BIMOLANGSHU ROY (DEAD) THROUGH LRS

v.

STATE OF ASSAM & ANOTHER

(Transferred Case (Civil) No. 169 of 2006)

JULY 26, 2017

[J. CHELAMESWAR, R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Constitution of India:

Art. 194(3) r/w Entry 39 of List II of VII Schedule – Scope of – By Constitution 91st Amendment, Art. 164 was amended whereby the size of the Council of Ministers in the State was curtailed to 15% of the total strength of the Assembly – The strength of the Council of Ministers in State of Assam was 36 out of total strength of Assembly being 126, amounting to 28.57% – State of Assam passed Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004, whereby member of Assembly were to be appointed as 'Parliamentary Secretaries' by the Chief Minister – They were to be of the rank and status of a Minister of State – Writ Petition (PIL) was filed before High Court, challenging the constitutional validity of the Act – The petition was transferred to Supreme Court – Held: The legislature of State of Assam did not have competence to enact the Act – Scheme of Art. 194, which deals with powers and privileges of the Legislature, does not expressly authorise the State Legislature to create offices such as the one in question – Reading the authority to create new offices by legislation would be a wholly irrational way of construing the scope of Art.194(3) and Entry 39 of List II – The "powers privileges and immunities" contemplated by Art. 194(3) and Entry 39 are those of the legislators qua legislators.

Schedule VII – Entries in the Lists – Scope – Interpretation of – Held: A great deal of examination of the scheme of the entire Constitution is essential while interpreting the scope of each of the Entries – No rule which has a universal application with regard to the interpretation of all the entries in the VII Schedule can be postulated – An Entry in VII Schedule is not a source of power, but

A *is only indicative of the field of legislation – Though words and expressions in Constitution must receive widest possible construction, the principle must be applied with some degree of caution when it comes to examination of amplitude of Legislative Entries.*

Art. 246 – Scope of – Held: Existence of a dedicated Article B *in the Constitution authorizing the making of law on a particular topic, eliminates the possibility of existence of legislative authority to legislate in Art. 246 r/w any Entry in the Seventh Schedule indicating field of legislation which appears to be closely associated with the topic dealt with by the dedicated Article.*

C *Interpretation of Constitution:*

"Rule of widest construction" – Held: The jurisprudential basis for the "rule of widest construction" is the hallowed belied that a Constitution is drafted with an eye on future – Therefore, interpretation of Constitution must be elastic enough to meet new D *social, political and historical realities often unimagined by the framers of the Constitution.*

Allowing the petition, the Court

HELD: 1. The jurisprudential basis for the "rule of widest construction" is the hallowed belief that a Constitution is drafted E **with an eye on future providing a continuing framework for exercise of governmental power. Therefore, it must be elastic enough to meet new social, political and historical realities often unimagined by the framers of the Constitution. [Para 18] [315-C-D]**

F **2. The Constitution of India, unlike the American Constitution, regulates and structures not only the authority of the federal Government, but also the components of the Federation (States and after the Constitution 73rd Amendment even the local bodies). As regards the authority of the legislatures** G **(Federal and State), analysis adopted by the US Supreme Court is equally good for the Constitution of India with appropriate modifications, because there are areas where the two Constitutions differ substantially. [Para 22] [317-F-G]**

3. Article 246 is one of the sources of authority to legislate under the Constitution of India. It declares that Parliament and H

the legislatures of various States have the "power to make laws with respect to any of the matters enumerated" in each of the three lists contained in the Seventh Schedule. It also makes clear that the power of the Parliament is exclusive with respect to List I and that of the State Legislature with respect to List II. List III indicates various fields over which both the Parliament as well as the State legislatures would have authority to legislate concurrently subject of course to the discipline of Article 254. Apart from declaration contained in Article 246, there are various other Articles of the Constitution which confer authority to legislate either on the Parliament or on a State legislature, as the case may be, in various circumstances. Article 3 authorises the Parliament to make a law either creating a new State or extinguishing an existing State. Article 326 while declaring a right of every citizen who is not less than 18 years of age to register as a voter at any election to the House of the People or to the legislative assembly of a State, authorises the appropriate legislature to disqualify any such citizen to be a voter on any one of the grounds specified under Article 326 by making a law. The authority to make such a law obviously flows directly from the text of Article 326 but not from Article 246. *See also* Articles 2, 3, 11, 15(5), 22(7), 32(3), 33, 34, 59(3), 70, 71(3), 98(2). The Articles mentioned above are only illustrative but not exhaustive of the category. [Paras 23-25] [318-C-E; 319-A-B]

4. The entries in the various lists of the Seventh Schedule are not sources of the legislative power but are only indicative of the fields w.r.t. which the appropriate legislature is competent to legislate. While examining the scope of the entries this Court must necessarily keep in mind the scheme of the Constitution relevant in the context of the Entry in question. A broad pattern can be identified from the scheme of the three lists, the salient features of which are (i) Fields of legislation perceived to be of importance for sustaining the federation, are exclusively assigned to the Parliament, (ii) State legislatures are assigned only specified fields of legislation unlike the US Constitution, (iii) Residuary legislative power is conferred in the Parliament; (iv) taxing entries are distinct from the general entries and (v) List III does not contain a taxing entry. [Paras 26-28] [320-A-C]

A 5. A great deal of examination of the scheme of the entire Constitution is essential while interpreting the scope of each of the Entries contained in the three Lists of the Seventh Schedule and no rule which has a universal application with regard to the interpretation of all entries in the 7th Schedule can be postulated. The statement that a broad and liberal spirit should inspire those B whose duty is to interpret the Constitution and the legislative entries should not be read in a narrow or pedantic sense, cannot be understood as a *sutra* valid for all times and in all circumstances. This court on more than one occasion cautioned about the perils of placing a construction on the expressions contained in the C various Entries in the three Lists of Seventh Schedule as taking within their sweep, matters that have no rational connection with the subject matter of the Entry. [Para 30] [322-D-E; 323-A-B]

6. The doctrine of "widest construction" propounded by Marshall was in the context of the substantive provisions of the D Constitution which are the sources of power to legislate and stipulate the areas with respect to which "the Congress" shall have the "legislative power" but not in the context of something like an entry in the 7th Schedule of the Constitution of India which is not a source of power but only indicative of the field of legislation. Though words and expressions employed in the E Constitution must receive widest possible construction, the principle must be applied with some degree of caution when it comes to the examination of the amplitude of the legislative Entries. There must be some distinction between a provision of the Constitution which confers power to legislate (source of F power) and an Entry in one of the 3 lists of the 7th Schedule which are not sources of power but are only indicative of the fields of legislation. Any construction which would run counter to the scheme of the Constitution relevant in the context must be avoided. [Para 31] [323-D-F]

G 7. The existence of a dedicated Article in the Constitution authorizing the making of law on a particular topic would certainly eliminate the possibility of the existence of the legislative authority to legislate in Article 246 read with any Entry in the Seventh Schedule indicating a field of legislation which appears to be closely associated with the topic dealt with by the dedicated

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article. For example even if the Constitution were not to contain Entries 38, 39, 40 in List II, the State Legislatures would still be competent to make laws w.r.t. the topics indicated in those 3 entries, because of the authority contained in Articles 164(5), 186, 194, 195 etc. Therefore, to place a construction on those entries which would have the effect of enabling the concerned legislative body to make a law not within the contemplation of the said Articles would be plainly repugnant to the scheme of the Constitution. In the present case, the relevant portion of text of Article 194(3) and Entry 39 of List II of Seventh Schedule are almost identical and speak about the "powers, privileges and immunities" of the house, its members and Committees. [Paras 32 and 39] [323-F-H; 324-A; 327-A]

8. 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. [Para 42] [327-D-E]

9. 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. Sub-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). [Para 43] [327-E-G]

10. 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

A **incumbents of those offices whereas Article 182 and 183 deal with the Chairman and Deputy Chairman of the Legislative Council wherever the Council exists. 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**
B **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**
C **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. Therefore, the Legislature of Assam lacks the competence to make the impugned Act i.e. Assam Parliamentary**
D **Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004. [Paras 44 and 45] [327-A-C; 328-A-B; 329-A-C]**

India Cement Ltd. & Ors. v. State of Tamil Nadu & Ors. **(1990) 1 SCC 12 : [1989] 1 Suppl. SCR 692;** *Hunter v. Southam Inc.* **[1984] 2 SCR 145;** *Synthetics and*
E *Chemicals Ltd. & Ors. v. State of U.P. & Ors.* **(1990) 1 SCC 109 : [1989] 1 Suppl. SCR 623;** *Jiluhhai Nanbhai Khachar v. State of Gujarat & Anr.* **(1995) Supp. 1 SCC 596;** *Harakchand Ratanchand Banthia v. Union of India* **(1969) 2 SCC 166 : [1970] 1 SCR 479;** *Union of*
F *India v. Harbhajan Singh Dhillon* **(1971) 2 SCC 779 : [1972] 2 SCR 33;** *M/s. Hoechst Pharmaceuticals Ltd. & Ors. v. State of Bihar & Ors.* **(1983) 4 SCC 45 : [1983] 3 SCR 130;** *Union of India & Ors. v. Shah Goverdhan L. Kabra Teachers' College* **(2002) 8 SCC 228 : [2002] 3 Suppl. SCR 220 – relied on.**
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Cauvery Water Disputes **(1993) Supp. 1 SCC 96 : [1991] 2 Suppl. SCR 497 – referred to.**

Mc Culloch v. Maryland **17 US 316 (1819);** *James v. Commonwealth of Australia* **(1936) AC 578;** *Central*
H *Provinces and Berar Sales of Motor Spirit and*

Lubricants Taxation Act. **1938 (1939) 1 FCR 18;** *United States v. Curtiss – Wright Export Corp.*, **299 U.S. 304, 81 L. Ed. 255 – referred to.**

Case Law Reference

[1991] 2 Suppl. SCR 497	**referred to**	**Para 12**
[1989] 1 Suppl. SCR 692	**relied on**	**Para 16**
[2002] 3 Suppl. SCR 220	**relied on**	**Para 17**
[1984] 2 SCR 145	**relied on**	**Para 18**
[1989] 1 Suppl. SCR 623	**relied on**	**Para 22**
(1995) Supp. 1 SCC 596	**relied on**	**Para 22**
[1970] 1 SCR 479	**relied on**	**Para 26**
[1983] 3 SCR 130	**relied on**	**Para 28**
[1991] 2 Suppl. SCR 497	**referred to**	**Para 33**

CIVIL ORIGINAL JURISDICTION : Transferred Case (Civil) No. 169/2006.

Under Article 139A of the Constitution of India.

Manoj Goel, Sr. Adv., Mr. Abhishek Gupta (for Brij Bhushan), Adv. for the Petitioner

Ranjit Kumar, S. G., A.K. Panda, Sr. Adv., Ms. Kiran Bhardwaj, R. K. Verma, M. K. Maroria, P. Parmeswaran, M/s Corporate Law Group, Advs. for the Respondents

The Judgment of the Court was delivered by

CHELAMESWAR, J. 1. Transferred Case (Civil) No.169 of 2006 arises out of Writ Petition, PIL NO.30/2005 on the file of the High Court of Gauhati. The vires of Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004 (hereafter THE ACT) is questioned in the writ petition.

2. Brief facts of the case are as follows:

On 1.1.2004 the Constitution 91st Amendment Bill, 2003 was passed by both the Houses of Parliament. This Bill after the assent of the President became an Act with modifications made to Articles 75 and 164 of the Constitution. This Act *inter-alia* provides under Article

A 164(1A)[1] that the size of the Council of Ministers in the State should not exceed 15% of the total strength of the Assembly.

3. At the time of the coming into force of the 91st Constitutional Amendment Act, 2003, the strength of the Council of Ministers in the State of Assam was at 36 out of a total 126 members, amounting to 28.57% of the strength of the Legislative Assembly. In view of the mandate contained in Article 164(1A) the strength of the Council of Ministers was to be brought down to 19 to be consistent with the ceiling of 15% imposed by Article 164(1A).

4. On 3.11.2004, the Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Ordinance, 2004 was promulgated. On 29.12.2004 THE ACT was passed and published in the Official Gazette of the State of Assam. We may briefly refer to the crucial provisions of the Act;

Section 2(c) of the Act defines Parliamentary Secretary as follows:-

> "'Parliamentary Secretary' means a Member of the Assam Legislative Assembly appointed as the Parliamentary Secretary under this Act by the Chief Minister."

Section 3 stipulates;

> "The Chief Minister may, having regard to the circumstances and the need of the situation, at any time appoint such number of Parliamentary Secretaries and assign to each of them such duties and functions as he may deem fit and proper."

Section 4 declares that Parliamentary Secretary should be of the rank and status of a Minister of State and exercise such powers, discharge such functions and perform such duties as may be assigned to him by the Chief Minister.[2]

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[1] Article 164(1A). The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than twelve;

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.

[2] Section 4 – A Parliamentary Secretary shall be of the rank and status of a Minister of State and shall exercise such powers, discharge such functions and perform such duties as may be assigned to him by the Chief Minister by way of a notification published in the official Gazette.

Section 7 deals with the salary and allowances of the Parliamentary Secretary.[3]

5. Writ Petition (PIL) No.30/2005 was filed on 13.04.2005 in the Hon'ble High Court of Gauhati challenging the constitutional validity of THE ACT. On 24.01.2006, the High Court of Gauhati adjourned the hearing of the said PIL in light of similar matters involving the same questions of law which had come up for hearing in this Court in SLP No. 22038 of 2005 (State of Himachal Pradesh *v.* Citizen Rights Protection Forum).

6. On 30.05.2005, Eight Parliamentary Secretaries were appointed in exercise of the power under THE ACT and they took oath of office, but were not assigned any ministry.

7. On 21.08.2006, this Court has allowed the Transfer Petition (C) No. 433 of 2006 filed by the Petitioners under Article 139A of the Constitution. The transferred case is registered as Transferred Case (Civil) No. 169 of 2005.[4]

8. The case of the petitioners is that:

(i) The legislature of State of Assam does not have competence to enact THE ACT;

(ii) THE ACT is violative of the constitutional mandate under Article 164 (1A)[5] which stipulates an upper limit of 15% as the strength of the Council of Ministers;

[3] Section 7. A Parliamentary Secretary shall be entitled to such salary and allowances as are admissible to a Minister of State under the Assam Ministers, Ministers of State and Deputy Ministers Salaries and Allowances Act, 1958.

[4] On 08/05/2007 the Petitioners moved an interlocutory application (I.A. No. 1/2007) in the Supreme Court in order to stay the operation of the Act.

[5] Article 164. (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor: Provided that in the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent. of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister in a State shall not be less than twelve:

Provided further that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent. or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date* as the President may by public notification appoint.

A (iii) That THE ACT is intended to over-reach the mandate of the Constitution Amendment Act and hence a fraud upon constitution;

(iv) Responsible government is a basic feature of the Constitution and THE ACT is violative of the basic
B structure of the Constitution.

9. The Respondent's case is that,

i. That the State of Assam has the legislative competence to make the impugned legislation under Entry 39 of the List II of the 7th Schedule to the Constitution;

C ii. That the functions of Parliamentary Secretary under THE ACT are different from the functions of a Minister and therefore neither the principle of collective responsibility nor the mandate of the Constitution under the Constitution 91st Amendment is violated.

D iii. The question of violation of 'basic structure' of the Constitution cannot arise in the context of a legislation. The doctrine is confined only to the Constitutional amendments.

10. The following issues arise out of the above rival submissions:

I. Whether the Legislature of Assam is competent to make THE
E ACT?

II. Whether the creation of the office of Parliamentary Secretary would amount to a violation of the constitutionally prescribed upper limit of 15% on the total number of Council of Ministers?

F III. Whether the concept of a 'Responsible Government' envisaged under various provisions of the Constitution is in any way violated by the impugned enactment and therefore unconstitutional as being violative of the basic structure of the Constitution.

G IV. Whether the theory of basic structure could be invoked at all to invalidate an enactment which is otherwise not inconsistent with the text of the Constitution.

In our opinion, if the answer to any one of the first two issues is in favour of the petitioner, the other two issues need not be examined.

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THE COMPETENCE OF THE STATE OF ASSAM TO PASS THE ACT:

11. Elaborating the 1st submission, the Petitioners argued that the Political Executive (both national and state level) is the creation of the Constitution itself. Articles 74(1)[6], 75(1)[7], 163(1)[8] and 164(1)[9] of the Constitution create the offices of the Prime Minister, Chief Minister and other Ministers respectively. The framers of the Constitution were aware of the different offices in vogue (such as Parliamentary Secretaries, Deputy Ministers etc) in various parliamentary democracies but chose to make provisions for only the office of 'Minister'.[10] The word 'shall' in these articles indicates that no other office of the political executive can be created by legislation either of the Parliament or State legislature.

12. In support of their submission, the petitioners relied upon the judgment in the case of ***Cauvery Water Disputes***[11]. This Court while dealing with the Inter-State Water Disputes Act, 1956, held that the said legislation did not fall within the ambit of the Entry 56 of the Union List, this Court opined so because of the presence of Article 262 of the Constitution which is dedicated to the question of inter-state water disputes. The petitioners placed reliance on para 62 of the said judgment:

> "It cannot be disputed that the Act, viz., the Inter-State Water Disputes Act, 1956 is not a legislation under Entry 56. In the first

[6] Article 74 (1) There **shall** be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice: Provided that the President may require the council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

[7] Article 75 (1) The Prime Minister **shall** be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

[8] Article 163 (1) There **shall** be a council of Ministers with the chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion.

[9] Article 164(1) The chief Minister **shall** be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor: Provided that in the State of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

[10] Constituent Assembly Debates (Dated 30.12.1948) on draft Article 61 corresponding to Article 74 of the Constitution – proposed amendments by Prof. K.T.Shah – Page 1146, 1148.

[11] (1993) Supp. 1 SCC 96 (II)

A instance Entry 56 speaks of regulation and development of inter-State rivers and river valleys and does not relate to the disputes between the riparian States with regard to the same and adjudication thereof. Secondly, and even assuming that the expression "regulation and development" would in its width, include resolution of disputes arising therefrom and a provision for adjudicating them, the Act does not make the declaration required by Entry 56. This is obviously not an accidental omission but a deliberate disregard of the Entry since it is not applicable to the subject-matter of the legislation. Thirdly, no Entry in either of the three Lists refers specifically to the adjudication of disputes with regard to inter-State river waters."[12]

and argued that the presence of provisions dedicated to the creation of a Political Executive oust the competence of the state legislature to make THE ACT and various entries relied upon by the State cannot be construed to authorise the creation of the position of Parliamentary Secretaries.

13. Dealing with the submission of the State of Assam that Entry 39 of the List-II of the 7th Schedule read with Article 246(3) authorises the making of THE ACT the petitioners submitted that:

Entry 39[13] of the State List (List II), speaks of powers, privileges and immunities of the Legislative Assembly and the members of the committees of the legislative assembly and similarly of the legislative council – if there is one. The latter part of the entry refers to enforcement of attendance of persons before committees of the legislature. There is not even the slightest indication in the text of the Entry that it authorises the creation of offices other than those specified in the Entry. The impugned Act neither describes the power of the members of the legislative assembly nor the committees nor their immunities. Instead, the ACT creates offices and makes stipulations regarding the rank, status and functions of Parliamentary Secretaries. Entry 39 corresponds to Article 194 of the Constitution, which deals with the powers,

[12] In Re: Cauvery Water Disputes Para 62

[13] Entry 39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

privileges and the immunities of the House of legislatures and of the members and committees thereof. Article 194(3) authorises the State legislature to prescribe by law, the powers, privileges and the immunities of the members and the committees of a House of such Legislature but does not make any mention of the authority to create new offices.

14. On the other hand, the respondents argued that Entry 39 of List II of the Seventh Schedule indicates the field of legislation regarding the powers, privileges, and immunities of the house of legislatures. It should not be read in a "narrow restricted sense" and the words occurring in the entry must be interpreted as extending and including all ancillary and subsidiary matters which can be comprehended in it. Since a Parliamentary Secretary is a member of the legislative assembly, it would be within the competence of the State legislature to make the ACT.

15. The stand of the State of Assam is reflected in a reply affidavit on behalf of the State in I.A. No.1 of 2007 in Transferred Case (Civil) No. 169 of 2006. Relevant portion of the affidavit reads as follows:-

> "It is submitted that it is well settled that legislative entries should be given the broadest possible interpretation and cannot be read in a restrictive manner. Entry 39 covers "powers, privileges and immunities .... of the members" of a Legislative Assembly. This Hon'ble Court has, on various occasions, held that the Legislative entries "should not be read in a narrow or pedantic sense but must be given their fullest meaning and the widest amplitude and be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them." It has also observed that "the cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction, according to the ordinary meaning of the words in entry, must be put upon them." [Gujarat University Vs. Krishna Ranganath 1963 Supp (1) SCR 112; Express Hotels (P) Ltd. Vs. State of Gujarat (1989) 3 SCC 677; R.S. Rekhchand Mohata Spinning and Weaving Mills Ltd. vs. State of Maharashtra (1997) 6 SCC 12; ITC Ltd. vs. Agricultural Produce Market Committee (2002) 9 SCC 232].

A Since a Parliamentary Secretary is a Member of the Legislative Assembly, it would be within the competence of the State Legislature to enact laws providing for the creation of the post of Parliamentary Secretary. In this view of the matter, it is reiterated that the impugned Act is clearly within the competence of the State Legislature."

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16. In our opinion, the State of Assam's reliance on the various extracts from the judgments of this Court is out of the context, ignoring an important caveat contained in the very extract relied upon by the State i.e. "each general word should be held to extend to all ancillary and subsidiary matters which can **fairly and reasonably be said to be comprehended in it**".[14]

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17. However, the more accurate legal position is expounded in ***Union of India & Others v. Shah Goverdhan L. Kabra Teachers' College,*** (2002) 8 SCC 228 at para 6:

D "In view of the rival submissions at the Bar, the question that arises for consideration is whether the impugned legislation can be held to be a law dealing with coordinated development of education system within Entry 66 of List I of the Seventh Schedule or it is a law dealing with the service conditions of an employee under the State Government. The power to legislate is

E engrafted under Article 246 of the Constitution and the various entries for the three lists of the Seventh Schedule are the "fields of legislation". The different entries being legislative heads are all of enabling character and are designed to define and delimit the respective areas of legislative competence of the Union and

F the State Legislatures. They neither impose any restrictions on the legislative power nor prescribe any duty for exercise of the legislative power in any particular manner. It has been a cardinal principle of construction that the language of the entries should be given the widest scope of which their meaning is fairly capable and while interpreting an entry of any list it would not be

G reasonable to import any limitation therein. **The rule of widest**

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[14] **India Cement Ltd. & Others v. State of Tamil Nadu & Others**, (1990) 1 SCC 12 "18. ... Hence, the language of the entries should be given widest scope, to find out which of the meaning is fairly capable because these set up machinery of the government. Each general word should be held to extend to all ancillary or

H subsidiary matters which can fairly and reasonably be comprehended in it. ..."

construction, however, would not enable the legislature to make a law relating to a matter which has no rational connection with the subject-matter of an entry. When the vires of enactment is challenged, the court primarily presumes the constitutionality of the statute by putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude and the substance of the legislation will have to be looked into. **The court sometimes is duty-bound to guard against extending the meaning of the words beyond their reasonable connotation in anxiety to preserve the power of the legislature.**

18. The jurisprudential basis for the "rule of widest construction" is the hallowed belief that a Constitution is drafted with an eye on future providing a continuing framework for exercise of governmental power. Therefore, it must be elastic enough to meet new social, political and historical realities often unimagined by the framers of the Constitution[15].

Chief Justice Marshall's celebrated statement in ***McCulloch case***[16] that "... we must never forget that it is a constitution we are expounding" is the starting point. It was a statement made in the context of the interpretation of Article I of the US Constitution which declares the authority of "the Congress" to perform various functions enumerated in sub-sections (1) to (17) of Section 8 and under sub-Section (18) "to make all laws necessary and proper to carrying into execution of the powers vested in the Congress by the preceding 17 sub-sections.".

19. The question that arose for consideration in ***McCulloch case*** was whether "the Congress" could establish a bank by its legislation. None of the "enumerated powers" in **Article 1, Section 8** contain any mention of the power to establish a bank or create a corporation. It was

[15] **Hunter v. Southam Inc.**, (1984) 2 SCR 145, Canadian Supreme Court – Para 47. ....."The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Bill or a charter of rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these considerations in mind.

[16] **McCulloch v. Maryland**, 17 US 316 (1819)

A argued that (i) Congress could only legislate w.r.t. the matter expressly enumerated in Section 8 and make only those laws which are "indispensable and without which the power would be nugatory", (ii) that the word "necessary" occurring in sub-section (18) "excludes the choice of means and leaves to Congress in each case that only which is most direct and single".

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Repelling the above submissions Marshall declared that to provide in the Constitution minute details of every aspect of governance would make the Constitution a very prolix document similar to a legal code. By the nature of the instrument it only contains "the great outlines of the power and important objects sought to be achieved."[17] The submission that the expression "necessary" in sub-section (18) has a limited import was rejected.[18]

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[17] A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American constitution, is not only to be inferred from the nature of the instrument, but from the language. Why else were some of the limitations, found in the ninth section of the 1st article, introduced? It is also, in some degree, warranted by their having omitted to use any restrictive term which might prevent its receiving a fair and just interpretation. In considering this question, then, we must never forget, that it is a constitution we are expounding.

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[18] Is it true, that this is the sense in which the word "necessary" is always used? Does it always import an absolute physical necessity, so strong, that one thing, to which another may be termed necessary, cannot exist without that other? We think it does not. If reference be had to its use, in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient, or useful, or essential to another. To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable. Such is the character of human language, that no word conveys to the mind, in all situations, one single definite idea; and nothing is more common than to use words in a figurative sense. Almost all compositions contain words, which, taken in their rigorous sense, would convey a meaning different from that which is obviously intended. It is essential to just construction, that many words which import something excessive, should be understood in a more mitigated sense – in that sense which common usage justifies. The word "necessary" is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison; and is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports. A thing may be necessary, very necessary, absolutely or indispensably necessary. To no mind would the same idea be conveyed, by these several phrases.

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20. About 100 years later the Privy Council in ***James v. Commonwealth of Australia,*** (1936) AC 578 observed that a "Constitution must not be construed in any narrow and pedantic sense" (See Lord Wright at Page 614). A

Relying on the above-mentioned celebrated statements, the Federal Court in the case of ***Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938***, (1939) 1 FCR 18, Gwyer, CJ observed that "I conceive that a broad and liberal spirit should inspire those whose duty it is to interpret it; but I do not imply by this that they are free to stretch or pervert the language of the enactment in the interests of any legal or constitutional theory, or even for the purpose of supplying omissions or of correcting supposed errors." B C

21. The authority to make law flows not only from an express grant of power by the Constitution to a legislative body but also by virtue of implications flowing from the context of the Constitution is well settled by the various decisions of the Supreme Court of America in the context of American Constitution. A principle which is too well settled in all the jurisdictions where a written Constitution exists. The US Supreme Court also recognised that the Congress would have the authority to legislate with reference to certain matters because of the fact that such authority is inherent in the nature of the sovereignty. The doctrine of inherent powers was propounded by Justice Sutherland in the context of the role of the American Government in handling foreign affairs and the limitations thereon.[19] D E

In substance, the power to make the legislation flows from various sources: (1) express text of the Constitution; (2) by implication from the scheme of the Constitution; and (3) as an incident of sovereignty. F

22. Unlike the American Constitution, we chose to adopt a Constitution which regulates and structures not only the authority of the federal government but also the components of the Federation (States and now[20] even the local bodies). Coming to the question of the authority of the legislatures (Federal and State) we are of the opinion that analysis adopted by the US Supreme Court is equally good for our Constitution with appropriate modifications, because there are areas where the two Constitutions differ substantially. G

[19] United States v. Curtiss – Wright Export Corp., 299 U.S. 304, 81 L. Ed. 255

[20] After the Constitution 73rd Amendment H

A However, the principle that the power to legislate under the Indian Constitution can flow from various sources is recognised by this Court in ***Synthetics and Chemicals Ltd. & Others*** **v.** ***State of U.P. & Others,*** (1990) 1 SCC 109 at para 67 that "... The power to legislate is given by Article 246 and other Articles of the Constitution"[21] - a reiteration of the
B principle that the power to legislate does not flow from a single Article of the Constitution.

23. Article 246[22] is one of the sources of authority to legislate under the Constitution of India. It declares that Parliament and the legislatures of the various states have the "power to make laws with
C respect to any of the matters enumerated" in each of the three lists contained in the Seventh Schedule. It also makes clear that the power of the Parliament is exclusive with respect to List I and that of the State Legislature with respect to List II. List III indicates various fields over which both the Parliament as well as the State legislatures would have authority to legislate concurrently subject of course to the discipline of
D Article 254.

24. Apart from declaration contained in Article 246, there are various other Articles of the Constitution which confer authority to legislate either on the Parliament or on a State legislature, as the case may be in various circumstances. For example, Article 3 authorises the Parliament
E to make a law either creating a new State or extinguishing an existing State. Such a power is exclusively conferred on the Parliament.

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[21] *See* also 1995 Supp. (1) SCC 596 para 7 - ***Jilubhai Nanbhai Khachar v. State of Gujarat & Another***

"the legislature derives its power from Article 246 and other related Articles of the Constitution"

F [22] Article 246. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

G (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter
H enumerated in the State List.

25. Article 326[23] while declaring a right of every citizen who is not less than 18 years of age to register as a voter at any election to the House of the People or to the legislative assembly of a State, authorises the appropriate legislature to disqualify any such citizen to be a voter on any one of the grounds specified under Article 326 by making a law. The authority to make such a law obviously flows directly from the text of Article 326 but not from Article 246. *See also* Articles 2, 3, 11, 15(5), 22(7), 32(3), 33, 34, 59(3), 70, 71(3), 98(2). The Articles mentioned above are only illustrative but not exhaustive of the category.

26. It must be remembered that this Court repeatedly held[24] that

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[23] Article 326. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.—The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under **any law made by the appropriate legislature** and is not otherwise disqualified under this constitution or any law made by the appropriate Legislature on the ground of non residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

[24] *Harakchand Ratanchand Banthia v. Union of India*, (1969) 2 SCC 166, Ramaswami, J. speaking on behalf of the Court, while dealing with the Gold (Control) Act (45 of 1968), observed:

> "Para 8. ... Before construing these entries it is useful to notice some of the well-settled rules of interpretation laid down by the Federal Court and by this Court in the matter of construing the entries. The power to legislate is given to the appropriate Legislature by Article 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation, they demarcate the area over which the appropriate Legislatures can operate. ..."

Union of India v. Harbhajan Singh Dhillon (1971) 2 SCC 779 – Para 22. It must be remembered that **the function of the lists is not to confer powers; they merely demarcate the legislative field.** The Federal Court, while interpreting the Government of India Act in *The Governor General in Council v. The Releigh Investment Co.*, observed:

> "It would not be right to derive the power to legislate on this topic merely from the reference to it in the List, because the purpose of the Lists was not to create or confer powers, but only to distribute between the Federal and the Provincial Legislatures the powers which had been conferred by Sections 99 and 100 of the Act."

Synthetics and Chemicals Ltd. and Others v. State of U.P. and Others (1990) 1 SCC 109 –

> "Para 67. ...**The power to legislate is given by Article 246 and other Articles of the Constitution.** The three lists of the Seventh Schedule to the Constitution are legislative heads or fields of legislation. These demarcate the area over which the appropriate legislatures can operate. It is well settled that widest amplitude should be given to the language of the entries in three Lists but some of these entries in different lists or in the same list may override and sometimes may appear to be in direct conflict with each other, then and then only comes the duty of the court to find the true intent and purpose and to examine the particular legislation in question. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. ..."

A the entries in the various lists of the Seventh Schedule are not sources of the legislative power but are only indicative of the fields w.r.t. which the appropriate legislature is competent to legislate.

27. The task of this Court in identifying the scope of an entry in the Lists contained in the Seventh Schedule is not easy. While examining B the scope of the entries this Court must necessarily keep in mind the scheme of the Constitution relevant in the context of the Entry in question.

28. A broad pattern can be identified from the scheme of the three lists, the salient features of which are (i) Fields of legislation perceived to be of importance for sustaining the federation, are exclusively assigned C to the Parliament, (ii) State legislatures are assigned only specified fields of legislation unlike the US Constitution, (iii) Residuary legislative power is conferred in the Parliament; (iv) taxing entries are distinct from the general entries[25], and (v) List III does not contain a taxing entry,

29. At the same time, it can also be noticed that there is no logical D uniformity in the scheme of the three lists contained in the Seventh Schedule.

(a) Power to legislate is conferred by some of the Articles by an express grant either on the Parliament or the State Legislature to make laws with reference to certain matters specified in each of those Articles but there is no corresponding entry in the E corresponding list indicating the field of such legislation.

For example, under Article 3 the Parliament is competent to create or extinguish a State. There is no entry in the List I of the Seventh Schedule indicating that the Parliament could make a law with regard to the creation of a new State or the extinguishment of an F existing State.

(b) On the other hand, with reference to some of the powers conferred expressly by the text of the Constitution, there is also a corresponding entry in the List. Entries 38, 39 and 40 in List II fall in this category.

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[25] **M/s. Hoechst Pharmaceuticals Ltd. & Others v. State of Bihar & Others**, (1983) 4 SCC 45,

"Para 74 – It is equally well settled that the various entries in the three Lists are not 'powers' of legislation, but 'fields' of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution. **Taxation is considered to be a distinct matter for purposes of legislative competence.** Hence, the power to tax H cannot be deduced from a general legislative entry as ancillary power. ..."

30. Article 248[26] and Entry 97 in the List I in our considered opinion virtually render most of the remaining Entries of List I superfluous, except Entries, such as 52 and 54. By these entries, (which form the exception) the framers of the Constitution carved out certain areas of legislation which otherwise are exclusively within the domain of the competence of the state legislatures. By virtue of the enumeration in Entry 24[27] of List II, industries would be a subject matter falling exclusively within competence of the State legislation. However, Entry 52[28] of List I indicates that the Parliament would be competent to legislate with respect to 'industries', "the control of which by the Union of India is declared by the Parliament to be expedient in the public interest". Similarly, regulation and development of mines and minerals would be a matter which is exclusively within the competence of the State legislature under Entry 23[29] of List II but for Entry 54[30] of List I. We would like to mention here that notwithstanding the general stipulations contained in Article 246 regarding the competence of the Parliament and the state legislatures with respect to the various fields of legislation, Articles 249[31], 250[32] and

[26] Article 248. Residuary powers of legislation.— (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

[27] Entry 24 Industries subject to the provisions of entries 7 and 52 of List I. (In the original Constitution Entry 24 didn't find mention of Entries 7 and 52)

[28] Entry 52 Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

[29] Entry 23 Regulation of mines and minerals development subject to the provisions of List I with respect to regulation and development under the control of the Union.

[30] Entry 54 Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

[31] Article 249. Power of Parliament to legislate with respect to a matter in the State List in the national interest. (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of State has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein:

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

[32] Article 250. Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation. (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

A 252[33] contain provisions which enable the Parliament to legislate with respect to any matter enumerated in List II in the exigencies specified in those Articles. The Scheme of Entries, such as 52 and 54 and the corresponding Entries in the List-II in our opinion is nothing but another instance of special arrangement akin to the one made in Articles 249, 250 and 252. Perhaps, incorporation of another Article stipulating that B the Parliament would be competent to legislate with reference to the fields of legislation contained in Entries 23 and 24 whenever Parliament declared that it would be "expedient in public interest" to legislate upon those topics would have achieved the purpose. We may not be understood as sitting in judgment over the wisdom of framers of the Constitution. C We are only pointing out the possibility of achieving results sought to be achieved by Entries 52 and 54 by adopting another model of drafting. Such a model is already resorted to by the framers of the Constitution in making provisions of Articles 249 and 250 etc.

Our endeavour is only to demonstrate that a great deal of D examination of the scheme of the entire Constitution is essential while interpreting the scope of each of the Entries contained in the three Lists of the Seventh Schedule and no rule which has a universal application with regard to the interpretation of all entries in the 7th Schedule can be postulated. The statement of Chief Justice Gwyer that a broad and liberal spirit should inspire those whose duty is to interpret the Constitution E and the legislative entries should not be read in a narrow or pedantic

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(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be F done before the expiration of the said period.

[33] Article 252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State. (1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to G that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to H which it applies, be amended or repealed by an Act of the Legislature of that State.

sense, cannot be understood as a *sutra* valid for all times and in all circumstances. We have already noticed that this court on more than one occasion cautioned about the perils of placing a construction on the expressions contained in the various Entries in the three Lists of Seventh Schedule as taking within their sweep, matters that have no rational connection with the subject matter of the Entry. The caution sounded by Justice Venkatachaliah in ***Shah Goverdhan L. Kabra Teachers' College*** (supra) that:

> "... the court sometimes is duty-bound to guard against extending the meaning of the words beyond their reasonable connotation ...".

is a constitutional imperative.

31. The doctrine of "widest construction" propounded by Marshall was in the context of the substantive provisions of the Constitution which are the sources of power to legislate and stipulate the areas with respect to which "the Congress" shall have the "legislative power" but not in the context of something like an entry in the 7th Schedule of our Constitution which is not a source of power but only indicative of the field of legislation. Though words and expressions employed in the Constitution must receive widest possible construction, we believe that the principle must be applied with some degree of caution when it comes to the examination of the amplitude of the legislative Entries. There must be some distinction between a provision of the Constitution which confers power to legislate (source of power) and an Entry in one of the 3 lists of the 7th Schedule which are not sources of power but are only indicative of the fields of legislation. Any construction which would run counter to the scheme of the Constitution relevant in the context must be avoided.

32. As rightly pointed out by the petitioners, the existence of a dedicated article in the Constitution authorizing the making of law on a particular topic would certainly eliminate the possibility of the existence of the legislative authority to legislate in Article 246 read with any Entry in the Seventh Schedule indicating a field of legislation which appears to be closely associated with the topic dealt with by the dedicated article. For example even if the Constitution were not to contain Entries 38, 39, 40 in List II the State Legislatures would still be competent to make laws w.r.t. the topics indicated in those 3 entries, because of the authority contained in Articles 164(5), 186, 194, 195 etc. Therefore, to place a

A construction on those entries which would have the effect of enabling the concerned legislative body to make a law not within the contemplation of the said Articles would be plainly repugnant to the scheme of the Constitution.

33. ***Cauvery Water Disputes***[34] may not be an exact authority for B the proposition of law advanced by the petitioners. But the logical extension of the principle enunciated in ***Cauvery*** would certainly support the case of the petitioners.

34. To understand the principle laid down in ***Cauvery***, we need to examine the factual background of the case and the issue (relevant) that C arose therefrom.

35. There has been a long standing dispute between the States of Karnataka and Tamil Nadu with regard to their respective rights to the water of river Cauvery. For the resolution of the said dispute, a tribunal was constituted by a notification dated 2nd June 1990 of the Government D of India in exercise of the power under the Inter State Water Disputes Act, 1956. On an interlocutory application filed by the State of Tamil Nadu, by an order dated 25th June 1991, the tribunal gave certain directions[35] to the State of Karnataka. Thereupon, the State of Karnataka issued an ordinance nullifying the directions of the tribunal referred to above. The President of India by a reference under Article 143[36] of the E Constitution sought the opinion of this Court regarding the constitutionality of the ordinance.

36. The State of Karnataka argued that the ordinance in question fell exclusively within the field of legislation assigned to the States by Article 246(3) read with Entry 17 of List II. In the absence of any law F made by the Parliament dealing with the subject matter of the content of

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[34] 1993 Supp. (1) SCC 96 (II)

[35] To release 205 TMC water from its reservoirs located in the State of Karnataka and certain other incidental directions.

[36] Article 143. (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance G that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon

(2) The President may, notwithstanding anything in the proviso to Article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its H opinion thereon

the ordinance in question, the authority of the legislature of Karnataka remained unencumbered. A

37. While examining the said submission, this Court had to examine – whether the Inter State Water Disputes Act, 1956 made by the Parliament was a law made in exercise of the authority of the Parliament under Article 246(1)[37] read with Entry 56[38] of List I of the Seventh Schedule? This Court reached a conclusion that the Inter State Water Disputes Act, 1956 is not a legislation referable to Entry 56 of List I. It also took note of the fact that none of the Entries in Seventh Schedule mentioned the topic of adjudication of disputes relating to inter State waters and Article 262[39] of the Constitution specifically provides for such adjudication. B C

> "62. It cannot be disputed that the Act, viz., the Inter-State Water Disputes Act, 1956 is not a legislation under Entry 56. In the first instance, Entry 56 speaks of regulation and development of inter-State rivers and river valleys and does not relate to the disputes between the riparian States with regard to the same and adjudication thereof. Secondly, and even assuming that the expression "regulation and development" would in its width, include resolution of disputes arising therefrom and a provision for adjudicating them, the Act does not make the declaration required by Entry 56. This is obviously not an accidental omission but a deliberate disregard of the entry since it is not applicable to the subject matter of the legislation. Thirdly, no entry in any of the three lists refers specifically to the adjudication of disputes with regard to inter-State river waters. D E
>
> 63. The reason why none of the Entries in the Seventh Schedule mention the topic of adjudication of disputes relating to the inter- F

[37] Article 246. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

[38] Entry 56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest G

[39] Article 262. (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley. (2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1). H

A State river waters is not far to seek. Article 262 of the Constitution specifically provides for such adjudication. ..."

67. ... Since the subject of adjudication of the said disputes is taken care of specifically and exclusively by Article 262, **by necessary implication the subject stands excluded from the field covered by Entries 56 and 17.** It is not, therefore, permissible either for the Parliament under Entry 56 or for a State legislature under Entry 17 to enact a legislation providing for adjudication of the said disputes or in any manner affecting or interfering with the adjudication or adjudicatory process of the machinery for adjudication established by law under Article 262. ..."

38. The ordinance was found to be beyond the legislative competence of the State of Karnataka. Because of the existence of a dedicated article empowering the Parliament to make laws for the adjudication of inter-State water disputes the subject stood by implication D excluded from the field covered under Entries 56 or 17 and the ordinance in substance had the effect of interfering with "adjudication process of the machinery for adjudication established by law under Article 262".

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[40] and Entry E 39[41] of List II is this that in the case of inter-State water disputes neither

[40] Article 194. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.
(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the F authority of a House of such a Legislature of any report, paper, votes or proceedings.
(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, 1 [shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978].
(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by G virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

[41] Entry 39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the H State.

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 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?

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 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. Sub-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[42] speaks about the

[42] Article 178. Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

A offices of Speaker and Deputy Speaker. Article 179[43] deals with the vacation of those offices or resignations of incumbents of those offices whereas Article 182[44] and 183[45] 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[46] which
B 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

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[43] Article 179. A member holding office as Speaker or Deputy Speaker of an Assembly—
(a) shall vacate his office if he ceases to be a member of the Assembly; (b) may at any
C time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and (c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly: Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution: Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first
D meeting of the Assembly after the dissolution.

[44] Article 182. The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

[45] Article 183. A member holding office as Chairman or Deputy Chairman of a Legislative
E Council—
(a) shall vacate his office if he ceases to be a member of the Council;
(b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman and if such member is the Deputy Chairman, to the Chairman, resign his office; and
(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:
F Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

[46] Article 187. (1) The House or each House of the Legislature of a State shall have a separate secretarial staff: Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature. (2) The Legislature of a
G State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State. (3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the
H provisions of any law made under the said clause.

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. A B

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. C

Kalpana K. Tripathy

Petition allowed.