

Or,

(ii) To dissolve the Garo Hills Autonomous District Council under paragraph 16(2) (?) of the Sixth Schedule, for not able to carry on in accordance with the provisions of the Sixth Schedule.

Dated Shillong
The 6th September, 2010.

(C.D. Kynjing)
Principal Secretary to the
Government of Meghalaya,
District Council Affairs Department."

13. On careful reading of the aforesaid Cabinet Memorandum, it is found that as late as 23-8-2010, the State-respondents received a joint petition "duly signed" by 18(eighteen) MDCs supporting the NCP group under the leadership of Shri Roynath D. Sangma, MDC (Annexure V) staking claim that they were having the majority to form the Executive Committee of the District Council and requesting the

Government to withdraw the Governor's Rule and restore the administration to the elected representative of the GHADC since the staff of the Council and the people of the Garo Hills suffered for 5 (five) months from the Governor's Rule. The aforesaid claim of majority signed by 18 MDCs of the District Council is not disputed by the Cabinet Memorandum. The situation obtaining on 23-8-2010 is thus apparently different from the situation when the Governor's Rule was proclaimed for the first time on 1-4-2010. What appeared to have persuaded the State Government to extend the period of Governor's rule by another six months with effect from 1-10-2010 is maladministration, misappropriation of public funds, illegal appointment and promotion of staff by the previous Executive Committee, which comprised of some MDCs, who are now staking claim to form the new Executive Committee. In other words, the possibility that the petitioners numbering 18 as on 23-8-2010 will not be able to provide stable government, is not the ground for extension of Governor's Rule or for denying them the chance to form the new Executive Committee. In my judgment, bad governance and/or corruption cannot be the grounds for extending Governor's Rule under the proviso to paragraph 16(2) just as Governor's Rule cannot be imposed on those grounds in the light of observations of the Apex Court in *Bommai case* reproduced herein above. Therefore, the appointment of Commission under paragraph 14(1) to inquire into the maladministration and corruption of the superseded Executive Committee, which apparently comprised of some or majority of the MDCs now staking claim to form the new Executive Committee cannot also be a ground to deny formation of the new Executive Committee if such claimants can demonstrate majority in the House. Such action

which resulted in preventing a political party or a group from staking claim to form the new Executive Committee, on such irrelevant grounds, if allowed to stand, would be destructive of parliamentary system of government, on whose model the District Council constituted under the Sixth Schedule is also admittedly based, and of the very democratic fabric.

14. The danger of avoiding or denying floor test on the ground of the likelihood of horse-trading or unethical conduct on the part of the elected representatives has been noticed by the Apex Court in *Rameshwar Prasad case* (*supra*) wherein it was observed thus:

> *"146. It was also contended that the present is not a case of undue haste. The governor was concerned to see the trend and could legitimately come to the conclusion that ultimately, people would decide whether was an "ideological realignment", then their verdict will prevail and such realigned group would win the elections, to be held as a consequence of dissolution. It is urged that given a choice between going back to the electorate and accepting a majority obtained improperly, on the former is the alternative. The proposition is too broad and wide to merit acceptance. Acceptance of such a proposition as a relevant consideration to invoke exceptional power under Article 356 may open a floodgate of dissolutions and has far-reaching alarming and dangerous consequences. It may also be a handle to reject post-election alignments and realignments on the ground of the same being unethical, plunging the country or the State into another election. This aspect assumes great significance in a situation of fractured verdicts and in the formation of coalition Governments. If, after polls two or more parties come together, it may be difficult to deny their claim of majority on the stated ground of such illegality. <u>These are</u>*

> *the aspects better left to be determined by the political parties which, of course, must set healthy and ethical standards for themselves, but, in any case, the ultimate judgment has to be left to the electorate and the legislature comprising also of members of the Opposition.*"
> (Emphasis added)

15. Though the aforesaid observations of the Apex Court in *Bommai case* and *Rameshwar Prasad case* have been made in the context of dissolution of Legislative Assemblies and President's Rule and where the incumbent Chief Minister was alleged to have lost the majority support or the confidence of the House, the principles of the scope of judicial review in such matters cannot be any different and will apply in the context of imposing Governor's Rule in the autonomous district councils of the State of Meghalaya. In the instant case, the claim of majority was made by the petitioners as early as 23-8-2010, and is repeated in this writ petition, which is apparently signed by 19 MDCs. What is to be done by the Governor when such claim is made by a political party or a group of political parties in a District Council constituted under the Sixth Schedule, is not obviously indicated in paragraph 16 or any other provision of the Sixth Schedule. However, the principles laid down by the Apex court in *Bommai case* and Rameshwar Prasad case must be extended to the District Council as they appear to be wholesome, appropriate and will also avoid objections on the ground of arbitrariness. The relevant observations are made by their Lordships, Sawant and Kuldip Singh, JJ, which are found at paragraph 119 of the judgment:

> *"119. In this connection, it is necessary to stress that in all cases where the support to the Ministry is*

> *claimed to have been withdrawn by some legislators, the proper course for testing the strength of the Ministry is holding the test on the floor of the House. That alone is constitutionally ordained forum for seeking openly and objectively the claims and counter-claims in that behalf. The assessment of the strength of the Ministry is not a matter of private opinion of any individual, be he the Governor or the President. It is capable of being demonstrated and ascertained publicly in the House. Hence, when such demonstration is possible, it is not open to bypass it and instead depend upon the subjective satisfaction of the Governor or the President. Such private assessment is anathema to the democratic principle, part from being open to serious objections of personal mala fides. It is possible that on some rare occasions, the floor-test may be impossible, although it is difficult to envisage such situation. Even assuming that arises one, it should be obligatory on the Governor in such circumstances, to state in writing, the reasons for not holding the floor-test. The High court was, therefore, wrong in holding that the floor-test was neither compulsory nor obligatory or that it was not the perquisite to sending the report to the President recommending action under Article 356(1). Since we have already referred to the recommendation of the Sarkaria Commission in this connection, it is not necessary to repeat them here."*

To the same effect are the observations of the Apex Court in *Rameshwar Prasad case* (*supra*) at paragraph 149 of the judgment, which read thus:

> *"149. The contention that the installation of the Government is different than removal of an existing Government as a consequence of dissolution as was*

> *the factual situation before the nine-Judge Bench in Bommai case and, therefore, the same parameters cannot be applied in these different situations has already been dealt with hereinbefore. Further, it is to be remembered that a political party prima facie having majority has to be permitted to continue with the government or permitted to form the government, as the case may be. In other categories, the majority shall have to be proved on the floor of the House. The contention also overlooks the basic issue. It being that a party even, prima facie, having a majority can be prevented to continue to run the Government or claim to form the Government, declined on the purported assumption of the said majority having been obtained by illegal means. There is no question of such basic issues falling in the category of "political thicket" and being closed on the ground that there are many imponderables for which there are no judicially manageable standards and, thus, outside the scope of judicial review*."

16. On the contention of Mr. K.S. Kynjing, the learned Advocate General, that when the Legislative Assembly of Meghalaya has already approved the Proclamation of Governor's rule, such Proclamation cannot be challenged, the observations of the Apex Court in *S.R. Bommai v. Union of India, (1994) 3 SCC 1*, have completely answered his contention:

> *"88. A further question which has been raised in this connection is whether the validity of the Proclamation issued under Article 356(1) can be challenged even after it has been approved by Both Houses of Parliament under Clause (3) of Article 356. There is no reason to make a distinction between the Proclamation so approved and a legislation enacted by Parliament. If the Proclamation is*

invalid, it does not stand validated merely because it is approved of by Parliament. The grounds for challenging the validity of Proclamation may be different from those challenging the validity of legislation. However, that does not make any difference to the vulnerability of the Proclamation on the limited grounds available. As has been stated by Prof. H.W.R. Wade in Administrative Law, 6th Edn.:

> *"There are many cases where some administrative order or regulation is required by statute to be approved by resolutions of the Houses. But this procedure in no way protects the order or regulation from being condemned by the court, under the doctrine of ultra vires, if it is not strictly in accordance with the Act. Whether the challenge is made before or after the Houses have given their approval is immaterial. (p. 29)*
>
> * * *
>
> *... in accordance with constitutional principle, parliamentary approval does not affect the normal operation of judicial review. (p. 411)*
>
> * * *
>
> *As these cases show, judicial review is in no way inhibited by the fact that rules or regulations have been laid before Parliament and approved, despite the ruling of the House of Lords that the test of unreasonableness should not then operate in normal way. The Court of Appeal has emphasised that in the case of subordinate legislation such as an Order in Council approved in draft by both Houses, 'the courts would without doubt be consider to consider whether or not the order was properly made in the sense of being intra vires."*

17. As I have found that the continuation of Governor's Rule in the District Council in terms of the impugned order dated

17-9-2010 is illegal and cannot, therefore, be sustained in law and that the NCP led alliance, prima facie, has the majority in the House since 23-8-2010, the only democratic solution of the current impasse is to direct the holding of a floor-test to prove their majority in the House. This is usually the direction passed by the Apex Court from time to time in a case of this nature — See *Jagdambika Pal case*, *Anil Kumar Jha case* and *Arun Munda case*. Resultantly, this writ petition stands allowed by issuing the following directions:

(a) A Special Session of the House of the District Council shall be convened by the State-respondents on 25-11-2010 at 10 A.M. for conducting floor-test to see if the petitioners/NCP-led alliance command majority in the House.

(b) The only agenda in the House on 25-11-2010 will be holding of the floor-test.

(c) The result of the floor-test will be announced immediately by the Chairman of the District Council faithfully and truthfully.

(d) This order shall constitute notice of the special meeting of the House for 25-11-2010 and no separate notice would be required.

(e) Till 25-11-2010, there shall be no nomination of a Member, if not already nominated in the interregnum, and the floor test shall remain confined to 29 elected members only if no such nomination has been made.

(f) The Deputy Commissioner, West Garo Hills District shall ensure that all the elected members of the District Council freely, safely and securely attend the House and no interference or hindrance is caused by anyone.

(g) Compliance report shall be submitted by the Deputy Commissioner/West Garo Hills District to this court on or before 28-11-2010.

(h) The impugned Notification dated 17-9-2010 be and is hereby quashed.

(i) Copies of this judgment be delivered to the learned counsel for the petitioners and Mr. N.D. Chullai, Senior Government Advocate, for communication to the parties represented by them forthwith.

JUDGE

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