

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISIDCTION

CIVIL APPEAL NOS. 6203-6204 OF 2016

(Arising out of SLP(C) Nos. 1259-1260 of 2016)

Nabam Rebia, and Bamang Felix ... Appellants

versus

Deputy Speaker and others ... Respondents

J U D G M E N T

Jagdish Singh Khehar, J.

1. Leave granted.
2. The 5th session of the Arunachal Pradesh Legislative Assembly (hereinafter referred to as, the Assembly/House) was concluded on 21.10.2015. On 3.11.2015, the Governor issued an order summoning the 6th session of the Assembly, to meet on 14.1.2016 in the Legislative Assembly Chamber at Naharlagun. The instant order was passed by the Governor, on the aid and advice of the Chief Minister, and in consultation with the Speaker of the House. The 6th session of the House was preponed by the Governor from 14.1.2016 to 16.12.2015, by an order dated 9.12.2015 indicating *inter alia* the manner in which the proceedings of the House should be conducted. In its support, the Governor issued a message on 9.12.2015. These actions of the Governor, according to learned senior

counsel for the appellants, demonstrate an extraneous and inappropriate exercise of constitutional authority. The above order and message of the Governor, without the aid and advice of the Council of Ministers and the Chief Minister, constitute the foundation of the challenge raised by the appellants.

3. When hearing in these appeals commenced, the impression given out was, that the sequence of facts relating to the affairs of the House and the MLAs, by itself would be sufficient to establish, that constitutional responsibilities were exercised in such manner, as would be sufficient for this Court to strike down the same. The same position was espoused on behalf of the respondents, who also advocated that the factual background, would establish the legal and constitutional validity of the Governor's actions. And also, that the Governor had passed the impugned order, and issued the impugned message, *bona fide*. The narration of facts, therefore assumes significance.

The foundation of the appellants case:

The first sequence of facts:

4. In order to project the correct narrative (as per the understanding, of learned counsel, representing the appellants), towards highlighting the factual position, it was urged, that the political posturing in the State of Arunachal Pradesh, commenced after the Governor – Jyoti Prasad Rajkhowa assumed charge on 1.6.2015.

5. It was suggested, that when the Governor assumed office, there was a brewing discord amongst members of the ruling Indian National Congress

(hereinafter referred to as the INC). Only a few days after the Governor took over charge, the President of the Arunachal Pradesh Congress Committee – Padi Richo addressed his first communication to the Chief Minister – Nabam Tuki (on 18.6.2015), inviting his attention to reports received from party workers, regarding breach of party discipline. On the same lines, another letter was addressed by the party President, to the Chief Minister on 1.9.2015. The text of the same is extracted hereunder:

“In reference to my earlier letter no.nil dated 18/6/2015 in connection with reports received from party workers regarding breach of discipline by some of the Congress legislators by their active involvement in anti-party activities, which has been seriously viewed by the AICC and APCC. But despite of that, it has been reported by party functionaries and workers that some of the congress legislators are still actively indulging in indiscipline and various anti-party activities.

Therefore, all the Congress legislators are requested to refrain themselves from indulging in such anti-party activities and maintain party discipline.”

6. It was submitted, that strenuous efforts were ongoing, to quell the intra-party dissidence. It was asserted, that resignation letters of two MLAs belonging to the INC – Wanglam Sawin and Gabriel D. Wangsu were accepted on 6.10.2015, whereupon, they stood removed from the House. The details of the ongoing disruptive activities within the Congress Legislature Party, as also, the involvement of the Governor, was sought to be demonstrated, by placing reliance on two further communications, the first of which (dated 11.10.2015), was addressed by the removed MLAs, to the Governor. A relevant part of the same, is reproduced hereunder:

“Sub: Commission of an enquiry into the forceful resignation.

Your Excellency,

With great pain and indignation, we the undersigned Members of Legislative Assembly of the Sixth Arunachal Pradesh Legislative

Assembly would like to apprise your benign authority about some disturbing, degraded and inglorious conduct of the leader of the Congress Legislative Party-cum-incumbent Chief Minister and his supporters for favour of your kind information and necessary action please;

Your Excellency, on 14th Sept 2015 at around 5 pm, we were repeatedly informed through phone calls requesting us to join “a get-together dinner party”, purportedly on the invitation of Mr. Mama Natung, HMLA, at his residence at Senki View area, Itanagar. Some 18 MLA colleagues from the Congress Party visited his residence for the dinner but were instead asked to join an informal discussion on the prevailing political crisis faced by the Congress led State Government under the Chief Ministership of Mr. Nabam Tuki. All members participated in the discussion which revolved around support for Mr. Tuki and further the issue of initiating actions against any member not adhering to the decision to be loyal to Tuki was discussed. Also it was decided to form a group of ‘like-minded’ legislators and accordingly formed S-18 or Super-18, besides forming one Action Committee tasked to take necessary actions against those MLAs who do not abide by the decisions taken jointly by the group. Thereafter, we had our dinner and left.

Your Excellency, on 16th September’ 2015, we were informed by Mr. Nyamar Karbak, MLA who was the coordinator of S-18 to join a dinner party at the official residence of Hon’ble Chief Minister Mr. Nabam Tuki. Like the other day, this time also 17 of us went together to attend the dinner hosted by the Chief Minister which amongst other included, i) Gabriel D.Wangsu, ii) Mr. Wanglam Sawin, iii) Phurpa Tsering, iv) Mr. Jambey Tashi, v) Mr. Tirong Aboh, vi) Mr. Dikto Yikar, vii) Mr. Mama Natung, viii) Mr. Pani Taram, ix) Mr. Nikh Kamin, x) Mr. Nyamar Karbak, xi) Mr. Bamang Felix, xii) Mr. Techu Kaso, xiii) Mr. Tatung Jamoh, xiv) Mr. Alo Libang, xv) Mr. Tapuk Taku, xvi) Kumsi Sidisow, xvii) Mrs. Karya Bagang.

Like the preceding night, some of the MLAs like Mr. Nyamar Karbak, Mr. Bamang Felix, Mr. Mama Natung and Mr. Nikh Kamen suddenly started discussion on the political matter and requested 17 of us to support Tuki and to protect his leadership from being ousted by the dissident group of the party. Most of us participated in the said discussion though reluctantly with certain reservations in our mind and heart. The gathering instead of being a dinner party was turning more into a political meeting and some MLAs, to our anxiety and panic, aggressively tried to persuade and prevail upon us thereby, putting all of us in a very stressful and awkward situation. There was little room left for further discussion or dissent.

Thereafter, some of our MLA colleagues came up with a strange proposal to sign and submit irrevocable resignation letter in the hand of HCM to show our loyalty to his leadership. We were baffled and dumbstruck by hearing the undemocratic, dangerous and inappropriate proposition placed before us by him. All of us were

confused and couldn't gather the courage to protest against the said proposal in the presence of the CM, Speaker of the Assembly and PCC president. Then some of the loyalists of Mr. Tuki namely Nyamar Karbak and Bamang Felix holding ready and prepared stereotype resignation letters in their hands came to us and handed over to each of us and asked us to put our signatures. The whole drama took place in presence of Mr. Nabam Tuki, CM and Mr. Padi Richo, President, Pradesh Congress Committee and putting us in strained mental torment and duress compelled us to hurriedly sign the resignation letter without even reading the content thereon, against our will and against the spirit of democracy. After getting us to sign the papers they collected the same and handed over to the Chief Minister Mr. Nabam Tuki.

Furthermore, we were given strict instruction and direction not to mention the date in our signatures. And just before the dinner, after concluding the meeting and signing of the resignation letters, surprisingly Speaker Nabam Rebia to arrived and joined in the dinner party at the CM's official residence. Soon thereafter a group namely 'S-18' was formed in the Whatsapp. However, both of us were removed from the group on 6th October 2015.

Now under the above circumstances, we would like to inform you that those resignation letters were signed by all 17 of us under complete duress having obtained illegally and wrongfully. In this regard, the following arguments may be taken into considerations;

i) That we were invited to attend an informal dinner party hosted by the HCM for 17 of us. It was neither a CLP meeting nor a party meeting to discuss politics as only 17 of us were invited for the dinner at the official bungalow of the HCM. It is equally true that we were invited for a dinner and not for signing our own resignation letters.

ii) That none of us could muster the courage and spirit to protest the unholy and vicious agenda of the HCM that too in his presence and that of the Speaker, both holding high constitutional posts, and President, PCC.

iii) That all the resignation letters signed by us were stereotype or identical copies of one single letter which speaks volume about the dishonest intention of the HCM, Speaker and his supporters as he was ready with the resignation letters which again established that everything was planned before hand with the help and support of the Speaker of the Legislative Assembly to obtain our signatures in the resignation letters by hook or crook and instill fear in our mind. Invitation to the dinner party was only a ploy to trap us in the larger game plan to secure the Chief Ministerial Chair.

iv) These disgracing, undemocratic and unethical action has brought disgrace to the benign office of the Chief Minister and the Speaker as their conduct are completely unbecoming of a Chief Minister as well as for holding the prestigious and dignified chair of the Speaker. Their illegal and wrongful act of obtaining our signatures by putting us in duress is nothing but criminalization of politics and brute

murder of democracy and its values and principles for their vested personal interest which is punishable under relevant law of the land.

v) If an elected representative is not allowed to take any decision out of his conscience and free will it tantamounts to murder of the very basic fabric of democracy which will bear negative impact in overall contribution to the state's governance, and above all that would be murder of democracy.

vi) The reason quoted in the resignation letter is also highly inconceivable and ludicrous. How could any elected representative including us after being elected by the people would tender the resignation on such irrational, unjust and unfounded ground.

Your Excellency, vide our letter dated 01-10-2015 addressed to the Speaker of the Legislative Assembly which we had submitted to the office of the Speaker on 05-10-2015 before noon, we have elucidated the facts and circumstances under which our signatures in the resignation letters were obtained on 16-09-2015 at the official bungalow of CM and that the same was obtained under duress against our consent and free will, therefore requested the Speaker not to accept the resignation letter and to treat the same as invalid, null and void until and unless we come in person to submit the resignation letters.

However, ironically, after submission of our letter, it came to our knowledge that the Speaker had without following the provisions as enshrined in Article 190(3)(b) of the Constitution and Rule 200(2) of the Rules of Procedure and Conduct of Business in the Arunachal Pradesh Legislative Assembly had purportedly issued a notification dated 01-10-2015 accepting our resignation and declaring our respective seats to have fallen vacant. The said notification was published in the evening of 05-10-2015 only immediately after submission of our withdrawal letters to the Speaker.

Article 190(3)(b) of the Constitution reads as follows;

xxx xxx xxx

Rule 200(3) of the Business Rules reads as follows;

xxx xxx xxx

Thus, the abovementioned provisions casts an obligation on the Speaker to make inquiry regarding the voluntariness and genuineness of the resignation letters when the resignation letters are not submitted in person but since the Speaker himself is a party to the whole episode playing hand in glove with the CM, therefore, he choose to do away with the laid provisions of the law.

xxx xxx xxx

Your Excellency, since the notification dated 01-10-2015 was issued by the Speaker without following the established principles, therefore we had approached the Hon'ble Gauhati High Court challenging the said notification vide WP (C) No.6193/2015. The Hon'ble Gauhati High Court after considering the whole facts and circumstances of the case was inter-alia pleased to stay the operation of the impugned notification dated 01-10-2015 vide order dated 07-10-2015. The

Hon'ble Court further observed that prima-facie the requirement of Rule 200(3) of the Procedure and Conduct of Business and the incorporated proviso to Article 190(3)(b) of the Constitution do not seem to have been complied and directed the Election Commission not to take any action on the basis of the said notification.

xxx

xxx

xxx

Your Excellency, along with us, 15 other MLAs had also signed the resignation letters and handed over the same to the CM in the presence of the PCC Chief, but why only our resignation letters were entertained and accepted by the Speaker. What happened to the other resignation letters signed by 15 other MLAs? Why no action has been taken till date on the resignation letters of other 15 MLAs who till date has not withdrawn their resignation letters?

xxx

xxx

xxx

We, therefore, request your Excellency to look into the issue seriously to unearth the unholy nexus between the Chief Minister, the Speaker of the Legislative Assembly and PCC, President. And why the Chief Minister has adopted such wrongful and illegal means to obtain the resignation letters from us, and what compelled him for such a criminal act is the million dollar question.

In view of the above facts and circumstances, it is our humble request to your august office to immediately enquire into the whole resignation incident through independent investigating agency like CBI because both the culprits are holding high constitutional posts, i.e. Chief Minister and Speaker and there cannot be free and fair investigation, if conducted by the State Investigation agency and take stringent action against all the persons involved in the whole crime by booking each and everyone under appropriate provision of law.”

According to learned counsel, it is shocking and distressing, that the above letter should have been addressed to the Governor, who has no role in intra-party affairs. The above letter and inferences, according to learned counsel, were suggestive of political motivation. The second communication dated 11.10.2015 was addressed (to the Governor) by 20 MLAs of the INC, jointly with two Independent MLAs. A relevant extract of the instant communication is reproduced below:

“Sub: Complaint against the policy of absolutism of the Chief Minister.

Your Excellency,

We the incumbent MLAs of INC party amongst them some are sitting Ministers in the present ruling dispensation of the State being

perturbed and disillusioned with the current dismal and grim state of affairs of the State Government and the tyrannical style of incumbent Chief Minister Shri Nabam Tuki in running the government would with profound veneration most humbly like to state the following few lines for favour of your perusal and necessary appropriate action;
His Excellency, it has been learnt through the print media that the Chief Minister is contemplating to literally drop four veteran, experienced and highly regarded leaders like i) Mr. Chowna Mein, Agriculture Minister, ii) Mr. Kamlung Mossang, Food & Civil Supply Minister, iii) Mr. Kumar Wai, Cooperation Minister and Mr. Wanglin Lowangdong, Social Welfare Minister from the council of Minister without articulating any cogent reasons either implicit or explicit for taking such a drastic and unpleasant measure at this particular junction when the State is experiencing acute financial crisis having occasioned due to the misrule, shortsightedness, autocratic policies and wrong decisions of the incumbent Chief Minister coupled with excessive unplanned, wasteful expenditures and financial mismanagement leading the state to a complete stalemate with development activities in the State in a complete standstill and clouding the State with complete darkness of financial depression.

His Excellency, your benign authority may be well aware of the fact that the State under the leadership of Mr. Nabam Tuki, CM has been reeling under the burden of humongous financial liabilities, insurmountable debts and burden of overdrafts for last 3 years due to gross and unprecedented level of corruption, fraudulent misappropriation and embezzlement of the project specific funds and revenues of the government.

His Excellency, it is very unfortunate that there are serious charges of criminal misconduct, nepotism and corruption against Shri Nabam Tuki on numerous counts which are as follows;

- 1) Awarding contract to his family and relatives by abusing his power and position without floating tenders and secured pecuniary gain by illegal and dishonest means in clear violation of codal formalities. The Hon'ble Gauhati High Court taking cognizance of the allegations against Nabam Tuki, CM vide Judgement and Order dated 21-08-2015 in WP (C) No. 1267/2010 has directed the CBI to register a case and conduct investigation against the alleged misconduct of Shri Nabam Tuki in awarding contracts to his wife, sister-in-law, brother and other near relatives without calling tenders by abusing his official position as a Minister. The Hon'ble Court also directed the CBI to probe and investigate the alleged UCO bank transaction of Rs.30,00,000/- (Rupees Thirty Lacs) only allegedly deposited in the account number of Mr. Nabam Tuki by Mr. N.N. Osik, the then Director of Food & Civil Supplies.
- 2) Serious allegation against the incumbent CM who also holds the charges of Finance, Planning and Disaster & Relief Ministries for gross misuse and embezzlement of relief funds under NDRF & SDRF. In this connection also two PILs are pending in the Hon'ble

Gauhati High Court being numbered as PIL No. 62/2015 & 65/2015 and vide order dated 06/08/2015 the Hon'ble Gauhati High Court was pleased to admit both the PILs by rejecting the preliminary objection of the State Government on the issue of maintainability of the cases and made an observation that "there appears to be some prima facie case to be enquired into the justification of the State in making assessments regarding natural disaster". In this connection the Controller and Auditor General of India is also conducting an enquiry into the allegation.

- 3) Gross misuse and siphoning of project specific funds under Centrally Sponsored Scheme (CSS) as a result of which majority of the projects or works under abovementioned schemes has not been completed and/or are under progress. Worst some have even not been commenced and will never see the light of the day because all the grant and assistance provided by the GOI has been whimsically and capriciously diverted and misused under Non-Plan head and PDS. Though majority of the works and projects has not been completed but the funds have been completely exhausted creating colossal financial liabilities to the tune of Rs.6911.55 Crores. That is the sole reason, why the state government is unable to furnish the UC as demanded by the GOI. The Ministry of DONER has instituted an enquiry to unearth the degree of corruption.
- 4) The State Government is reeling under the burden of overdraft for consecutively two years. The Government committed an overdraft of Rs.(-) 449.76 Crores during 2013-14 and Rs. (-) 581.38 Crores during last financial year 2014-15. The current overdraft till May' 2015 is Rs. (-) 222 Crores bringing the total overdraft to the tune of Rs. (-) 1,253.14 Crores. The amount of overdraft are to be repaid by the State government to the RBI with 13% interest rate which in turn will affect the development of the State, as the Government will be forced to utilize the plan money for the repayment of the overdraft.

Your Excellency, overdraft, suspension of government bank transactions, inordinate delay in disbursement of pension, GPF, TA/DA and other benefits to the government employees, transfer of funds in the civil deposits of the government, non-payment of bills to the contractors and suppliers against the completed works and non-payment of stipend to the students has become an order of the day.

Your Excellency, Shri Nabam Tuki, CM is adopting all sorts of illegal and unlawful means in order to quell and crush the voices of dissent who having been disillusioned and disenchanted with his misdeed and style of running the State Government in a despotic and autocratic manner has intensified their demand in recent days for a change in the leadership. He is even indulging in criminal and immoral activities to secure his Chief Ministerial post. It is very disheartening that Shri Nabam Tuki, CM with the support of handful

of his protagonist invited 17 MLA's for a dinner party at his official bungalow and has forcefully obtained signatures of the 17 MLA's in a resignation letters authored and produced at his residence by putting them under intense duress and pressure with the objective to use the same as a tool to blackmail them not to shift their loyalty or allegiance.

xxx

xxx

xxx

7. Your Excellency, in a democratic and parliamentary form of government, the legislators of the single largest party in the legislative assembly select a leader amongst themselves to lead them who is called as a leader of the legislative party and the selected leader accordingly becomes the Chief Minister and forms a government. If the leader upon being selected loses the goodwill, trust and confidence of the legislators who have selected him, the legislators can change or replace the said leader with more efficient, capable and competent leader to run the government. In context to the present prevailing political scenario of the State the CM has lost the goodwill, trust and confidence of majority of the legislators which can be gauged from the CLP meeting which was held on 29-09-2015 where only 22 party legislators attended the meeting. Immediately thereafter a Cabinet was also summoned by the CM and similarly the meeting not attended by majority of the Cabinet Ministers and was less than the necessary quorum for taking any major decisions, therefore, it is the CM who should be tendering his resignation papers rather than dropping highly respected and decorated sitting Ministers who have serving the State to the best of their capability and capacity without any complaint or blemish on their integrity.

xxx

xxx

xxx

Therefore, in view of the above facts and circumstances of the case, it is our collective earnest request and appeal to your esteemed office not to entertain the decision of the incumbent CM as he is running a minority government and enjoys the support of only handful of legislators as he has lost the confidence and goodwill of the majority of the legislators. If the CM is allowed to prevail then it will tantamount to murder of democracy and parliamentary form of government.

With regards,

signed by 20 INC MLAs and
2 Independent MLAs.
Yours faithfully,"

It was submitted, that despite the position being clear, that a Governor has no role in internal party feuds, details as noticed in the letter extracted above, were being provided to the Governor. Illustratively it was submitted, that the manner of functioning of the Chief Minister, or the likely change in

the composition of the Cabinet, or the manner in which financial affairs of the State were being handled, or the prevailing allegations of corruption against the Government, and such like matters, are beyond the realm of cognition and responsibility of the Governor. And yet, were being brought to the notice of the Governor. It was urged, that all this was being done, because of the belief of the dissident faction, that the Governor would act thereon. This, because of the tacit support, by MLAs belonging to the Bharatiya Janata Party (hereinafter referred to as, 'the BJP'). It was highlighted, that the involvement of two Independent MLAs along with 20 MLAs of the INC, in the letter dated 11.10.2015, needed to be pointedly noticed. Because it demonstrates, not only dissension within the party, but also the involvement of support from outsiders. The connotations of the above second letter, according to learned counsel, were also suggestive of political motivation.

7. Having highlighted the alleged divisive activities of the breakaway group of MLAs within the INC, it was submitted, that the party President – Padi Richo, was right in perceiving, that the above actions amounted to breach of party discipline. The party President accordingly, addressed individual communications dated 12.10.2015, to the defaulting MLAs, wherein he brought to their attention, the party's impressions. A relevant extract of one of the said communications is being reproduced hereunder:

“It has been reported by party functionaries and workers of your constituency and the Block/District Congress Committee that you are indulging in various activities which amounts to breach of discipline of the Party under Claus 4(a), (b) and (c) of the Constitution of Indian National Congress. In this connection I have also issued a Circular to all Party MLAs and Leaders on 1st September 2015 making it clear

that action will be taken against any such leader indulging in indiscipline and anti-party activities.

The matter was placed before the Executive Committee of the PCC on 6th October 2015 and the Committee is of the view that there is a prima facie breach of discipline from your side. You are hereby called upon to explain the charges made against you within 15 days time as to why disciplinary action as it may deem fit is not taken against you.”

Your failure to reply within the above stated time will be considered as that you have no explanation or reply to be given, and appropriate action as deemed fit, will be taken against you without any further notice.”

8. At the instant juncture, a meeting inviting all members of the Congress Legislature Party was convened for 8.11.2015, which was to be attended by representatives of the central leadership. An extract of the communication dated 5.11.2015, calling the above meeting, is reproduced below:

“No.CM(AP – 11/2015 dtd 05th Nov, 2015[:] Please convey the following message by quickest means as under[.] quote[.] From Shri Nabam Tuki, Chief Minister to all Congress MLAS/Parliamentary Secretaries/Ministers[.] As directed by Shri V. Narayanasami, General Secretary, AICC, In-Charge, Arunachal Pradesh a meeting of all members of Congress Legislature Party (CLP) convened on 8th November, 2015(Sunday) at 4.30 PM repeat 8th November,2015 at 4.30 PM at Rajiv Gandhi Bhawan, Itanagar[.] Meeting will be attended by [.] One[.] Shri V Narayanasami, General Secretary, AICC, In Charge[.] Two[.] Dr. Jayakumar, AICC Secretary,[.] Three[.] Shri Padi Richo, President PCC among others[.] Request to attend the meeting as directed by Shri V Narayanasami, GS, AICC positively[.] unquote[.] Plse confirm N.T.T.”

Immediately on receipt of the aforesaid invitation, the same 21 dissident MLAs, addressed a joint statement to the party leadership, that they would not be attending the meeting (scheduled for 8.11.2015), as the Chief Minister – Nabam Tuki had lost all moral credibility to lead the House. An extract of the contents of above joint assertion is reproduced below:

“...It has come to our notice that a CLP meeting has been convened on 8th November 2015. There are already differences of opinion with regards to autocratic way of functioning and disrespect for inner democracy of the party with the present CLP leader Mr. Nabam Tuki. Were clearly denounce his legitimacy as the leader of Congress Legislature Party of Arunachal Pradesh. Under this circumstances any meeting called under his leadership do not carry any substance and holds no water. He has lost all the moral credibility to lead the party in the house. Therefore, we the undersigned Congress legislature party members have unanimously decided not to attend the CLP meeting called under the leadership of Mr. Nabum Tuki.”

signed by 21 MLAs of the INC.

9. On 12.10.2015, the President of the Congress Legislature Party issued a show cause notice to 19 MLAs belonging to the INC, for indulging in activities, indicative of breach of sincerity and commitment towards the INC. Another communication was also issued to all MLAs belonging to the INC, to attend a party meeting, at the residence of the leader of Congress Legislature Party. It was submitted, that the same 21 legislators belonging to the INC again addressed a joint statement to the Chief Minister, wherein they contested his legitimacy, as leader of the INC. The said legislators, again refused to attend the meeting. They also issued a press note, to openly announce their aforesaid stance. In a meeting held on 8.11.2015, the central leadership of the Congress Party affirmed, its support to the Chief Minister – Nabam Tuki. It was pointed out, that thereafter, another notice was issued for holding a meeting of the legislators, belonging to the INC, on 18.11.2015. Yet again, the same 21 MLAs did not attend the meeting, and reiterated their point of view, with reference to the leadership of the Chief Minister. It was asserted on behalf of the appellants, that this was a revolt of sorts, within the INC.

10. In their narration, learned counsel also pointed out, that on 16.11.2015, a notice of resolution for the removal of the Deputy Speaker – Tenzing Norbu Thongdok, was moved. The same was allegedly moved by 16 MLAs, belonging to the INC. As a matter of clarification, it would be pertinent to mention, that the Deputy Speaker had been elected as an MLA, on the nomination of the INC.

11. On 19.11.2015, a notice of resolution for the removal of the Speaker of the Assembly – Nabam Rebia, was moved by the 13 MLAs – 11 belonging to the BJP, and 2 Independent MLAs. It was submitted, that the aforesaid notice was issued under Article 179(c) read with Article 181, and Rules 151 and 154 of the Rules of Procedure and Conduct of Business of the Arunachal Pradesh Legislative Assembly, framed under Article 208 (hereinafter referred to as, the ‘Conduct of Business Rules’). The notice depicted the following grounds for the removal of the Speaker:

- “(i) The Constitution and democracy are not safe in the hands of the Speaker, as he has unseated two members of the Arunachal Pradesh Legislative Assembly;
- (ii) That he has flagrantly violated the Constitution;
- (iii) That Speaker has not been functioning as a neutral person;
- (iv) That the Speaker has been appointing secretarial staff/persons without following administrative procedure.”

12. Yet another meeting of MLAs belonging to the INC, was held on 18.11.2015. The allegedly errant 21 MLAs belonging to the INC, did not again attend the meeting. It was asserted, that in order to take stock of the ongoing activities of the 21 dissident MLAs, another meeting of the Congress Legislature Party was held on 3.12.2015, wherein the participants took note of the prevailing situation, by recording the following proceedings:

“This meeting of the Congress Legislature Party, Arunachal Pradesh, held on today, the 3rd December at 4.00 P.M. at Itanagar unanimously resolves to request the Party Leadership and the Congress High Command at Delhi, bringing to your kind attention a letter dated 2nd November 2015 signed by 21 elected members of the Congress Legislature Party Arunachal Pradesh, in clear undemocratic, indiscipline and unheard manner dictating terms and excuses for absenting and voluntarily distancing from the Congress Legislature Party, Arunachal Pradesh against procedure established by the rules and regulations of the party, challenging the democratically elected Congress Legislature Party leaders authority, instead of participating in the meeting as members of the Congress Legislature Party and express whatever opinion, suggestion or grievances which can be resolved or decided by the Congress Legislature Party in its meeting.

It is also requested that the Congress High Command may make it clear that whether the signatories of the letter are staying back in Delhi as per the advice of the AICC in spite of the fact that, the above group of Legislatures voluntarily abstained from the earlier CLP meeting held on 16th November, 2015, which was attended by the General Secretary, AICC in charge of Arunachal Pradesh Shri V. Narayanaswamy, Dr. Jayakumar, Secretary AICC and Shri Padi Richo President APCC on the same grounds.

The meeting of the Congress Legislature Party also bring to the notice of the Party Leadership that the activities of the above 21 MLAs who have formed a separate group distancing themselves from the Congress Party, is working against the interests of the Party and the democratically elected Government of the Party, which is taking all-round efforts to develop the State and working untiringly to improve and help the people of Arunachal Pradesh, which got elected with an unprecedented mandate in the Assembly election held on 2014.”

13. It was submitted, that the said 21 dissident MLAs, were publicly proclaiming, that V. Narayanasamy, a former Union Minister, and the All India Congress Committee in-charge for North Eastern States, was supporting them in their cause. V. Narayanasamy had to address identical letters to all the 21 dissident MLAs, on 6.12.2015, to repudiate their assertion of his support. The text of the aforesaid communications is reproduced below:

“AICC has received copies of letters dated 15.11.2015 and 02.12.2015 addressed to the Chief Minister written by you and 20 other MLAs of

the Congress Legislative Party, Arunachal Pradesh in which you have claimed and alleged that I have advised you to stay back in Delhi to bring a solution to the present stalemate in the Party.

2. The above statements are false and against the directions given by me and the Party Leadership at Delhi and Itanagar. In the CLP meeting held on 16.11.2015 at Itanagar, I categorically made a statement that the Party Leadership is wholly supporting the present Chief Minister, Shri Nabam Tuki who is CLP leader having majority and if any grievance, any of the CLP member is having can be sorted out in the Party forum instead of giving public statements and working against the Chief Minister or the Govt. of Arunachal Pradesh.

3. You have also willfully did not attend three consecutive CLP meetings and boycotted the same.

4. Instead of listening to my statement and direction, you have made contrary statements and false allegations against me and the Party Leadership which is not acceptable.”

The President of the Arunachal Pradesh Congress Committee – Padi Richo was required to deliver the said letters to the 21 dissident MLAs, and also, to obtain their acknowledgement. Which he did.

14. It was highlighted, that the aforesaid activities of the dissident members of the INC, compelled the President – Padi Richo, to again issue identical letters to the concerned MLAs on 7.12.2015, with a copy to the Chief Whip of the Congress Legislature Party – Rajesh Tacho. The text of the above letter is reproduced below:

“AICC has taken serious note of your activities against the party, continuous attacks, defamatory and unfounded allegations and propaganda against the Chief Minister and the Council of Ministers of Arunachal Pradesh and the Congress Party calculated to lower the prestige of the party, inspite of our repeated directions not to indulge in any such activities which amounts to breach of discipline of the party.

By such continuous actions and activities you have distanced yourself and from your conduct we have come to the conclusion that you have voluntarily given up your membership of Indian National Congress and the Congress Legislature Party.

I am enclosing herewith the letter received from the General Secretary, AICC vide dated 06/12/2015, addressed to you in this regard.”

15. It was also pointed out, that a very important event, sponsored by the respondents, took shape on 19.11.2015. The 13 MLAs who had issued the notice of resolution for the removal of the Speaker – Nabam Rebia, forwarded its copy to the Governor, with a covering letter dated 19.11.2015, wherein, they requested the Governor, to prepone the 6th session of the Assembly. Their prayer was aimed at expediting the removal of the Speaker – Nabam Rebia. This, according to the appellants, is apparent from the fact, that the request for preponement was sought on the ground, that the issue of removal should be taken up immediately after completion of the 14 days notice, mandated under Article 179(c). The 13 MLAs also pressed, through their above letter, that the party composition in the House, be not altered, till the resolution for removal of the Speaker, was finally disposed of.

16. In narrating the facts, it was pointed out, that in the meeting of the members of the Congress Legislature Party held on 3.12.2015, the activities of the dissident members of the party were highlighted, indicating their rebellious posturing. The central leadership of the INC, at this juncture, again supported the leadership of Chief Minister – Nabam Tuki. The central leadership further took note of the fact, that 21 members of the Congress Legislature Party, had distanced themselves from the party. It was therefore, that the Chief Whip of the Congress Legislature Party – Rajesh Tacho, filed a petition under Paragraph 2(1)(a) of the Tenth Schedule on 7.12.2015, seeking disqualification of 14 MLAs of the INC. The disqualification of the 14 MLAs had been sought on the ground, that they had snapped their ties with the INC, by their refusal to respond to, or

associate with the political leadership in the State, and for their having expressly refused to attend the meetings of the party held on 29.9.2015, 8.11.2015, 18.11.2015 and 3.12.2015. And also, for having issued a press note, to publicly air their views. The above disqualification petition, was presented to the Speaker. It would be relevant to mention, that the name of the Deputy Speaker – Tenzing Norbu Thongdok, figured at serial no.14, in the disqualification petition. On receipt of the aforesaid petition, the Speaker issued notices to the concerned 14 MLAs, on 7.12.2015 itself. The 14 MLAs belonging to the INC, were required to submit their response(s), and thereupon to appear before the Speaker, on 14.12.2015.

17. It was contended on behalf of the appellants, that the factual position noticed above, triggered the stage for a political upmanship. Not between the legislators of the INC and the BJP, but between two factions of the INC. With one faction of the INC legislators, garnering support from BJP legislators. It was alleged, that the BJP legislators, in order to topple the Government in power, were extending support to the faction opposing the continuation of the Chief Minister – Nabam Tuki.

The impugned orders:

18. The Governor of the State of Arunachal Pradesh, according to learned counsel, without consulting the Chief Minister – Nabam Tuki, and his Council of Ministers, or even the Speaker – Nabam Rebia, issued an order dated 9.12.2015, whereby, he preponed the 6th session of the Assembly scheduled to be held on 14.1.2016, to 16.12.2015. The instant order

passed by the Governor, has been assailed by the appellants. A relevant extract of the order, is reproduced below:

“WHEREAS I, Jyoti Prasad Rajkhowa, the Governor of Arunachal Pradesh, had issued an Order on 3 November, 2015 under clause (1) of article 174 of the Constitution of India summoning the Sixth Legislative Assembly of Arunachal Pradesh to meet for its sixth session at 10.00 AM on 14 January, 2016 in the Legislative Assembly Chamber at Naharlagun:

WHEREAS subsequent to the issue of the aforesaid order by me, a notice of resolution for removal of Shri Nabam Rebia, from the office of the Speaker of the Arunachal Pradesh Legislative Assembly has been received on 19 November, 2015 with a copy endorsed to me by the notice givers namely Shri Tamiyo Taga, the Leader of Opposition in the said Assembly along with 12 other Members of the Legislative Assembly:

WHEREAS the notice of resolution for removal of the Speaker as aforesaid has complied with the notice period of 14 days on the 4 December, 2015 (excluding the day of notice and 4 December, 2015 – 14 days clear notice) as required under the first proviso to article 179(c) of the Constitution of India:

WHEREAS it has been judicially held in Nipamacha Singh and Others Vs. Secretary, Manipur Legislative Assembly and Others [AIR 2002 Gauhati 7] as under:

“13... the powers to consider or to reject a motion for removal of the Speaker from his office did not vest in the Speaker but in the Legislative Assembly under article 179 and 181 of the Constitution...”

WHEREAS in view of the above judicial order, it is a Constitutional obligation on my part to ensure that the resolution for removal of Speaker is expeditiously placed before the Legislative Assembly:

WHEREAS I have also received a request from the notice givers of the resolution for removal of the Speaker that the sitting of the sixth session of the Sixth Arunachal Pradesh Legislative Assembly originally slated for 14 January, 2016 may be advanced so as to enable the House to urgently consider the resolution for removal of the Speaker:

WHEREAS, the time gap between the 4 December, 2015 and the intended date of first sitting of the sixth session i.e. 14 January, 2016 i.e. the earliest date on which the resolutions for removal of Speaker can be taken up for consideration by the House, is 42 days (including 4 December, 2015 and 14 January, 2016):

WHEREAS any such notice of resolution in relation to an Officer of the Legislative Assembly (Speaker or Deputy Speaker) needs to be expeditiously considered by the Legislative Assembly in view of (i) past precedents in the Lok Sabha and (ii) the seriousness and urgency accorded to such resolutions in paragraph 2 of Rule 151 of the Rules of Procedure and Conduct of Business in the Arunachal Pradesh

Legislative Assembly and (iii) the utmost immediacy with which the cloud cast by the notice of resolution over the continuance of the incumbent in the office of the Speaker has to be cleared:

WHEREAS I am personally satisfied that the time gap between the date of compliance of the notice with the notice period prescribed in the first proviso to article 179(c) of the Constitution of India and the date of the intended first sitting of the ensuing session, as computed in the aforesaid manner, is long and unreasonable and may cause damage to the goals and ideals of provisions in the Constitution of India and the Rules of Procedure of the House concerning speedy disposal of such resolutions:

WHEREAS I am further satisfied that, for any exercise of advancing, the date of the sixth session under clause (1) of article 174 of the Constitution of India to a date earlier than the date mentioned in the Summons dated 3rd November, 2015 for facilitating the House to expeditiously consider resolutions for removal of Speaker, I may not be bound by the advice of the Council of Ministers, since the subject matter of the notice for removal of the Speaker is not a matter, falling under the executive jurisdiction of the Chief Minister, Arunachal Pradesh not such a subject matter finds a mention in the Rules of Executive Business of the Government of Arunachal Pradesh framed under article 166 of the Constitution of India thereby restricting the role of the Chief Minister in advising me in exercise of my powers under article 174(1) of the Constitution of India only to the matters for which the Chief Minister, under the Constitution of India, is responsible”.

AND NOW THEREFORE –

In exercise of powers conferred upon me by clause (1) of article 174 of the Constitution of India, I, Jyoti Prasad Rajkhowa, Governor of Arunachal Pradesh do hereby modify the order issued by me under the said provision of the Constitution of India on 3rd November, 2015 summoning the Sixth Arunachal Pradesh Legislative Assembly to meet for its sixth session on 14th January, 2016 to the following extent:

(i) For ‘14th January, 2016’ read ‘16th December, 2015’

(ii) For ‘18th January, 2016’ read ‘18th December, 2015’

2. Accordingly, in pursuance of the order issued by me under clause (1) of article 174 of the Constitution of India on 3rd November, 2015 as modified herein, the Arunachal Pradesh Legislative Assembly shall now meet at 10.00 AM on 16th December, 2015 at the Legislative Assembly Chamber at Naharlagun.

JYOTI PRASAD RAJKHOWA
Governor”

19. It was pointed out, that the order extracted above reveals, that it was prompted by a notice of resolution for the removal of the Speaker, coupled

with the assumption, that a constitutional obligation was cast on the Governor, to ensure that the above resolution was expeditiously taken up for consideration. Because, any delay in taking up the same, on the scheduled date of summoning of the 6th session of the House (- 14.1.2016), would "...cause damage to the goals and ideals of the provisions of the Constitution, besides the Conduct of Business Rules ...". And that, the Governor was not obliged, in the peculiar background referred to above, to seek the advice of the Chief Minister and his Council of Ministers. Admittedly, the Governor had issued the above order at his own, without any aid and advice.

20. On the same day – 9.12.2015, the Governor issued a message under Article 175(2) *inter alia* fixing the resolution for the removal of the Speaker, as the first item of the House agenda, at the first sitting of its 6th session. A relevant extract of the same is reproduced hereunder:

- “1. The resolution for removal of Speaker shall be the first item on the agenda of the House at the first sitting of the Sixth Session of the Sixth Arunachal Pradesh Legislative Assembly;
2. As the resolution for removal of the Speaker shall be the first item of business, at the first sitting of the Sixth Session of the Sixth Arunachal Pradesh Legislative Assembly, the Deputy Speaker shall preside over the House from the first moment of the first sitting of the House in accordance with provisions in article 181(1) of the Constitution of India;
3. The proceedings of the House on the leave, discussion and voting on the resolution for removal of the Speaker shall be completed at the first sitting of the session itself;
4. The Deputy Speaker shall conduct the proceedings peacefully and truthfully and shall communicate the results of the voting on the resolution on the same day. The proceedings of the House on the resolution shall be video graphed and an authenticated copy of the video record shall also be sent to me on the same day; and
5. Until the session is prorogued, no Presiding Officer shall alter the party composition in the House.”

The above message of the Governor, has also been assailed by the appellants. The message predetermined the procedure which the Assembly was mandated to follow, particularly with reference to the notice of resolution for the removal of the Speaker. The message also entailed, that the "... party composition in the House ..." would not be altered until the 6th session of the House was prorogued. It was pointed out, that by the above edict, the proceedings initiated by the Chief Whip of the Congress Legislature Party under the Tenth Schedule, against 14 MLAs of the INC, would automatically be put on hold, till the 6th session of the House was prorogued.

Resumption of, the first sequence of facts:

21. It was pointed out, that consequent upon the above development, a meeting of the Chief Minister and his Council of Ministers was convened on 14.12.2015. Based on the opinion tendered by the Advocate General of the State of Arunachal Pradesh dated 12.12.2015, the State Cabinet resolved, that the order of the Governor dated 9.12.2015, was violative of Article 174 read with Article 163 of the Constitution, and Rule 3 of the 'Conduct of Business Rules'. It was resolved, that the message of the Governor dated 9.12.2015, infringed Article 175 of the Constitution, read with Rule 245 of the 'Conduct of Business Rules'. In the aforesaid view of the matter, the Speaker – Nabam Rebia issued a letter dated 14.12.2015, bringing the aforesaid legal position to the notice of the Governor, and requested the Governor, to allow the House to function, in consonance with the provisions of the Constitution. The Governor was accordingly urged, to convene the

6th session of the Arunachal Pradesh Legislative Assembly, as was originally scheduled (-for 14.1.2016). It was submitted, that the aforesaid communication addressed by the Speaker to the Governor, was neither responded to nor acknowledged.

22. It was also the case of the appellants, that the disqualification proceedings against the 14 legislators of the INC (initiated through the notice dated 7.12.2015), were taken up for consideration by the Speaker – Nabam Rebia on 14.12.2015. None of the 14 MLAs sought to be disqualified, responded to the notice issued to them. They did not even enter appearance before the Speaker on the returnable date – 14.12.2015. Accordingly, the Speaker deferred the disqualification proceedings, to the following day – 15.12.2015. On 15.12.2015, a disqualification order was passed against all the 14 MLAs of the INC, *ex parte*. As a natural corollary, the constituencies from which the 14 disqualified MLAs were elected, were declared vacant (through a notification published in the Arunachal Pradesh Gazette dated 15.12.2015).

23. It was the pointed contention of the appellants, that on the same day, – 15.12.2015, when the aforesaid 14 MLAs belonging to the INC, were declared disqualified, in a purely unprecedented and unconstitutional manner, the Deputy Speaker – Tenzing Norbu Tongdok quashed the order of disqualification, even though he himself had been unseated through the disqualification order. Relevant extract of the above order dated 15.12.2015, is reproduced hereunder:

“ARUNACHAL PRADESH LEGISLATIVE ASSEMBLY
OFFICE OF DEPUTY SPEAKER

ORDER UNDER TENTH SCHEDULE TO THE CONSTITUTION OF INDIA AND RULE MADE THEREUNDER

WHEREAS the Governor of Arunachal Pradesh had issued an order dated 9th December, 2015 under article 174(1) of the Constitution of India preponing the Sixth Session of the Sixth Arunachal Pradesh Legislative Assembly to 16th December, 2015 from 14th January, 2016; WHEREAS the Governor of Arunachal Pradesh preponed the Sixth Session as aforesaid in order to enable the House to expeditiously consider and dispose of a notice of Resolution for removal of Shri Nabam Rebia from the Office of the Speaker.

WHEREAS the Governor of Arunachal Pradesh had further issued a message to the Arunachal Pradesh Legislative Assembly under article 175(2) of the Constitution of India, of which, the following part has significance of clipping the abuse of power of the incumbent Speaker. "Until the session is prorogued the Presiding Officer shall not alter the party composition in the House."

WHEREAS the resolution for removal of Speaker Sh Nabam Rebia is listed as the first item of business at the first sitting of Sixth Session of the Legislative Assembly on the 16th December, 2015;

WHEREAS the Speaker who is facing the resolution for removal has deliberately refrained from issuing the necessary Bulletin part II notifying the resolution and also the list of business for the 16.12.2015 including the resolution for transaction by the House, despite the message of the Governor and in total defiance of the Constitution, rules, norms and ideals thereby subverting the vary Constitution of India;

WHEREAS the Deputy Speaker who was tasked by the Governor to conduct the proceedings of the House on the resolution for removal of the Speaker in accordance with article 181 of the Constitution of India read with relevant rules of procedure of the House, prepared the Bulletin Part II and list of business for 16th December, 2015 thereby conforming to the Constitution and the mandate issued by the Governor of Arunachal Pradesh:

WHEREAS the Speaker, in order to escape the consequence of the resolution of his removal slated for transaction on the 16th December, 2015, suddenly a day before the first sitting of the Sixth Session i.e. on the 15th December, 2015 disqualified following 14 MLAs by 2 Notification of even number with No.LA/LEG-37/2015 dated the 15th December, 2015 under the Tenth Schedule to the Constitution of India:

- (1) Shri Pema Khandu
- (2) Shri Kumar Waii
- (3) Srhi Kameng Dolo
- (4) Shri Markio Tado
- (5) Shri Jarkar Gamlin
- (6) Shri P.D. Sona

- (7) Shri Mutchu Mithi
- (8) Shri Kamlung Mossang
- (9) Shri Phosum Khimhun
- (10) Shri Wanglin Lowangdong
- (11) Shri T. Wangham
- (12) Shri Lombo Tayeng
- (13) Shri Kalikho Pul
- (14) Shri T.N. Thongdok

WHEREAS THE Speaker has disqualified the above 14 MLAs without following basic procedure of law and justice in regard to:

- (i) Receipt of petition for Disqualification.
- (ii) Forwarding the petition for comments of the respondents.
- (iii) Hearing the respondents.

WHEREAS Rule 7(7) of the Members of Arunachal Pradesh Legislative Assembly (Disqualification on Ground of Defection) provides as under, according to which, no MLA can be disqualified under the Tenth Schedule without affording an opportunity of personally being heard:

“.....neither the Speaker nor the committee shall come to any finding that a member has become subject to disqualification under the Tenth Schedule without affording a reasonable opportunity to such members to represent his case and to be heard in person.”

WHEREAS, when a notice of resolution is staring at the face of Speaker, he is completely incapacitated from making any order on the membership of other MLAs when his own fate is hanging in balance:

WHEREAS the Speaker, as Constitutional functionary, is not vested with omnipotent powers to cause injury to the powers of Honourable Governor who had already issued a message as aforesaid to maintain the integrity of party-wise composition of the House:

WHEREAS the Speaker, in committing this mala fide and perverse action, has not even spared the Deputy Speaker whom the Governor had appointed to preside over the proceedings of the House when it takes up consideration of the resolution for removal of the Speaker:

WHEREAS a Speaker who is facing a removal resolution before the House has no competence whatsoever to pass instantaneous orders under the Tenth Schedule to manipulate a majority in favour of him and also Speaker who has been directed to face the House over the resolution for his own removal has no power whatsoever to escape his defeat by throwing out chunks of MLAs abusing his powers under the Tenth Schedule:

WHEREAS the orders of the Speaker disqualifying 14 MLAs as aforesaid squarely challenges the position of the Governor which the Constitution of India had designed him to occupy in the scheme of Constitution:

NOW THEREFORE,

I, Shri T.N. Thongdok, Deputy Speaker appointed by the Governor to preside over the first sitting of the sixth session of the sixth

Arunachal Legislative Assembly, hereby quash the orders of the Speaker and notification issued by the Secretary of the Legislative Assembly as aforesaid disqualifying above named named fourteen members of the Legislative Assembly and such orders and notifications may be deemed as non est for want of competence on the part of the Speaker who passed the order not only for not following constitutional and legal procedures but also for having lost his competence to do so since a notice of resolution dated 19.11.2015 for his removal is pending against him and which is to come before the house on 16.12.2015.

2. The effect of this order is that all the above named 14 MLAs continue to be members of the sixth Arunachal Pradesh Legislative Assembly as though the order of the delinquent Speaker is ab initio void.

3. All the aforesaid 14 MLAs shall attend all the sessions of the sixth Arunachal Pradesh Legislative Assembly without let or hindrance.

4. Any authority, civil or police, obstructing their attendance of the ensuing session shall be committing grave breach of privilege of the legislative assembly as also shall come directly under the disciplinary jurisdiction of all law enforcing authorities including the Governor.

Naharlagun
15th December 2015

T.N. Thongdok
Deputy Speaker”

24. It was also the case of the appellants, that on 16.12.2015, the Deputy Speaker conducted the proceedings of the 6th session of the Assembly, outside the official premises of the State Assembly. It was submitted, that the House assembled at Techhi Takar Community Hall, G Sector, Naharlagun. It was contended, that at the aforesaid unconstitutional session of the Assembly (presided over by the Deputy Speaker), the Deputy Speaker – Tenzing Norbu Thongdok, passed an order declaring, that the erstwhile Speaker – Nabam Rebia’s announcement that the 6th session of the Assembly would not commence on 16.12.2015, was illegal. Having so declared, the Deputy Speaker further ordered, that the 6th session of the Assembly would be convened as rescheduled by the Governor, with effect from 16.12.2015. It was also ordered, that the 6th session of the Assembly

would continue upto 18.12.2015. The order passed by the Governor on 9.12.2015 was thus reiterated, and also given effect to. When the House assembled for the preponed 6th session on 16.12.2015, the notice for a vote of confidence against the Speaker was taken up for consideration. The resolution for removal of the Speaker – Nabam Rebia, was adopted by the Assembly on 16.12.2015 itself. The list of business issued by the Deputy Speaker – Tenzing Norbu Thongdok provided, that the following motions would be taken up on 17.12.2015:

- (i) vote of confidence of the Council of Ministers headed by Shri Nabam Tuki – the then Chief Minister, and
- (ii) expression of confidence in Kalikho Pul, to head the new Council of Ministers.

The second sequence of facts:

25. It is also relevant to mention, that the Speaker – Nabam Rebia, filed Writ Petition (C) No.7745 of 2015 before the Gauhati High Court, challenging *inter alia* the Governor's order dated 9.12.2015, the Governor's message dated 9.12.2015, the alleged holding of the preponed 6th session of the Assembly, outside the House on 16.12.2015, the Deputy Speaker – Tenzing Norbu Thongdok's order dated 15.12.2015, quashing the disqualification order of the 14 MLAs, belonging to the INC, and the resolution dated 16.12.2015 adopting the resolution for removal of the Speaker – Nabam Rebia, and its consequential notification.

26. A Single Bench of the Gauhati High Court, by an interim order dated 17.12.2015 stayed all the aforementioned impugned decisions, till the next date of hearing – 1.2.2016. A relevant extract of the interim order passed by the High Court is reproduced below:

placed before a different Single Bench of the High Court. During the course of hearing of the above writ petition on 19.12.2015, the Governor – Jyoti Prasad Rajkhowa, and the State Government, were impleaded as parties. Two further interlocutory applications bearing nos. 2822 and 2823 of 2015, were filed by 13 and 7 applicants respectively, seeking impleadment in Writ Petition (C) No.7745 of 2015, and were allowed. Through the above applications, the applicants besides seeking impleadment, assailed the maintainability of Writ Petition (C) No.7745 of 2015. They also sought modification/vacation of the interim order (staying the impugned decisions), dated 17.12.2015.

27. It was submitted, that when the Assembly met on 17.12.2015, and the Government headed by the Chief Minister – Nabam Tuki was declared to have lost confidence of the House, Kalikho Pul, another INC MLA, was chosen as the new leader of the House.

28. The learned Single Bench, before whom the matter came to be posted by the acting Chief Justice of the High Court (after the interim order extracted above, had been passed), issued notice for modification/vacation of the interim order (passed by the previous Single Bench) dated 17.12.2015. It was submitted, that without any notice to the appellant, and without affording an opportunity of hearing to the counsel representing the appellant, the successor Single Bench restrained reconvening of the House till 4.1.2016.

29. The two MLAs belonging to the INC (- Bamang Felix and Nyamar Karbak) also approached the High Court by filing Writ Petition (C) No.7998

of 2015. The petitioners in the aforesaid writ petition, *inter alia* assailed the same decisions, as were impugned by Nabam Rebia in Writ Petition (C) No.7745 of 2015 (more or less, on the same grounds). The instant matter came up for hearing, before yet another Single Bench of the High Court. On its first date of hearing, Writ Petition (C) No.7998 of 2015 was directed to be posted for hearing on 4.1.2016, along with the first writ petition – Writ Petition (C) No.7745 of 2015. Resultantly, both the writ petitions came to be posted before the same Single Bench (nominated by the acting Chief Justice, on 18.12.2015).

30. Dissatisfied with the listing of the matters, the appellant herein – Nabam Rebia, filed an Interlocutory Application in Writ Petition (C) No.7745 of 2015, on the judicial side on 23.12.2015, seeking the recusal of the Single Bench, nominated to hear the case by the acting Chief Justice. Writ Petition (C) No.10 of 2016, was independently filed in the High Court, impugning the order of the acting Chief Justice dated 18.12.2015 (communicated by the Joint Registrar (Judicial), after obtaining instructions from the acting Chief Justice), directing the posting of Writ Petition (C) No.7745 of 2015, before a different Single Bench of the High Court.

31. As already noticed above, a prayer for recusal was also made to the learned Single Bench, before which the matter had been posted, by the acting Chief Justice. The learned Single Bench, was asked to recuse from the proceedings in Writ Petition (C) No.7745 of 2015. The acting Chief Justice of the High Court, entertained an Interlocutory Application with a similar prayer, in his chambers on the administrative side, and rejected the

same on 4.1.2016. Writ Petition (C) No.10 of 2016 was dismissed on 7.1.2016 by a Single Bench (other than the one, which had passed the interim order dated 17.12.2016, as also, other than the one to which the acting Chief Justice had assigned Writ Petition (C) No. 7745 of 2015 for hearing – after the passing of the interim order dated 17.12.2016). Dissatisfied with the above determination, the appellant filed Special Leave Petition (C) No.189 of 2016, before this Court. It would be pertinent to mention, that the above special leave petition was withdrawn by the petitioner on 13.1.2016.

The legal challenge, on behalf of the appellants:

32. The High Court disposed of Writ Petition (C) Nos.7745 and 7998 of 2015 by a common order dated 13.1.2016. The instant order is subject matter of challenge, through Special Leave Petition (C) Nos.1259-1260 of 2016.

33. Despite the challenges to the various orders passed by the High Court through different petitions, it was contended on behalf of the appellants, that the determination of Special Leave Petitions (C) Nos.1259-1260 of 2016 would completely and effectively, result in the adjudication of all the issues canvassed at the hands of the appellants, in the connected matters.

34. It was submitted on behalf of the appellants, that for an effective adjudication of the present controversy, it is necessary to understand the duties and responsibilities of the Governor, as envisaged in the scheme of the Constitution. It was highlighted, that the position of the Governor, should not be confused with the impression created by Article 168 – that

the State Legislature includes the Governor. It was submitted, that the Governor cannot be considered even as an officer of the House. Despite the above two express assertions, it was submitted, that it cannot be disputed that the Governor of a State is a part of the State Legislature – just like the President, is a part of the Parliament. It was asserted, that the Governor functions and operates as a bridge between the executive and the legislature. Through an address by the Governor under Article 175, the executive informs the Assembly, about the policies of the Government. The power vested with the Governor, to give his assent to a Bill passed by the Assembly, or to require the matter to be reconsidered by returning the Bill to the legislature, it was pointed out, were powers which a Governor exercised beyond the precincts of the Assembly. This function/power resting with the Governor, according to learned counsel, was clearly beyond the scope of legislative business, conducted within the Assembly. It was pointed out, that when a Governor summons the House, he does not do so at his own will. He summons the House, on the aid and advice of the Chief Minister and his Council of Ministers, after due consultation with the Speaker. The only responsibility entrusted to the Governor, according to learned counsel, is provided for in Article 174, inasmuch as, it is the obligation of the Governor to ensure, that the interval between the last sitting of the previous session, and the first sitting of the succeeding session, is not more than six months.

35. For substantiating the propositions canvassed in the foregoing paragraph, reliance was first placed on Article 158, which expressly

provides, that the "...Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule...". It was pointed out, that as a matter of abundant caution, Article 158 also provides, that in case an incumbent member of the Assembly (or that of the Parliament) is appointed as Governor of a State "... he shall be deemed to have vacated his seat in that House on the date on which he enters his office as Governor". Additionally, reliance was placed on Article 163 to demonstrate, that the Governor is bound by the aid and advice of the Chief Minister and his Council of Ministers. It was acknowledged, that the Governor is also authorized to act independently – on his own, but only in respect of such functions, wherein he is expressly authorized to do so, by or under the Constitution. It was acknowledged, that in such matters which the Governor considers as falling within his independent judgment, "... the decision of the Governor in his discretion shall be final...". And that, the exercise of such discretion, cannot be called in question. It was however pointed out, that such exercise of independent judgment, can only be questioned by way of judicial review.

36. In order to demonstrate the effectiveness of the Governor as a bridge between the executive and the legislature, reliance was placed by learned counsel on Article 167, which provides that it would be the duty of the Chief Minister, to communicate all decisions of the Council of Ministers relating to administration of affairs of the State to the Governor, as well as, proposals with reference to matters on which legislation is contemplated. It was therefore submitted, that the intent expressed in Article 168 should not

be determined from a peripheral reading thereof, but from the scheme envisioned by the surrounding provisions. It was urged, that even though Article 168 provides, that every State Legislature “shall” consist of the Governor, the fact of the matter is, that the Governor has no role in any legislative activity of the House.

37. It was acknowledged, that the Governor was obliged to address the Assembly, in consonance with Article 175(1). It was however urged, that the Governor’s address to the House, was obligated to be in consonance with, the aid and advice of the Chief Minister and his Council of Ministers. It was pointed out, that the same position prevailed, in the matter of sending messages to the House under Article 175(2), which according to learned counsel, was subject to similar aid and advice.

38. Inviting the Court’s attention to Article 178 it was submitted, that the instant Article is a part of Chapter III - under Part VI (which includes Articles 178 to 189), of the Constitution. It was pointed out, that Chapter III bears the heading – “Officers of the State Legislature”. It was pointed out, that the Speaker and the Deputy Speaker are the only two officers of the State Legislative Assembly. And likewise, the Chairman and the Deputy Chairman, are the only officers of the State Legislative Council. Besides the above officers, the staff of a State Legislative Assembly, comprises of the personnel appointed, for carrying on ministerial responsibilities of the secretariat of the Legislature. It was submitted, that no other functionary could be considered as an officer of the State Legislature. The pointed

contention of learned counsel was, that the Governor could not be considered, as an officer of a State Legislative Assembly.

39. In the present sequence of submissions, learned counsel, last of all, referred to Article 208, and urged, that the same allows every State Legislative Assembly to frame rules for regulating the procedure for conducting business of the House. Having drawn the Court's attention to sub-article (3) of Article 208, it was submitted, that the power vested with the Governor to make rules thereunder, was limited to communications between the two Houses (the State Legislative Assembly and the State Legislative Council). It was accordingly contended, that the framing of the above rules of procedure, should not be confused with, the rules for carrying on the business of the House itself. Having invited our attention to Article 163, it was asserted, that the power vested with the Governor under Article 208 by necessary implication, had to be exercised on the aid and advice of the Chief Minister and his Council of Ministers.

40. Having premised his submissions on the aforementioned provisions, reference was made by learned counsel to Paragraph 6 of the Tenth Schedule. Paragraph 6(1), according to learned counsel, leaves no room for any doubt, that on the subject of disqualification of an MLA, the functional authority is vested only with the Speaker. It was further submitted, that reference to Article 212 (cited in Paragraph 6(2), of the Tenth Schedule), was for the sole purpose of granting judicial immunity, to the actions taken on a disqualification motion under Paragraph 6. Most importantly, it was pointed out, that the Governor has no role whatsoever, on the question of

removal of MLAs. And as such, according to learned counsel, it was not open to the Governor to be concerned with, what might or might not emerge, from proceedings conducted by the Speaker under the Tenth Schedule.

41. It is relevant to mention, that learned counsel representing the appellants, also made a reference to Article 361, which postulates *inter alia*, that the Governor of a State is not "... answerable to any court for the exercise and performance of powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties...". Despite the aforesaid protection afforded to the Governor, it was submitted, that in the present controversy, the Governor – Jyoti Prasad Rajkhowa had moved an application for being permitted to be arrayed as a party respondent. This action of the Governor, according to learned counsel, was sufficient to infer, that the actions of the Governor were partisan. It was submitted, that the facts of the case reveal, that the actions of the Governor, were supportive of the BJP for purely political considerations, and that, they were pointedly prejudicial to the interest of the INC. It was asserted, that an analysis of actions of the Governor would reveal, that the Governor was making concerted efforts towards dislodging the INC Government, and/or weakening it by extending support to the faction of the INC MLAs seeking the removal of the Chief Minister – Nabam Tuki.

42. In order to support his contentions, learned counsel placed reliance on debates of the Constituent Assembly. With reference to Article 163, it

was submitted, that the Governor was mandated to discharge his functions in consonance with the aid and advice of the “Council of Ministers with the Chief Minister at the head”. The only exception to the above position was in situations, where an express provision of the Constitution, required the Governor to exercise his functions in his own discretion/judgment. It would be relevant to mention, that draft Article 143 eventually came to be renumbered as Article 163 in the Constitution. The debate highlighted, with reference to the concerned provision, is extracted hereunder:

“Shri H.V. Kamath: (C.P. & Berar: General): Mr. President, Sir, I move:

“That in clause (1) of article 143, the words 'except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion' be deleted.”

If this amendment were accepted by the House, this clause of article 143 would read thus:-

“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.”

Sir, it appears from a reading of this clause that the Government of India Act of 1935 has been copied more or less blindly without mature consideration. There is no strong or valid reason for giving the Governor more authority either in his discretion or otherwise *vis-a-vis* his ministers, than has been given to the President in relation to his ministers. If we turn to article 61(1), we find it reads as follows:-

“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.”

When you, Sir, raised a very important issue, the other day, Dr. Ambedkar clarified this clause by saying that the President is bound to accept the advice of his ministers in the exercise of all of his functions. But here article 143 vests certain discretionary powers in the Governor, and to me it seems that even as it was, it was bad enough, but now after having amended article 131 regarding election of the Governor and accepted nominated Governors, it would be wrong in principle and contrary to the tenets and principles of constitutional Government, which you are going to build up in this country. It would be wrong I say, to invest a Governor with these additional powers, namely, discretionary powers. I feel that no departure from the principles of constitutional Government should be favoured except for reasons of emergency and these discretionary

powers must be done away with. I hope this amendment of mine will commend itself to the House. I move, Sir.

xxx

xxx

xxx

Shri T.T. Krishnamachari: Mr. President, I am afraid I will have to oppose the amendment moved by my honourable Friend Mr. Kamath, only for the reason that he has not understood the scope of the article clearly and his amendment arises out of a misapprehension.

Sir, it is no doubt true, that certain words from this article may be removed, namely, those which refer to the exercise by the Governor of his functions where he has to use his discretion irrespective of the advice tendered by his Ministers. Actually, I think this is more by way of a safeguard, because there are specific provisions in this Draft Constitution which occur subsequently where the Governor is empowered to act in his discretion irrespective of the advice tendered by his Council of Ministers. There are two ways of formulating the idea underlying it. One is to make a mention of this exception in this article 143 and enumerating the specific power of the Governor where he can exercise his discretion in the articles that occur subsequently, or to leave out any mention of this power here and only state it in the appropriate article. The former method has been followed. Here the general proposition is stated that the Governor has normally to act on the advice of his Ministers except in so far as the exercise of his discretions covered by those articles in the Constitution in which he is specifically empowered to act in his discretion. So long as there are articles occurring subsequently in the Constitution where he is asked to act in his discretion, which completely cover all cases of departure from the normal practice to which I see my honourable Friend Mr. Kamath has no objection, I may refer to article 188, I see no harm in the provision in this article being as it is. If it happens that this House decides that in all the subsequent articles, the discretionary power should not be there, as it may conceivably do, this particular provision will be of no use and will fall into desuetude. The point that my honourable Friend is trying to make, while he concedes that the discretionary power of the Governor can be given under article 188, seems to be pointless. If it is to be given in article 188, there is no harm in the mention of it remaining here. No harm can arise by specific mention of this exception of article 143. Therefore, the serious objection that Mr. Kamath finds for mention of this exception is pointless. I therefore think that the article had better be passed without any amendment. If it is necessary for the House either to limit the discretionary power of the Governor or completely do away with it, it could be done in the articles that occur subsequently where specific mention is made without which this power that is mentioned here cannot at all be exercised. That is the point that I would like to draw the attention of the House to and I think the article had better be passed as it is.

Dr. P.S. Deshmukh: (C.P. & Berar: General): Mr. President, Mr. T. T. Krishnamachari has clarified the position with regard to this

exception which has been added to clause (1) of article 143. If the Governor is, in fact, going to have a discretionary power, then it is necessary that this clause which Mr. Kamath seeks to omit must remain.

Sir, Besides this, I do not know if the Drafting Committee has deliberately omitted or they are going to provide it at a later stage, and I would like to ask Dr. Ambedkar whether it is not necessary to provide for the Governor to preside at the meetings of the Council of Ministers. I do not find any provision here to this effect. Since this article 143 is a mere reproduction of section 50 of the Government of India Act, 1935, where this provision does exist that the Governor in his discretion may preside at the meetings of the Council of Ministers, I think this power is very necessary. Otherwise, the Ministers may exclude the Governor from any meetings whatever and this power unless specifically provided for, would not be available to the Governor. I would like to draw the attention of the members of the Drafting Committee to this and to see if it is possible either to accept an amendment to article 143 by leaving it over or by making this provision in some other part. I think this power of the Governor to preside over the meetings of the Cabinet is an essential one and ought to be provided for.

xxx

xxx

xxx

Pandit Hirday Nath Kunzru: (United Provinces: General): Mr. President I should like to ask Dr. Ambedkar whether it is necessary to retain after the words "that the Governor will be aided and advised by his Ministers", the words "except in regard to certain matters in respect of which he is to exercise his discretion". Supposing these words, which are reminiscent of the old Government of India Act and the old order, are omitted, what harm will be done? The functions of the Ministers legally will be only to aid and advice the Governor. The article in which these words occur does not lay down that the Governor shall be guided by the advice of his Ministers but it is expected that in accordance with the Constitutional practice prevailing in all countries where responsible Government exists the Governor will in all matters accept the advice of his Ministers. This does not however mean that where the Statute clearly lays down that action in regard to specified matters may be taken by him on his own authority this article 143 will stand in his way.

xxx

xxx

xxx

I should like to say one word more before I close. If article 143 is passed in its present form, it may give rise to misapprehensions of the kind that my honourable Friend Dr. Deshmukh seemed to be labouring under when he asked that a provision should be inserted entitling the Governor to preside over the meetings of the Council of Ministers. The Draft Constitution does not provide for this and I think wisely does not provide for this. It would be contrary to the traditions of responsible government as they have been established in Great Britain and the British Dominions, that the

Governor or the Governor-General should, as a matter of right, preside over the meetings of his cabinet. All that the Draft Constitution does is to lay on the Chief Minister the duty of informing the Governor of the decisions come to by the Council of Ministers in regard to administrative matters and the legislative programme of the government. In spite of this, we see that the article 143, as it is worded, has created a misunderstanding in the mind of a member like Dr. Deshmukh who takes pains to follow every article of the Constitution with care. This is an additional reason why the discretionary power of the Governor should not be referred to in article 143. The speech of my Friend Mr. Krishnamachari does not hold out the hope that the suggestion that I have made has any chance of being accepted. Nevertheless, I feel it my duty to say that the course proposed by Mr. Kamath is better than what the Drafting Sub-Committee seem to approve.

xxx

xxx

xxx

Shri Alladi Krishnaswami Ayyar: (Madras: General): Sir, there is really no difference between those who oppose and those who approve the amendment. In the first place, the general principle is laid down in article 143 namely, the principle of ministerial responsibility, that the Governor in the various spheres of executive activity should act on the advice of his ministers. Then the article goes on to provide "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. So long as there are article in the Constitution which enable the Governor to act in his discretion and in certain circumstances, it may be, to over-ride the cabinet or to refer to the President, this article as it is framed is perfectly in order. If later on the House comes to the conclusion that those articles which enable the Governor to act in his discretion in specific cases should be deleted, it will be open to revise this article. But so long as there are later articles which permit the Governor to act in his discretion and not on ministerial responsibility, the article as drafted is perfectly in order.

Shri H.V. Pataskar: (Bombay: General): Sir, article 143 is perfectly clear. With regard to the amendment of my honourable Friend Mr. Kamath various points were raised, whether the Governor is to be merely a figure-head, whether he is to be a constitutional head only or whether he is to have discretionary powers. To my mind the question should be looked at from and entirely different point of view. Article 143 merely relates to the functions of the ministers. It does not primarily relate to the powers and functions of a Governor. It only says:

"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." Granting that we stop there, is it likely that any complications will arise or that it will interfere with the discretionary powers which are proposed to be given to the Governor? In my view article 188 is probably necessary and I do not mean to suggest for a moment that

the Governor's powers to act in an emergency which powers are given under article 188, should not be there. My point is this, whether if this Provision, viz., "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion", is not there, is it going to affect the powers that are going to be given to him to act in his discretion under article 188? I have carefully listened to my honourable Friend and respected constitutional lawyer. Mr. Alladi Krishnaswami Ayyer, but I was not able to follow why a provision like this is necessary. He said that instead later on, while considering article 188, we might have to say "Notwithstanding anything contained in article 143." In the first place to my mind it is not necessary. In the next place, even granting that it becomes necessary at a later stage to make provision in article 188 by saying "notwithstanding anything contained in article 143", it looks so obnoxious to keep these words here and they are likely to enable certain people to create a sort of unnecessary and unwarranted prejudice against certain people. Article 143 primarily relates to the functions of the ministers. Why is it necessary at this stage to remind the ministers of the powers of the Governor and his functions, by telling them that they shall not give any aid or advice in so far as he, the Governor is required to act in his discretion? This is an article which is intended to define the powers and functions of the Chief Minister. At that point to suggest this, looks like lacking in courtesy and politeness. Therefore I think the question should be considered in that way. The question is not whether we are going to give discretionary powers to the Governors or not. The question is not whether he is to be merely a figure-head or otherwise. These are questions to be debated at their proper time and place. When we are considering article 143 which defines the functions of the Chief Minister it looks so awkward and unnecessary to say in the same article "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." Though I entirely agree that article 188 is absolutely necessary I suggest that in this article 143 these words are entirely unnecessary and should not be there. Looked at from a practical point of view this provision is misplaced and it is not courteous, nor polite, nor justified nor relevant. I therefore suggest that nothing would be lost by deleting these words. I do not know whether my suggestion would be acceptable but I think it is worth being considered from a higher point of view.

xxx

xxx

xxx

The Honourable Dr. B.R. Ambedkar: Mr. President, Sir, I did not think that it would have been necessary for me to speak and take part in this debate after what my Friend, Mr. T. T. Krishnamachari, had said on this amendment of Mr. Kamath, but as my Friend, Pandit Kunzru, pointedly asked me the question and demanded a reply, I thought that out of courtesy I should say a few words. Sir, the main and the crucial question is, should the Governor

have discretionary powers? It is that question which is the main and the principal question. After we come to some decision on this question, the other question whether the words used in the last part of clause (1) of article 143 should be retained in that article or should be transferred somewhere else could be usefully considered. The first thing, therefore, that I propose to do so is to devote myself of this question which, as I said, is the crucial question. It has been said in the course of the debate that the retention of discretionary power in the Governor is contrary to responsible government in the provinces. It has also been said that the retention of discretionary power in the Governor smells of the Government of India Act, 1935, which in the main was undemocratic. Now, speaking for myself, I have no doubt in my mind that the retention in or the vesting the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government. I do not wish to rake up the point because on this point I can very well satisfy the House by reference to the provisions in the Constitution of Canada and the Constitution of Australia. I do not think anybody in this House would dispute that the Canadian system of government is not a fully responsible system of government, nor will anybody in this House challenge that the Australian Government is not a responsible form of government. Having said that, I would like to read section 55 of the Canadian Constitution.

"Section 55.--Where a Bill passed by the Houses of Parliament is presented to the Governor-General for the Queen's assent, he shall, according to his discretion, and subject to provisions of this Act, either assent thereto in the Queen's name, or withhold the Queen's assent or reserve the Bill for the signification of the Queen's pleasure."

xxx

xxx

xxx

The Honourable Dr. B. R. Ambedkar: I think he has misread the article. I am sorry I do not have the Draft Constitution with me. "Except in so far as he is by or under this Constitution," those are the words. If the words were "except whenever he thinks that he should exercise this power of discretion against the wishes or against the advice of the ministers", then I think the criticism made by my honourable Friend Pandit Kunzru would have been valid. The clause is a very limited clause; it says: "except in so far as he is by or under this Constitution". Therefore, article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my honourable Friend, Pandit Kunzru.

Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government, the only question that arises is, how should we provide for the mention of this

discretionary power? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable Friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143, "that except as provided in articles so and so specifically mentioned-articles 175, 188, 200 or whatever they are". But the point I am trying to submit to the House is that the House cannot escape from mentioning in some manner that the Governor shall have discretion.

Now the matter which seems to find some kind of favour with my honourable Friend, Pandit Kunzru and those who have spoken in the same way is that the words should be omitted from here and should be transferred somewhere else or that the specific articles should be mentioned in article 143. It seems to me that this is a mere method of drafting. There is no question of substance and no question of principle. I personally myself would be quite willing to amend the last portion of clause (1) of article 143 if I knew at this stage what are the provisions that this Constituent Assembly proposes to make with regard to the vesting of the Governor with discretionary power. My difficulty is that we have not as yet come either to article 175 or 188 nor have we exhausted all the possibilities of other provisions being made, vesting the Governor with discretionary power. If I knew that, I would very readily agree to amend article 143 and to mention the specific article, but that cannot be done now. Therefore, my submission is that no wrong could be done if the words as they stand in article 143 remain as they are. They are certainly not inconsistent.

Shri H.V. Kamath: Is there no material difference between article 61(1) relating to the President *vis-a-vis* his ministers and this article?

The Honourable Dr. B.R. Ambedkar: Of course there is because we do not want to vest the President with any discretionary power. Because the provincial Governments are required to work in subordination to the Central Government, and therefore, in order to see that they do act in subordination to the Central Government the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the provincial Governments are supposed to act according to the Constitution or in subordination to the Central Government are observed.

Shri H.V. Kamath: Will it not be better to specify certain articles in the Constitution with regard to discretionary powers, instead of conferring general discretionary powers like this?

The Honourable Dr. B.R. Ambedkar: I said so, that I would very readily do it. I am prepared to introduce specific articles, if I knew what are the articles which the House is going to incorporate in

the Constitution regarding vesting of the discretionary powers in the Governor.

Shri H.V. Kamath: Why not hold it over?

The Honourable Dr. B.R. Ambedkar: We can revise. This House is perfectly competent to revise article 143. If after going through the whole of it, the House feels that the better way would be to mention the articles specifically, it can do so. It is purely a logomachy.”

It is not necessary for us to summarise any inferences or conclusions, from the above debate, as the same are apparent from the suggestions and responses, highlighted above.

43. Reliance was then placed on the decision rendered by a Constitution Bench of this Court in *Samsher Singh v. State of Punjab*¹. The question that arose for consideration in the above case was, whether the Governor as a constitutional head of the State, could exercise powers or functions of appointment and removal of members of the subordinate judicial service, personally? The contention of the State Government was, that the Governor was obliged to exercise powers of appointment and removal, conferred on him by or under the Constitution, like the other executive power of the State Government, only on the aid and advice of the Council of Ministers, and not personally. As against the above stance, the appellants before this Court placed reliance on the decision in *Sardari Lal v. Union of India*², wherein this Court had held, that the President or the Governor, as the case may be, on being satisfied would make an order under Article 311(2), and more particularly, under proviso (c) thereof. It was further held, that the

1

(1974) 2 SCC 831

² (1971) 1 SCC 411

satisfaction of the President or the Governor, in the above matter, was his “personal satisfaction”. It was therefore, the contention of the appellants before this Court, in the above case, that in exercise of powers vested with the Governor under Article 234, the appointment/termination of subordinate judges was to be made by the Governor in exercise of his “personal discretion”. It would also be relevant to mention, that the Samsher Singh case¹ was decided by a seven-Judge Bench, which examined the correctness of the decision rendered in the Sardari Lal case². While debating the issue, this Court in the Samsher Singh case¹, examined the distinction between Articles 74 and 163, and held as under:

“16. It is noticeable that though in Article 74 it is stated that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions, there is no provision in Article 74 comparable to Article 163 that the aid and advice is except in so far as he is required to exercise his functions or any of them in his discretion.

17. It is necessary to find out as to why the words ‘in his discretion’ are used in relation to some powers of the Governor and not in the case of the President.

18. Article 143 in the Draft Constitution became Article 163 in the Constitution. The Draft Constitution in Article 144(6) said that the functions of the Governor under that article with respect to the appointment and dismissal of Ministers shall be exercised by him in his discretion. Draft Article 144(6) was totally omitted when Article 144 became Article 164 in the Constitution, Again Draft Article 153(3) said that the functions of the Governor under clauses (a) and (c) of clause (2) of the article shall be exercised by him in his discretion. Draft Article 153(3) was totally omitted when it became Article 174 of our Constitution. Draft Article 175 (proviso) said that the Governor "may in his discretion return the Bill together with a message requesting that the House will reconsider the Bill". Those words that “the Governor may in his discretion” were omitted when it became Article 200. The Governor under Article 200 may return the Bill together with a message requesting that the House will reconsider the Bill. Draft Article 188 dealt with provisions in case of grave emergencies. Clauses (1) and (4) in Draft Article 188 used the words “in his discretion” in relation to exercise of power by the Governor. Draft Article 188 was totally omitted. Draft Article 285(1) and (2)

dealing with composition and staff of Public Service Commission used the expression "in his discretion" in relation to exercise of power by the Governor in regard to appointment of the Chairman and Members and making of regulation. The words "in his discretion" in relation to exercise of power by the Governor were omitted when it became Article 316. In Paragraph 15(3) of the Sixth Schedule dealing with annulment or suspension of Acts or suspension of Acts and resolutions of District and Regional Councils it was said that the functions of the Governor under the Paragraph shall be exercised by him in his discretion. Sub-paragraph 3 of Paragraph 15 of the Sixth Schedule was omitted at the time of enactment of the Constitution.

19. It is, therefore, understood in the background of these illustrative draft articles as to why Article 143 in the Draft Constitution which became Article 163 in our Constitution used the expression "in his discretion" in regard to some powers of the Governor.

20. Articles where the expression "acts in his discretion" is used in relation to the powers and functions of the Governor are those which speak of special responsibilities of the Governor. These articles are 371A(1)(b), 371A(1)(d), 371A(2)(b) and 371A(2)(f). There are two paragraphs in the Sixth Schedule, namely, 9(2) and 18(3) where the words "in his discretion" are used in relation to certain powers of the Governor. Paragraph 9(2) is in relation to determination of amount of royalties payable by licensees or lessees prospecting for, or extracting minerals to the District Council. Paragraph 18(3) has been omitted with effect from January 21, 1972.

xxx

xxx

xxx

30. In all cases in which the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers he does so by making rules for convenient transaction of the business of the Government of India or the Government of the State respectively or by allocation among his Ministers of the said business, in accordance with Articles 77(3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352 (1), 356 and 360 the satisfaction required by the Constitution is not the personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of Government. The reasons are these. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. Neither Article 77(3) nor Article 166(3) provides for any delegation of power. Both Articles 77(3) and 166(3) provide that the President under Article 77(3) and the Governor under Article 166(3) shall make rules for the more convenient transaction of the business of the Government and the allocation of business among the Ministers of

the said business. The Rules of Business and the allocation among the Ministers of the said business all indicate that the decision of any Minister or officer under the Rules of Business made under these two articles viz., Article 77(3) in the case of the President and Article 166(3) in the case of the Governor of the State is the decision of the President or the Governor respectively.”

44. Based on the determination rendered by this Court in the Samsher Singh case¹, it was submitted, that all functions discharged by the Governor, would have to be based on the aid and advice of the Council of Ministers (with the Chief Minister as the head), and in the instant case, it is apparent, that the Governor had acted on his own, while issuing the order dated 9.12.2015, for summoning the House for 16.12.2015, under Article 174. It was pointed out, that the Governor in the above order had himself recorded, that “... I may not be bound by the advice of the Council of Ministers ...” and had also expressed therein, “... it is a constitutional obligation on my part to ensure that the resolution for removal of the Speaker is expeditiously placed before the Legislative Assembly ...”. And likewise, the message of the Governor dated 9.12.2015, directing that the composition of the House should not be changed, and the manner in which the business of the House was to be conducted when it assembled on 16.12.2015, was issued without any aid and advice.

45. Based on the conclusions recorded in the Samsher Singh case¹, it was contended, that the disqualification process contemplated under the Tenth Schedule, is of no concern, of the Governor. While, it was acknowledged, that the Tenth Schedule was introduced into the Constitution, to maintain and sustain the process of democratic governance, and therefore, the same could not be put on a backburner or suspended. Learned counsel was

emphatic in his submission, that the Governor has no role in the disqualification process contemplated under the Tenth Schedule. And the Speaker alone, has the authority to effectuate in his exclusive discretion, the schedule which needed to be adopted, in the process of disqualification of MLAs. As such, it was asserted, that the fluidity of the democratic process, could not be treated as some kind of justification, for the Governor's order and message dated 9.12.2015.

46. Learned senior counsel also contended, that all actions of the Governor, ought to be in conformity with the aid and advice tendered to him by the Council of Ministers and the Chief Minister, except when mandated otherwise. It was submitted, that where such an express discretion is not provided for, by or under a constitutional provision, the Governor is precluded from exercising his own discretion. Illustratively, he invited our attention to Articles 371-A(1)(b), 371-A(1)(d), 371-A(2)(b) and 371-A(2)(f), wherein the Articles themselves postulate that the Governor would discharge his functions in his individual discretion/judgment. Reliance in this behalf, was placed on *PU Myllai Hlychho v. State of Mizoram*³. It was submitted, that similar discretion has also been vested with the Governor under the provisions of the Fifth and the Sixth Schedules to the Constitution. In this behalf, reference was made to *State of Meghalaya v. KA Brhyien Kurkalang*⁴, *Bhuri Nath v. Sate of Jammu & Kashmir*⁵, and *Samatha v. State of A.P.*⁶. Illustratively, reference was also made to Articles 167, 200 and 356 wherein the Governor is presumed to exercise his powers

³ (2005) 2 SCC 92

⁴ (1972) 1 SCC 148

⁵ (1997) 2 SCC 745

⁶ (1997) 8 SCC 191

at his own discretion, because the above provisions cannot be construed otherwise. It was accordingly asserted, that individual discretion could be exercised by the Governor, only when the Governor was so expressly authorized by a constitutional provision, to exercise his discretion at his own. And not otherwise.

47. It was pointed out, that the functions of the office of the Governor vis-a-vis the State Legislature, are comparable to those of the President with reference to the Parliament and the Central Government. In order to highlight the contours of the duties and responsibilities of the Governor, and the extent to which he can participate in the legislative process, reliance was placed on a treatise by M.N Kaul and S.L. Shakhder – “Practice and Procedure of Parliament”, (5th Edition), published by the Lok Sabha Secretariat. In order to highlight the extent of the Governor’s power and authority, on the subject of summoning the Assembly, reference was made to the following position narrated in Chapter IX, which bears the heading – “Summoning, Prorogation of the Houses of Parliament and the Dissolution of the Lok Sabha”:

“Summoning of Lok Sabha-

The power to summon Lok Sabha is vested in the President. He exercises this power on the recommendation of the Prime Minister or the Cabinet. He may make informal suggestions to the Prime Minister as to the more convenient date and time of summoning the House, but the ultimate advice in this matter rests with the Prime Minister.

In West Bengal consequent on the resignation of eighteen members, including one Minister, from the ruling United Front on 6 November, 1967, prima facie doubts arose about majority support to the Government in the Legislative Assembly. The Governor desired that the Assembly be summoned on 23 November, so that a confidence vote might be taken, but the Chief Minister said that he would call the Assembly into session on 18 December, as scheduled. Thereupon, the Governor dismissed the Ministry on 21 November.

The crisis in West Bengal, as observed by Speaker Reddy, was not unavoidable, for the Governor need not have precipitated matters by insisting on the Chief Minister to convene the Assembly earlier than scheduled, when the interval between the two dates was only of a few days.

In a Resolution adopted at the Conference of Presiding Officers, it was recommended that the Government of India should, in the light of the following observations, take urgent and suitable steps in regard to the powers of Governors to summon or prorogue the Legislatures and to dismiss Ministries:

That a Governor shall summon or prorogue the Legislature on the advice of the Chief Minister. A convention shall be developed that the Chief Minister may fix the dates of summoning or prorogation after consulting the Presiding Officer concerned. The Governor may suggest an alternative date but it shall be left to the Chief Minister or the Cabinet to revise their decision or not. Where, however, there is undue delay in summoning a Legislative Assembly and the majority of members of the Legislative Assembly desire to discuss a Motion of No-confidence in a Ministry and make a request to that effect in writing to the Chief Minister, the Chief Minister shall advise the Governor to summon the Assembly within a week of such request.

The proposal to summon Lok Sabha is initiated by the Minister of Parliamentary Affairs (and by the Leader of the House in case the Prime Minister is not the Leader of the House) and submitted to the Prime Minister, after an informal consultation with the Speaker in regard to the date of commencement and the duration of the session. The Prime Minister may agree with the suggestion or refer it to the Cabinet. The proposal as finally agreed to by the Prime Minister or the Cabinet is formally submitted to the Speaker. If the Speaker also agrees (in the case of a rare disagreement, he may refer the matter back to the Prime Minister for reconsideration), he directs the Secretary-General to obtain the order of the President to summon Lok Sabha on the date and time specified. After the President has signed the order, the Secretariat notifies it in the Gazette Extraordinary and issues a press communiqué for wider publicity in the Press as well as over the All India Radio and Doordarshan.”

And from Chapter XLI under the title – “Parliament and the States”, our attention was invited to the following narration:

“Prorogation of the Assembly

As regards prorogation, the Governor should normally act on the advice of his Council of Ministers. Where a notice of no-confidence against his Ministry is pending in the Assembly, the Governor should first satisfy himself that the notice is not frivolous and is a genuine exercise of the parliamentary right of the Opposition to challenge the Government’s majority. If so satisfied, the Governor should ask the

Chief Minister to face the Assembly and allow the motion to be debated and voted upon. To prorogue the Assembly otherwise would amount to avoidance of responsibility of the Council of Ministers to the Assembly.

If an Assembly or Legislature has been prorogued in a State, the matter may be raised in the Lok Sabha and the Speaker may, in certain circumstances, allow a discussion thereon.

Dissolution of the Assembly

Normally a Governor should exercise the power of dissolution on the advice of the Council of Ministers. If a Chief Minister who enjoys majority support advises dissolution, the Governor must accept the advice, but if he advises dissolution after losing his majority, the Governor need accept his advice only if the Ministry suffers a defeat on a question of major policy and the Chief Minister wishes to appeal to the electorate for a mandate on that policy. In the case of a Chief Minister heading a single party Government which has been returned by the electorate in absolute majority, if the ruling party loses its majority because of defection by at least one-third of its members and the Chief Minister recommends dissolution so as to enable him to make a fresh appeal to the electorate, the Governor may grant a dissolution. The mere fact that some members of the party have defected does not necessarily prove that the party has lost the confidence of the electorate. If there is a no-confidence motion against a Ministry and the chief Minister, instead of facing the Assembly, advises the Governor to dissolve the Assembly, the Governor need not accept such advice, but should ask the Chief Minister to get the verdict of the Assembly on the no-confidence motion.

In a case where the Chief Minister recommends dissolution of the Assembly when the Budget has not been voted and the Ministry claims majority support, the Ministry in such a situation should face the Assembly and get the Budget passed before seeking dissolution for whatever reason. If, on the other hand, there is reason to believe that the Chief Minister no longer commands majority support, it is clearly open to the Governor to take steps to ascertain if it is possible to install another Ministry which is able to command majority support and get the Budget passed. Failing both, the Governor has no alternative except to make a report to the President under article 356 because Parliament alone could then sanction appropriation for carrying on the administration of the State.

A Governor is not bound to accept the advice of a Chief Minister to dissolve the Assembly if the Chief Minister has lost the majority support.”

48. In order to appreciate and effectively interpret Article 174, it was submitted, that it is necessary to examine draft Article 153 drawn by the Drafting Committee. The same is reproduced below:

“153. Sessions of the State Legislature, propagation and dissolution. –
(1) The House or Houses of the Legislature of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.
(2) Subject to the provisions of this article, the Governor may, from time to time –
(a) summon the Houses or either House to meet at such time and place as he thinks fit;
(b) prorogue the House or Houses;
(c) dissolve the Legislative Assembly.
(3) The functions of the Governor under sub-clauses (a) and (c) of clause (2) of this article shall be exercised by him in his discretion.”

In the written comments submitted to draft Article 153, Jayaprakash Narayan suggested, that clause (3) of Article 153 should be deleted. It was his submission, that there was no reason why the Governor in his discretion, should be permitted to summon or dissolve the House, when no such discretionary power was being extended to the President (– with regard to summoning and dissolution, of the Parliament). Another reason expressed by him for deleting the aforesaid clause (3) was, the changed position of selection of Governors, whereby Governors are to be nominated by the President, instead of being elected, as hitherto before. When draft Article 153 came up for debate, Mohd. Tahir suggested, addition of the following words at the end of sub-clause (c) of clause (2) – “If the Governor is satisfied that the administration is failing and the Ministry has become unstable”. It was canvassed, that merely because a Governor did not subscribe to the views of the majority party, he should not have the

discretion to dissolve the House. It was asserted, that there could be no other reason for the dissolution of a House, except mal-administration and instability of the Government. It was therefore, that Dr. B.R. Ambedkar moved, that clause (3) of draft Article 153 be omitted, as the same was inconsistent with the scheme of a “constitutional” Governor. When put to vote, the amendment suggested by Mohd. Tahir was rejected, and the one suggested by Dr. B.R. Ambedkar was adopted. The above draft Article was renumbered as Article 174 of the Constitution.

49. Based on a collective reading of draft Article 153, and Article 174 of the Constitution, according to learned counsel, it was apparent that the original intention of the Constituent Assembly, to vest personal discretion with the Governor, for summoning, proroguing and dissolving the House, was overruled. The above historical background, it was urged, should not be overlooked, and that, Article 174 should be interpreted in a manner as would exclude the personal discretion of the Governor, in the matter of summoning, proroguing or dissolving the House(s) of the State Legislature, in consonance with the obvious intention of the framers of the Constitution. Learned counsel for the appellants, suggested while concluding, that the Governor in the present case, having no discretion to unilaterally summon the Assembly, having done so, while passing the order dated 9.12.2015, had acted unconstitutionally. Consequently, according to learned counsel, all steps taken by the Assembly, pursuant to the order dated 9.12.2015 were liable to be set aside, as unconstitutional and void.

50. The appellants also assailed the validity of the message of the Governor, dated 9.12.2015. In order to demonstrate the contours of the authority of the Governor under Article 175, it was pointed out, that the precursor to Article 175, was Section 63 of the Government of India Act, 1935, which is extracted below:

“63. Right of Governor to address, and send messages to, Chambers.-(1) The Governor may in his discretion address the Legislative Assembly or, in the case of a Province having a Legislative Council, either Chamber of the Provincial Legislature or both Chambers assembled together, and may for that purpose require the attendance of members.

(2) The Governor may in his discretion send messages to the Chamber or Chambers of the Provincial Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom. any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.”

Referring to the words “in his discretion” used in sub-section (2) of Section 63, it was submitted, that Article 175 vests no such discretion, with the Governor. It was therefore contended, that the framers of the Constitution, did not intend to confer any discretion with the Governor, in the matter of sending messages (envisaged under Article 175). Accordingly, it was submitted, that no authority is vested with the Governor under Article 175(2), to send messages in respect of the functioning of the House, at his own. It was pointed out, that there was no question of any right being vested with the Governor, to interfere with the legislative autonomy of the House, by addressing a message to the House under Article 175. It was submitted, that the message of the Governor dated 9.12.2015, was beyond the purview of Article 175(2), and therefore, was liable to be declared unconstitutional.

51. It was also asserted, that the message of the Governor dated 9.12.2015, contained directions to the House. The aforesaid directions, according to learned counsel, would not fall within the purview of messages contemplated under Article 175(2). It was pointed out, that the 'Conduct of Business Rules' framed under Article 208, assigned no such role to the Governor. A Governor, according to learned counsel, cannot determine or interfere with, any issue with reference to the conduct of business, within the Legislative Assembly. In support of the above proposition, reliance was placed on Rule 21, of the 'Conduct of Business Rules', which is extracted below:

“Arrangement of Business, Provisional Programme and List of Business.

(a) Arrangement of Business:

21. Arrangement of Govt. business. On days allotted for the transaction of Government business, such business shall have precedence and the Secretary shall arrange that business in such order as the Speaker may, after consultation with the Leader of the House, determine:

Provided that such order of business shall not be varied on the day that business is set down for disposal unless the Speaker is satisfied that there is sufficient ground for such variation.”

Based on Rule 21, it was submitted, that a Governor has no right to determine the agenda of the business of the House. Or even, the sequence in which the business of the House, was to be conducted. To the above extent, it was submitted, that the message of the Governor dated 9.12.2015, was not only unconstitutional, but also violative of Rule 21. It was therefore submitted, that it was not open to the Governor, to have directed the House, through his message dated 9.12.2015, to take up the resolution for removal of the Speaker, as the first item on the agenda, on 16.12.2015. A reference

was also made to Rules 152 to 154 of the 'Conduct of Business Rules', which are extracted below:

“152. Leave of House to take up resolution.- (1) Subject to the provisions of Article 181 of the Constitution, the Speaker or the Deputy Speaker or such other person as is referred to in clause (2) of Article 180 of the Constitution shall preside when a motion under rule 151 is taken up for consideration.

(2) The member in whose name the motion stands on the list of business shall, except when he wishes to withdraw it, move the motion when called upon to do so, but no speech shall be permitted at this stage.

153. Inclusion of Resolution in the list of.- On the appointed day the Resolution shall be included in the list of business to be taken up after the questions and before any other business for the day is entered upon.

154. Time limit for speeches. – Except with the permission of the Speaker or the person presiding, a speech on the Resolution shall not exceed fifteen minutes in duration:

Provided that the mover of the Resolution when moving the same may speak for such longer time as the Speaker or the person presiding may permit.”

Based on the above Rules, it was urged, that the entire proceedings in the Assembly, are to be regulated by the Speaker (or the Deputy Speaker), and that, the Governor has no role in the proceedings of the House.

52. It was also contended, that the Governor is neither a member of the State Legislative Assembly, nor an officer of the State Legislature, and therefore, a Governor can have no jurisdiction in the functioning, and affairs of the House. It was accordingly asserted, that the intent expressed in Article 168, should not be determined from a cursory reading thereof, but should be visualised from the scheme of the surrounding provisions. The Governor's connectivity and relationship with the House, according to learned counsel, was based on the aid and advice of the Council of Ministers headed by the Chief Minister.

53. It was submitted, that the Governor has no authority whatsoever, to get embroiled with matters falling under the Tenth Schedule. It was urged, that the Speaker, was the sole adjudicatory authority, under the Tenth Schedule, and his actions thereunder cannot be interfered with, by or at the behest of the Governor. It was submitted, that even the Legislative Assembly itself, could not interfere with the Speaker's determination, under the Tenth Schedule. It was urged, that on the same analogy, even the Deputy Speaker of the House, had no authority whatsoever, to set aside an order passed by the Speaker under the Tenth Schedule. It was pointed out, that even the Speaker himself had no power or discretion to review the order of disqualification dated 15.12.2015 (as in the present case). In this behalf, reliance was placed on the following observations recorded in Dr. Kashinath G. Jalmi v. The Speaker⁷:

“49. The power of review which, it is suggested by counsel for the respondents, inheres in the Speaker by necessary implication has to be found in the provisions made in the Tenth Schedule alone, and not elsewhere. Para 7 has to be treated as non-existent in the Tenth Schedule from the very inception, as earlier indicated. As held by the majority in Kihoto Hollohan 1992 Supp (2) SCC 651, judicial review is available against an order of disqualification made by the Speaker under para 6 of the Tenth Schedule, notwithstanding the finality mentioned therein. It is on account of the nature of finality attaching by virtue of para 6, that the judicial review available against the Speaker's order has been labelled as limited in para 110 (at page 711 of SCC) of the decision in Kihoto Hollohan and the expression has to be understood in that sense distinguished from the wide power in an appeal, and no more. As held in Kihoto Hollohan, the Speaker's order is final being subject only to judicial review, according to the settled parameters of the exercise of power of judicial review in such cases, which it is not necessary to elaborate in the present context. The existence of judicial review against the Speaker's order of disqualification made under para 6 is itself a strong indication to the contrary that there can be no inherent power of review in the Speaker, read in the Tenth Schedule by necessary implication. The

⁷ (1993) 2 SCC 703

need for correction of errors in the Speaker's order made under the Tenth Schedule is met by the availability of judicial review against the same, as held in Kihoto Hollohan.

50. In our opinion there is no merit in the submission that the power of review inheres in the Speaker under the Tenth Schedule as a necessary incident of his jurisdiction to decide the question of disqualification; or that such a power existed till November 12, 1991 when the decision in Kihota Hollohan (1992) 1 SCC 309 was rendered; or at least a limited power of review inheres in the Speaker to correct any palpable error outside the scope of judicial review.”

54. It was the pointed assertion of learned senior counsel, that the order of the Deputy Speaker dated 16.12.2015, quashing the Speaker's order dated 15.12.2015 (disqualifying 14 members of the House, belonging to the INC), was totally without jurisdiction. It was also urged, that if any individual including the Deputy Speaker of the Assembly and/or the other 13 disqualified members of the House were aggrieved, they could have legitimately taken recourse to judicial review, either before the jurisdictional High Court under Article 226, or before this Court under Article 32. It was pointed out, that the disqualified MLAs had actually assailed their disqualification orders before the High Court. It was accordingly submitted, that the decision of the Deputy Speaker, quashing the order of the Speaker dated 15.12.2015 (disqualifying 14 MLAs of the INC), was *per se* unconstitutional, it lacked jurisdictional authority, and as such, was unacceptable in law.

55. In addition to the above, it was submitted, that the Deputy Speaker of the Assembly – Tenzing Norbu Thongdok was one of the 14 INC MLAs of the Assembly disqualified by the Speaker vide his order dated 15.12.2015. As such, it was urged, that it was not open to the Deputy Speaker, to set aside the order of his own disqualification. It was submitted, that the aforesaid

determination at the hands of the Deputy Speaker, amounted to the Deputy Speaker acting as a judge in his own cause. It was pointed out, that not only his action was illegal, but the same was also violative of the rules of natural justice. With reference to the importance of the validity (or invalidity) of the order of the Deputy Speaker dated 16.12.2015, it was pointed out, that in case the above order was found by this Court to be unacceptable in law, the participation of the 14 disqualified MLAs belonging to the INC, in the proceedings of the House on 16.12.2016 – and thereafter, was liable to be considered as *non est* in the eyes of law. It is important for us to record, that the validity of above order of the Deputy Speaker, is sub-judice before the jurisdictional High Court at Guwahati.

56. It was submitted, that the proceedings of the Assembly held with effect from 16.12.2015, till the House was prorogued on 18.12.2015 with the participation of the 14 disqualified MLAs belonging to the INC, was nothing but an overt political act of the BJP MLAs, supported by the Governor, to undermine the democratic process in the State. It was submitted, that once the Governor had summoned the leader of the political party, having the largest strength amongst the different political parties, to form Government, without any support from any other political party, the action of the Governor expressed through the order and message dated 9.12.2015 was absolutely undemocratic, and unconstitutional.

57. Mr. F.S. Nariman, learned Senior Advocate entered appearance, in support of the claim raised by the appellants. He represented Bamang Felix – Deputy Chief Whip of the INC. In his opening statement, Mr. Nariman

adopted the factual and the legal submissions advanced on behalf of Nabam Rebia. He pointed out, that he affirmed the submissions advanced by Mr. Kapil Sibal, but would assist the Court, by projecting some further constitutional aspects.

58. In the first instance, learned senior counsel placed reliance on two reports. The first – the Justice Sarkaria Commission report, on “Centre-State Relations”, and the second – the Justice M.M. Punchhi Commission report, on “Constitutional Governance and Management of Centre-State Relations”. It was pointed out, that in the Justice Sarkaria Commission report, Chapter 5 was attributed to the role of the Governor. And in the Justice M.M. Punchhi Commission report, Chapter 4 was ascribed to the role of the Governor. It was asserted, that reference to both the reports would be repetitive, inasmuch as, the conclusions drawn in the Justice Sarkaria Commission report, had been substantially affirmed and reiterated in the Justice M.M. Punchhi Commission report. It was therefore, that learned counsel placed reliance only on the Justice M.M. Punchhi Commission report. He invited our attention to paragraph 4.1.03, of the report, wherein the Commission adopted the reasoning expressed during the proceedings of the Constituent Assembly for arriving at its conclusions. Reference was also made to paragraphs 4.2.09 to 4.2.15 highlighting the fact, that the Governor in exercise of his functions, cannot act in his individual capacity, especially when the function sought to be discharged (by the Governor), is in the realm of executive dispensation. Reliance was also placed on paragraph 4.3 of the report (in its entirety),

which expounds the proposition, that it is not expected of the Governor to embroil himself in day-to-day activities of rival political parties, and that, Governors are expected to be independent, and to act in a manner devoid of any political consideration. It was pointed out, that independence of such actions would include, keeping the State Legislature and the political executive, shielded from the political will of the Union Government. Especially when the concerned State and the Union were not being governed by the same political party/conglomerate. Last of all, reliance was placed on paragraph 4.5, and more particularly, on sub-paragraph 4.5.03, to demonstrate, that a reading of the constitutional provisions had resulted in the two Commissions very clearly expounding, that the Governor was bound to act in consonance with the aid and advice tendered to him, by the Council of Ministers and the Chief Minister. It was pointed out, that the aforesaid mandate was also applicable to situations, where provisions of the Constitution had used expressions like “he thinks fit”. It was pointed out, that only in situations, where a constitutional provision expressly requires the Governor to exercise his functions in his own discretion, it is open to the Governor to do so. Only then, the exercise of such discretion, will be deemed to have been constitutionally exercised. Paragraphs of the Justice M.M. Punchhi Commission report, relied upon by learned senior counsel, are extracted hereunder:

“4.1.03 Dr. B.R. Ambedkar, highlighted the Constitutional role of the Governor in following terms:

“The Governor under the Constitution has no functions which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to perform, and I think the House will do well to bear in mind this distinction. This Article (Article 167) certainly, it

should be borne in mind, does not confer upon the Governor the power to overrule the Ministry on any particular matter. Even under this Article, the Governor is bound to accept the advice of the Ministry... This Article, nowhere, either in clause (a) or clause (b) or clause (c), says that the Governor in any particular circumstances may overrule the Ministry. Therefore, the criticism that has been made that this Article somehow enables the Governor to interfere or to upset the decision of the Cabinet is entirely beside the point, and completely mistaken.

A distinction has been made between the functions of the Governor and the duties which the Governor has to perform. My submission is that although the Governor has no functions still, even the Constitutional Governor, that he is, has certain duties to perform. His duties according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because, the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty which the Governor has, and must have, is to advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for a reconsideration. I do not think that anybody in this House will question the fact that the Governor should have this duty cast upon him; otherwise, he would be an absolutely unnecessary functionary: no good at all. He is the representative not of a party; he is the representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on at a level which may be regarded as good, efficient, honest administration. I submit that he cannot discharge the constitutional functions of a Governor which I have just referred to unless he is in a position to obtain the information... It is to enable the Governor to discharge his functions in respect of a good and pure administration that we propose to give the Governor the power to call for any information...

4.2.09 The Governor does not exercise the executive functions individually or personally. The State Government at various levels takes executive action in the name of the Governor in accordance with the rules of business framed under Article 166(3). Hence, it is the State Government and not the Governor who may sue or be sued in respect of any action taken in the exercise and performance of the powers and duties of his office [Articles 361, 299(2) and 300].

4.2.10 The Governor enjoys the same privileges as the President does under Article 361 and he stands, in this respect, on the same footing. Article 361 states that neither the President nor the Governor can be sued for executive actions of the Government. The reason is that neither the President nor the Governor exercises the executive functions individually or personally.

4.2.11 The Governor is not answerable to any court for the exercise and the performance of the powers and duties of his office, or for 'any act done or purporting to be done by him' in the exercise and

performance of those duties. The words 'purporting to be done by him' are of very wide import, and even though, the act is outside the scope of his powers, so long it is professed to be done in pursuance of the Constitution, the Governor will be protected.

4.2.12 Lack of bona-fide vitiates executive action, but due to the operation of Article 361 the Governor is not personally responsible. Even where the Governor's bonafide is in question while exercising his discretionary powers, such as appointment and dismissal of Chief Minister, he cannot be called to enter upon defense. The Madras High Court had held that a combined reading of Articles 154, 163 and 361 would show that the immunity against answerability to any Court is regarding functions exercised by the Governor qua Governor and those functions in respect of which he acts on the advice of the Council of Ministers or in his discretion.

4.2.13 In the recent case of Rameshwar Prasad, Chief Justice Sabharwal, while stating the majority opinion held: The immunity granted to the Governor under Article 361(1) does not affect the power of the Court to judicially scrutinize the attack made to the proclamation issued under Article 361(1) of the Constitution of India on the ground of mala fides or it being ultra vires. It would be for the Government to satisfy the court and adequately meet such ground of challenge. A mala fide act is wholly outside the scope of the power and has no existence in the eyes of law. Even, the expression "purporting to be done" in Article 361(1) does not cover acts which are mala fide or ultra vires and, thus, the Government supporting the proclamation under Article 361(1) shall have to meet the challenge.

The personal immunity from answerability provided in Article 361(1) does not bar the challenge that may be made to their actions. Under law, such actions including those actions where the challenge may be based on the allegations of mala fides are required to be defended by Union of India or the State, as the case may be. Even in cases where the personal mala fides are alleged and established, it would not be open to the Governments to urge that the same cannot be satisfactorily answered because of the immunity granted. In such an eventuality, it is for the respondent defending the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegation of personal mala fides are made. Article 361(1) does not bar filing of an affidavit if one wants to file on his own. The bar is only against the power of the Court to issue notice or making the President or the Governor answerable. In view of the bar, the Court cannot issue direction to President or Governor for even filing of affidavit to assist the Court.

4.2.14 In a very limited field, however, the Governor may exercise certain functions in his discretion, as provided in Article 163(1). The first part of Article 163(1) requires the Governor to act on the advice of his Council of Ministers. There is, however, an exception in the latter part of the clause in regard to matters where he is by or under the Constitution required to function in his discretion. The expression

"required" signifies that the Governor can exercise his discretionary powers only if there is a compelling necessity to do so. It has been held that the expression "by or under the Constitution" means that the necessity to exercise such powers may arise from any express provision of the Constitution or by necessary implication. We would like to add that such necessity may also arise from rules and orders made "under" the Constitution."

4.2.15 Thus, the scope of discretionary powers as provided in the exception in clause (1) and in clause (2) of Article 163 has been limited by the clear language of the two clauses. It is an accepted principle that in a parliamentary democracy with a responsible form of government, the powers of the Governor as Constitutional or formal head of the State should not be enlarged at the cost of the real executive, viz. the Council of Ministers. The scope of discretionary powers has to be strictly construed, effectively dispelling the apprehension, if any, that the area for the exercise of discretion covers all or any of the functions to be exercised by the Governor under the Constitution. In other words, Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. The area for the exercise of his discretion is limited. Even this limited area, his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith and tempered by caution.

4.3 Role of Governor in Management of Centre-State Relations

4.3.01 The role of the Governor has been a key issue in the matters of Central State relations. The Constitution of India envisages three tiers of Government - the Union, State and the Local Self-Government. In the light of a volatile Political system prevailing today, it is pertinent to recognize the crucial role played by the Governors in the working of the democratic framework. Addressing the Conference of Governors in June 2005, the President of India, Dr. A.P.J. Abdul Kalam stressed the relevance of recommendations of the Sarkaria Commission and observed that "While there are many checks and balances provided by the Constitution, the office of the Governor has been bestowed with the independence to rise above the day-to-day politics and override compulsions either emanating from the central system or the state system. "The Prime Minister, Dr. Manmohan Singh on the same occasion noted that "you are the representatives of the centre in states and hence, you bring a national perspective to state level actions and activities". The then Vice-President of India, Shri G.S. Pathak, had remarked in 1970 that "in the sphere which is bound by the advice of the Council of Ministers, for obvious reasons, the Governor must be independent of the center" as there may be cases "where the advice of the Center may clash with advice of the State Council of Ministers" and that "in such cases the Governor must ignore the Centre's "advice" and act on the advice of his Council of Ministers."

4.3.02 One highly significant role which he (Governor) has to play under the Constitution is of making a report where he finds that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The Governor is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. He is an independent constitutional office which is not subject to the control of the Government of India.

4.3.03 The Court in Rameshwar Prasad case affirmed the following views of the Sarkaria Commission that the Governor needs to discharge "dual responsibility" to the Union and the State. Further, most of the safeguards as regards the working of the Governor will be such as cannot be reduced to a set of precise rules of procedure or practice. This is so because of the very nature of the office and the role of the Governor. The safeguards have mostly to be in the nature of conventions and practices, to be understood in their proper perspective and faithfully adhered to, not only by the Union and the State Governments but also by the political parties.

4.5 Powers of the Governor in the Context of Harmonious Centre-State Relations

Article 163 of the Constitution, unlike Article 74, carves out two ways in which the power of the Governor must be exercised. One, in which the Governor has to act in accordance with the aid and advice of the Council of Ministers and two, where he exercises his personal discretion. The concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. The normal rule is that the Governor acts on the aid and advice of the Council of Ministers, but there are exceptions under which the Governor can act in his own discretion. The powers in exercise of which the Governor has to use his personal discretion have now been settled through judicial pronouncements. In relation to other powers, even though the Constitution uses phrases like "he thinks fit" and "in exercise of his discretion", the Governor must act on the aid and advise of the Council of Ministers.

Article 163(2) gives an impression that the Governor has a wide, undefined area of discretionary powers even outside situations where the Constitution has expressly provided for it. Such an impression needs to be dispelled. The Commission is of the view that the scope of discretionary powers under Article 163(2) has to be narrowly construed, effectively dispelling the apprehension, if any, that the so-called discretionary powers extends to all the functions that the Governor is empowered under the Constitution. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area, his choice of action should not be nor appear to be arbitrary or fanciful. It

must be a choice dictated by reason, activated by good faith and tempered by caution.

The Governor's discretionary powers are the following: to give assent or withhold or refer a Bill for Presidential assent under Article 200; the appointment of the Chief Minister under Article 164; dismissal of a Government which has lost confidence but refuses to quit, since the Chief Minister holds office during the pleasure of the Governor; dissolution of the House under Article 174; Governor's report under Article 356; Governor's responsibility for certain regions under Article 371-A, 371-C, 371-E, 371-H etc. These aspects are now considered below:

4.5.03 Dismissal of the Chief Minister

It has already been stated that the Council of Ministers occupy office upon the pleasure of the Governor. Further, Article 164 states that Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. So the question arose as to whether the discretion of the Governor or his pleasure is curtailed by the fact that the Ministers no longer enjoy the confidence of the House. Courts have time and again clarified that the discretion of the Governor is not fettered by any condition or restriction. It was held that the Assembly could only express want of confidence in the Ministry; it can go no further. The power to dismiss solely and entirely rests with the Governor. However, the fact that the Ministry has lost confidence is a major consideration for its dismissal.

The Sarkaria Commission recommended that if a Government loses its majority, it should be given a chance to prove whether it has a majority or not on the floor of the House. The Governor should not dismiss a Council of Ministers, unless the Legislative Assembly has expressed on the floor of the House its want of confidence in it. He should advise the Chief Minister to summon the Assembly as early as possible. If the Chief Minister does not accept the Governor's advice, the Governor may, summon the Assembly for the specific purpose of testing the majority of the Ministry. The Assembly should be summoned to meet early within a reasonable time. What is "reasonable" will depend on the circumstances of each case. Generally, a period of 30 days will be reasonable, unless there is very urgent business to be transacted, such as passing the Budget, in which case, a shorter period may be indicated. On the question of dismissal of a Chief Minister, the Governor should invariably insist on the Chief Minister proving his majority on the floor of the House for which he should prescribe a time limit. This view of the Sarkaria Commission ought to be considered in the form of a Constitutional Amendment.

4.5.04 Summoning, proroguing and dissolution of the legislative assembly

Article 174 of the Constitution empowers the Governor to summon, prorogue or dissolve the House. It is a well-recognised principle that, so long as the Council of Ministers enjoys the confidence of the

Assembly, its advice in these matters, unless patently unconstitutional must be deemed as binding on the Governor. It is only where such advice, if acted upon, would lead to an infringement of a constitutional provision, or where the Council of Ministers has ceased to enjoy the confidence of the Assembly, that the question arises whether the Governor may act in the exercise of his discretion. The Sarkaria Commission recommended that, if the Chief Minister neglects or refuses to summon the Assembly for holding a "Floor Test", the Governor should summon the Assembly for the purpose. As regards proroguing a House of Legislature, the Governor should normally act on the advice of the Chief Minister. But where the latter advises prorogation when a notice of no-confidence motion against the Ministry is pending, the Governor should not straightaway accept the advice. If he finds that the no-confidence motion represents a legitimate challenge from the Opposition, he should advise the Chief Minister to postpone prorogation and face the motion. As far as dissolution of the House is concerned, the Governor is bound by the decision taken by the Chief Minister who has majority. However, if the advice is rendered by a Chief Minister who doesn't have majority, then the Governor can try to see if an alternate government can be formed and only if that isn't possible, should the house be dissolved. This Commission reiterates the recommendations of the Sarkaria Commission in this regard."

59. Learned senior counsel then placed reliance on Article 166, which postulates the manner of conducting the executive business of the State Government. It was pointed out, that the Governor, has been assigned the responsibility of framing rules under Article 166. For the State of Arunachal Pradesh, these rules were notified on 9.4.1987 – the Arunachal Pradesh Rules of Executive Business, 1987 (hereinafter referred to as, the Rules of Executive Business). It was submitted, that Part-I of the Rules of Executive Business containing Rules 4 to 12 are clustered under the heading – “Allocation and Disposal of Business”. Whereas Part-II containing Rules 13 to 21, are grouped under the heading – “Procedure of the Cabinet”. Learned counsel thereupon, invited our attention to Rule 4

from Part-I and Rules 13 and 14 from Part-II, which are being extracted hereunder:

Part I

xxx

xxx

xxx

Rule 4

“4. The business of the Government shall be transacted in its different departments. Allocation of subjects among the departments shall continue to be as set out in the Government of Arunachal Pradesh (Allocation) Rules, 1975 (as notified from time to time) until new Rules are prescribed.”

Part II

xxx

xxx

xxx

Rules 13 and 14

“13. The Chief Secretary shall be the Secretary to the Cabinet and another officer shall be designated to be the Joint Secretary to the Cabinet. In the absence of both the Chief Secretary and the Joint Secretary to the Cabinet the Chief Minister may appoint for this purpose any other Secretary to function as the Secretary to the Cabinet.

14. All cases referred to as in the schedule shall, after consideration by the Minister be sent to the Secretary with a view to obtaining orders of the Chief Minister for circulation of the case under Rule 16 or for bringing it for consideration at a meeting of the Cabinet.”

60. Learned counsel then drew our attention to the Schedule referred to in Rules 8 and 14, and further invited our attention, to item no.4 in the said Schedule which is extracted below:

“Proposals to summon, prorogue or dissolve the legislature of the State”.

It was urged on behalf of the appellants, that in the matter of summoning the House for 16.12.2015, the procedure contemplated under Rules 8, 13 and 14 ought to have been adopted. But the same was breached. Learned senior counsel further pointed out, that while passing the order dated 3.11.2015 (when the same Governor had summoned the 6th session of the House to meet at 10 a.m. on 14.1.2016), the procedure contemplated under Rules 8 and 14 was duly followed. Learned counsel then referred to the

summoning particulars to demonstrate, that the proposal to summon the 6th session of the House, had emanated from the Chief Minister. The Court's attention was also invited to the fact, that the Speaker of the Assembly had also been consulted, on the matter, as also the duration of the 6th session, whereupon, the Chief Minister submitted the outcome on the matter to the Governor. It was pointed out, that the Governor had duly accepted the proposal, and had scheduled the 6th session of the Assembly, to meet at 10 a.m. on 14.1.2016. It was asserted, that the above rules framed under Article 166 were binding and every constitutional authority, including the Governor of the State, who is bound to carry out his functions/duties in compliance therewith.

61. In addition to the above, our attention was invited to the 'Conduct of Business Rules', framed under Article 208. Learned senior counsel pointedly drew our attention to Rule 3, which is extracted hereunder:

"3. The Chief Minister shall, in consultation with the Speaker, fix the date of commencement and the duration of the session, advise the Governor for summoning the Assembly under Article 174 of the Constitution."

A perusal of the above rule, according to learned senior counsel, postulates a procedure, similar to the one contemplated under the Rules of Executive Business, framed under Article 166. It was submitted, that in view of the clear mandate of Rule 3 extracted above, not only the Rules of Executive Business, framed under Article 166 must be deemed to have been breached by the Governor (through his order dated 9.12.2015), the Governor must also be deemed to have breached Rule 3 of the Conduct of Business Rules, framed under Article 208. It was therefore the contention of learned

counsel for the appellants, that the order of the Governor dated 9.12.2015, preponing the 6th session of the Assembly from the earlier determined date – 14.01.2016, by summoning it for 16.12.2015, was in breach of the rules framed under the Constitution, and was liable to be set aside.

The foundation of the respondents' case:

The third sequence of facts:

62. A notice of resolution for the removal of the Speaker – Nabam Rebia, was moved on 19.11.2015. This factual position is not in dispute. The authors of this notice were 13 MLAs – 11 belonging to the BJP and 2 Independent MLAs. It was submitted on behalf of the appellants, that a notice of resolution dated 16.11.2015 was moved by 16 MLAs, all belonging to the INC, for the removal of the Deputy Speaker - Tenzing Norbu Thongdok. This factual position is disputed at the hands of the respondents. The claim of the respondents before this Court was, that no such resolution had been moved under Article 179, for the removal of the Deputy Speaker. During the course of hearing, we ventured to determine the factual position. In support of their assertion, learned counsel for the appellants invited our attention to a xerox copy of the notice dated 16.11.2015, which is reproduced below:

“To,
The Secretary
Arunachal Pradesh Legislative Assembly
Naharlagun.

Sub: Resolution for Removal of Deputy Speaker, under Article 179(c) of Constitution of India and Rule 151 (Chapter XX) of Rules of procedure and conduct of Business AP Legislative Assembly.

Sir,

We the Members of the 6th Arunachal Pradesh Legislative Assembly do here by move this resolution as per the Articles and Rules quoted in

the subject cited above. The specific Charges against the incumbent Deputy Speaker warranting his removal from the post are as below:

1. The Deputy Speaker is absent from attending his office continuously for a period three months which shows disability to hold the post of Deputy Speaker

2. The Deputy Speaker is involved in active political dissidence activity and thereby demeaning the office of the Deputy Speaker and also there by the neutrality and sanctity of the Legislative Assembly is at stake.

Therefore, we request you to kindly accept this resolution and initiate necessary action immediately.

Yours Sincerely”

All 16 MLAs had affixed their signatures, below the above notice. Having perused the aforesaid document, and having found no clear endorsements thereon (depicting the receipt thereof, in the office of the Secretary, Arunachal Pradesh Legislative Assembly), we called for the original. During the hearing, learned counsel representing the appellants adopted the stance, that the original resolution was in the custody of the respondents, whereas, learned counsel for the respondents pleaded to the contrary, namely, that the same was in the custody of the appellants. It is therefore apparent, that even though the Court desired to peruse the original resolution moved by 16 MLAs for the removal of the Deputy Speaker, the same was never produced for consideration. For sure the appellants, if nothing else, could have filed an affidavit of the concerned 16 MLAs, along with a copy of the resolution. But they did nothing of the sort.

63. Despite the above, it was asserted on behalf of the respondents, that there was substantial material on the record of the case, to demonstrate that such a resolution had never been moved. In order to establish that the notice dated 16.11.2015 was actually submitted, learned counsel for the appellants referred to a letter dated 7.12.2015 addressed by the Deputy

Secretary – Minik Damin (attached to the Governor), to the Secretary of the Legislative Assembly. The above communication which bore reference number GS/I-115/00 (Vol.II)/6742, is being extracted hereunder:

“To

The Secretary,
Arunachal Pradesh Legislative Assembly,
Arunachal Pradesh,
Naharlagun.

Sub: Notice of Resolution for removal of Deputy Speaker.

Sir,

I am directed to inform you that there is a Notice of Resolution for removal of Deputy Speaker. A copy of the resolution may kindly be forwarded to this Office for information and perusal of His Excellency the Governor. The Hon'ble Governor would also like to have the following information on the above stated resolution at the earliest.

1. Date of receipt of the notice of the resolution in the Legislative Assembly.
2. Action taken by the Legislative Assembly on the notice.
3. Highlight of the precedents, if any.

Kindly ensure that replies of above points are sent latest by 8th December, 2015.

Yours faithfully,
signed (illegible)
07.12.2015
(Minik Damin)

Deputy Secretary to Governor”

The aforesaid communication, according to learned counsel for the appellants, was responded to by the Secretary of the Legislative Assembly on the following day, i.e., 8.12.2015. The response is extracted below:

“To,

The Secretary to Governor,
Governor's Secretariat,
Raj Bhawan,
Itanagar.

Sub: Notice of Resolution of Removal of Hon'ble Deputy Speaker.

Sir,

With reference to your letter No. GS/1-115/00 (Vol-II) 6742 dated 7th December, 2015 on the above mentioned subject, I am to

furnish the following information required by you for kind perusal of His Excellency, the Governor.

1. Date of Receipt of the Notice of the Resolution of the Legislative Assembly. : 16th November, 2015.
2. Action Taken by the Legislative Assembly on Notice : File processed and under consideration of Hon'ble Speaker.
3. Highlight of the precedent. : Nil

Yours faithfully,
signed
8/XII/15
(M.LASA)
Secretary,
Arunachal Pradesh
Legislative Assembly,
Naharlagun.



Signed (illegible)
8/12/15”

64. Learned counsel for the appellants emphatically pointed out, that the reply of the Secretary of the Legislative Assembly, was expressly to the letter bearing reference number GS/1-115/00(Vol-II)/6742. The said reference number was recorded in the letter, addressed by the Deputy Secretary attached to the Governor. Additionally, it was pointed out, that the Secretary to the Governor was pointedly informed, that the notice of the resolution of the Legislative Assembly for the removal of the Deputy Speaker, was received in the office of the Secretary of the Legislative Assembly on 16.11.2015. And it was noted in the reply, that the file was processed, and was under consideration of the Speaker. It was therefore asserted on behalf of the appellants, that the Governor had complete information about the initiation of the notice of resolution for the removal of

the Deputy Speaker under Article 179, and yet, the Governor continued to feign ignorance about the same.

65. In order to controvert the factual position brought to our notice on behalf of the appellants, learned senior counsel for the respondents, placed reliance on a note of Tage Habung – Superintendent of Police-cum-ADC to Governor, and the endorsement recorded thereon, which is extracted below:

“N O T E

Today dated 8th Dec'2015, I had gone to L/Assembly secretariat, Naharlagun and meet the Secretary, Addll. Secretary, OSD to speaker, under secretary and section officer. I have apprised them about the letter issued from Governor's Secretariat to Secretary A.P. Legislative Assembly, Naharlagun regarding the notice of resolution for removal of speaker and deputy speaker. It is learned that the said file is at the official residence of Hon'ble Speaker at Itanagar.

Further it is learned that Hon'ble speaker is on tour in his home constituency. He is likely to return late night today.

For information please.

signed (illegible)
(Tage Habung) SP
ADC to Governor

Dy. Secretary to Governor



H.E. may like to Peruse Please.

Signed
8.12.15
D.S.

Illegible
signed
08.12.15”

Based on the note/endorsement extracted above, it was submitted, that even though the Deputy Secretary to the Governor, through his communication dated 7.12.2015, had sought “A copy of ...” the notice of

resolution for the removal of the Deputy Speaker – Tenzing Norbu Thongdok, the same was not furnished to the Governor. Further more, it was pointed out from the note/endorsement dated 8.12.2015 (of the Superintendent of Police-cum-ADC to the Governor), that even on his visit to the office of the Speaker, when he had met the Secretary, the Additional Secretary and the Officer-on-Special Duty to the Speaker, he was not furnished with a copy of the notice of resolution for the removal of the Deputy Speaker. Rather he was informed, that the same was in the personal custody of the Speaker, who was on tour in his home constituency. Learned counsel for the respondents wishes us to draw a very important inference, from their instant assertion. That, the factum of the custody of the notice of resolution for the removal of the Deputy Speaker, was allegedly in the custody of the Speaker of the House, and that, the Speaker never ever produced the original thereof. And the Speaker, who is one of the appellants before this Court, did not produce the same, even when it was called for by the Court. And secondly, despite repeated efforts made by the Governor, to obtain a copy of the notice of resolution for the removal of the Deputy Speaker – Tenzing Norbu Thongdok, no such copy was ever furnished to him, by the office of the Secretary of the Legislative Assembly.

66. More important than the factual inferences drawn in the foregoing paragraph, was the assertion at the hands of the respondents, that the letter addressed by the Secretary of Legislative Assembly dated 8.12.2015, to the Secretary to the Governor extracted hereinabove, was a forged and

fabricated document. The accusation was aimed at the appellants, who alone could be beneficiaries of the above resolution. To demonstrate, that the communication dated 8.12.2015 was a forged and fabricated document, the Court's attention was drawn towards a similar intimation, about the notice of resolution for the removal of the Speaker, on the very same day – 8.12.2015. The above communication, bearing endorsement number LA/Leg.26/2015, is extracted hereunder:-

“Dated Naharlagun, the 8th Dec, 2015.

To,
The Secretary to Governor,
Governor Secretariat,
Raj Bhawan Itanagar,
Arunachal Pradesh.

Sub:- Notice of Resolution for Removal of Hon'ble Speaker.
Sir,

With reference to your Letter No.GS/1-115/00 (Vol.II) 6743, Dated 07/12/2015, on the above mentioned subject, I am to furnish the following information required by you for kind perusal of His Excellency the Governor.

1. Date of receipt of the notice of the resolution of the Legislative Assembly. 19/11/2015
2. Action taken by the Legislative Assembly on the notice File processed and under consideration of Hon'ble Speaker
3. Highlight of the precedents, if any. Nil.



Yours faithfully,
signed
(M. Lasa)
Secretary,
Arunachal Pradesh, Legislative Assembly
Naharlagun.”

It was the submission of learned senior counsel for the respondents, that the letter-head on which the two communications were addressed by the Secretary of the Legislative Assembly on 8.12.2015, depicting details of the

resolutions for the removal of the Speaker and the Deputy Speaker, even though addressed on the same day, were different. Having perused the same, we hereby affirm the assertion. It was also pointed out, that the seal of the receipt affixed by the Governor's Secretariat, on the two letters were markedly different, inasmuch as, the seal of the Governor's Secretariat on the letter bearing no.LA/LEG-24/2015 (pertaining to the notice of resolution for the removal of the Deputy Speaker) was of long and almost twice the size of the seal on the letter bearing no. LA/LEG-26/2015 (pertaining to the notice of resolution for the removal of the Speaker), which was circular. The former letter merely recorded in writing the date 8.12.2015 on the receipt, whereas the latter bears a printed receipt number, as also, a printed date of receipt, which we were informed, is the usual practice adopted in the Secretariat of the Governor.

67. To contest the above accusation, it was submitted on behalf of the appellants, that no receipt number was depicted even in the former letter bearing no. LA/LEG-24/2015, dated 8.12.2015, which the respondents acknowledge as genuine. The respondents therefore placed reliance on a third communication, which was also addressed by the Secretary of the Legislative Assembly, to the Commissioner to the Governor, on the subject of preponement of the 6th Legislative Assembly. The instant communication, bearing endorsement number LA/LEG-23/2015, is extracted below:

“To,
The Commissioner,
to the Governor,
Arunachal Pradesh,

Itanagar.

Sub: Preponing of Sixth Legislative Assembly.

Sir,

Please refer Deputy Secretary's letter NO.GS/1-11/00 (Vol. - II/6778 dated 10.12.2015 forwarding (i) Order modifying summons dated 3rd November, 2015 under 174(1) of the Constitution of India; and (ii) Message under article 175 (2) of the Constitution of India.

This office had issued summons for the Sixth Session of Sixth Legislative Assembly conveying the order dated 03.11.2015 of His Excellency. Accordingly, this office has swung in to action and initiated all necessary steps for conducting the Session with effect from 14th January, 2015. In the meantime we have received a communication referred above from the Deputy Secretary, Governor's Secretariat preponing the assembly session and fixing the agenda for the Session.

I am to state that as per normal practice and procedure the notice for summoning of the Assembly Session should reach the Legislative Assembly Secretariat through the Department of Parliamentary Affairs Department of the State Govt. Secondly, under article 174 there is no provision to prepone or postpone Assembly Session without consulting the Govt./Speaker. Article 175 clearly relates that His Excellency can address and send messages to when the House in Session.

It may be mentioned here that as per rules and procedure of Arunachal Pradesh Legislative Assembly agenda for any session is finalized by the Business Advisory Committee as per order of precedence in the Rules.

However, Legislative Assembly Secretariat has obtained legal opinion and advice from the Learned Advocate General of Arunachal Pradesh which is enclose herewith for your perusal and guidance.

Recd at
3 pm. Please
put up on file
expeditiously. – US (NN) to
receive a copy
signed
14/12



US (NN)

D.S.

State Cabinet in its meeting held today at 1000 hrs has also conveyed its resolution which is reproduced below for your perusal "We have also received the opinion of the Ld. Advocate General dated 12.12.2015 on the said Order and Message. The Cabinet has per used the said opinion and is in complete agreement with views the Ld. Advocate General.

The said order dated 09.12.2015 issued by His Excellency the Governor of Arunachal Pradesh is in contradiction to Article 174 read

with Article 163 of the Constitution of India and Rule 3 of the Rules of Procedure and Conduct of Business ("Rules"). Similarly, the message is contrary to Article 175 of the Constitution read with Rule 245 of the Rules.

We, therefore advise the Hon'ble Speaker not to take any action on the said Order and Message. The concerned officers are accordingly directed to take necessary action."

In view of above, we have no other alternative but to stick to the earlier order of His Excellency to convene the Sixth Assembly Session with effect from 14th to 18th January, 2015 excluding the holidays.

Yours faithfully,
signed (illegible)

(M. Lasa)

Secretary,

Arunachal Pradesh, Legislative Assembly"

68. It was submitted on behalf of the respondents, that the seal on the receipt of the instant communication in the Governor's Secretariat, is identical to the receipt of the notice of resolution for the removal of the Speaker. This communication, according to learned counsel for the respondents, was a genuine communication, which was duly received at the Governor's Secretariat. The reliance on the instant communication dated 14.12.2015, according to learned senior counsel, is of utmost significance to determine, that fraud had been played by the appellants. This assertion was sought to be demonstrated, by depicting the numbers assigned to the three communications of the office of the Secretary of the Legislative Assembly, coupled with the date of issuance thereof. We may tabulate the position as under:

| Sl. No. | Letter Nos. | Dated | Receipt No. and date thereof at the Governor's Secretariat |
|---------|----------------|---------------------------------|--|
| 1. | LA/LEG-23/2015 | 14 th December, 2015 | Receipt No. 6246 dated 14.12.2015 |
| 2. | LA/LEG-24/2015 | 8 th December, 2015 | Receipt No. Nil, dated 8.12.2015 |
| 3. | LA/Leg.26/2015 | 8 th December, 2015 | Receipt No.6127 dated |

8.12.2015

The three letters to which our attention was drawn bore numbers 23, 24 and 26. The first communication which bears no. LA/LEG-23/2015 was dated 14.12.2015. The said communication was addressed by M. Lasa – Secretary of the Legislative Assembly, to Commissioner to the Governor, Arunachal Pradesh. It pertained to the preponement of the 6th Legislative Assembly. In seriatim, the second communication bearing no. LA/LEG-24/2015 was dated 8.12.2015. The said communication was also addressed by M. Lasa – Secretary of the Legislative Assembly, to the Secretary to the Governor. The above noted communications pertained to the notice of resolution for the removal of the Deputy Speaker. Sequentially, the third communication bearing no. LA/LEG-26/2015 was also dated 8.12.2015. The said communication was addressed by M. Lasa – Secretary of the Legislative Assembly, to Secretary to the Governor. The above noted communications pertained to the notice of resolution for the removal of the Speaker. It was pointed out, that the above two letters were issued on the same letter-head(s), and their receipts were recorded under the seal of the Governor's Secretariat, bearing not only the number of the receipt(s), but also the date(s) of the receipt. Whereas, the communication pertaining to the notice of resolution for the removal of the Deputy Speaker, was not only on a different letter-head, but was also with a different seal, and bore no receipt number. But most importantly, sequentially, the first letter referred to above, was dated 14.12.2015, whereas the next two communications with the succeeding reference numbers bore the date 8.12.2015. It was

pointed out, that the letter bearing no. LA/LEG-23/2015 having been issued on 14.12.2015, the other two letters bearing nos. LA/LEG-24/2015 and LA/LEG-26/2015 could not bear a date preceding 14.12.2015.

69. We were of the view, that the factual position needed to be verified, as the inference suggested was logical. We therefore, required the officer, who was in custody of the despatch register of the office of the Secretary of the Legislative Assembly, to produce the same for our perusal. Having perused the original record, and having heard the explanation tendered by the officer, all of us were individually satisfied, that the numbers jumble suggested on behalf of the respondents, was not sufficient to lead to the suggested inference. All that can be stated in conclusion however is, that the material produced by the rival parties for our consideration, with reference to the alleged resolution moved on 16.11.2015 by 16 members of the House belonging to the INC, for the removal of the Deputy Speaker – Tenzing Norbu Thongdok, is not sufficient to render a clear determination on the matter, one way or the other.

The fourth sequence of facts:

70. Mr. Rakesh Dwivedi, learned senior counsel entered appearance on behalf of respondent nos. 2 to 15, and also, on behalf of respondent nos. 31 to 37. Respondent nos. 2 to 15 are the 14 MLAs belonging to the INC, who were disqualified by the Speaker on 15.12.2015. Respondent nos. 31 to 37, are 7 more MLAs also belonging to the INC. The first set of 14 MLAs and the second set of 7 MLAs referred to above, constitute the group of 21 MLAs who had originally been elected on the INC ticket, and comprise the

breakaway group of dissidents, who desired a change in the political leadership in the Assembly. They had demanded the removal of Chief Minister – Nabam Tuki. It would also be relevant to mention, that respondent nos.31 and 37 – Wanglam Sawin and Gabriel D. Wangsu, were stated to have tendered their resignations, which were accepted. Thereupon, the constituencies represented by them, were declared vacant. It may also be noted, that respondent nos. 31 and 37 had assailed the acceptance of their resignations before the High Court, but the challenge raised by them, was rejected by the High Court. We are informed, that a Petition for Special Leave to Appeal filed by them before this Court, assailing the above order of the High Court, has also been dismissed.

71. The submissions advanced on behalf of the respondents, require us to record another sequence of facts. It was submitted by learned counsel, that the 5th session of the Assembly was concluded on 21.10.2015. The Governor issued an order on 3.11.2015 summoning the 6th session, and scheduled its commencement for 14.1.2016. In the interregnum 13 MLAs – 11 belonging to the BJP and 2 Independent MLAs, issued a notice (-dated 19.11.2015) of resolution for the removal of the Speaker – Nabam Rebia. The above factual position was confirmed by the Secretary of the Legislative Assembly – M. Lasa, to Secretary to the Governor on 8.12.2015. Having issued the above notice, the concerned 13 MLAs addressed a letter to the Governor (dated, 19.11.2015) for the preponement of the meeting/proceeding of the House. The aforesaid communication, which

was received in the office of the Governor on 20.11.2015, is reproduced below:

“REQUEST TO GOVERNOR FOR PREPONING THE NEXT SESSION
OF APLA TO CONSIDER AND VOTE ON THE RESOLUTION FOR
REMOVAL OF THE SPEAKER”

Naharlagun
19-11-2015

Honourable Governor Saheb

We, the undersigned members of the Arunachal Pradesh Legislative Assembly, 13 in number, wish to table a notice of resolution for removal of Shri Nabam Rebia from the Office of Speaker in exercise of our powers under article 179 read with article 181 of the Constitution of India further read with Rules 151 to 154 of the Rules of Procedure of the House.

The notice of Resolution for removal of the Speaker, signed by all of us and addressed to the Secretary, Arunachal Pradesh Legislative Assembly and endorsed to the Speaker and Deputy Speaker of the Assembly is enclosed.

As this Resolution is not a resolution under the Rules of Procedure of the House, but a resolution under article 179 read with article 181 of the Constitution of India, the said Resolution, as soon as it is given notice of, requires to be disposed of by the Legislative Assembly immediately after the completion of the mandatory time period of 14 days prescribed in the Constitution.

You are aware, sir, that generally sessions of the House are convened on the recommendation of the Government of the day, so that matters related to governance are considered by the House. The matter relating to removal of the incumbent from the Office of Speaker is not a matter of governance but limited to the confines of Legislature with which Government of the day is not concerned. Since a Speaker enjoys and sustains his office with the support of the ruling party which now, in the present case, stands reduced to only 25, even extraordinarily also, no Government recommendations would be forthcoming for a session to consider the resolution for removal which we tabled.

You have however called the next session on the 6th Arunachal Pradesh Legislative Assembly to meet on 14th January, 2016 but this Resolution for removal for which notice once given, cannot wait for nearly two months time. Since the Constitutional imperative has to be complied with, a session at the earliest becomes indispensable.

We therefore beseech you sir that you may be pleased to rescind the summons issued for the House to meet on 14th January, 2016 and re-issue the summons for the House to meet at an emergent date so that the Resolution aforesaid is considered and disposed at the earliest in accordance with the scheme, purpose and timeframe envisaged by the Constitution makers. Any delay in this behalf would

gravely and irreversibly affect the ends of justice as guaranteed in the said Constitutional provisions and Rules.

You are also aware how recent reports in the newspapers about the alleged moral turpitude of the incumbent in the office of Speaker as evidenced by the criminal complaint of a women against him, that has brought down the esteem of the office of the Speaker. The dignity of the Speaker's office needs thus to be restored with the utmost dispatch through your hands of calling a session at the earliest in lieu of the session that has been summoned to meet on 14.1.2016.

You also have the power to modify your summons by merely preponing the date of the meet from 14 January 2016 to any date immediately after completion of the 14 days period. As all notices given after issue of summons are valid, you may be pleased to prepone the session to a date immediately after 14 days of the date of notice of our resolution for removal of the Speaker.

We pray your honour accordingly with the hope that you would save democracy from peril at the hands of the Speaker.

sd/-
(TAMIYO TAGA)
LEADER OF OPPOSITION
(JAPU DERU)
MLA”

A perusal of the aforesaid communication reveals, that the concerned 13 MLAs had sought the removal of the Speaker – Nabam Rebia under Articles 179 and 181. It was also pointed out, that in consonance with the procedure of the House, such a resolution was required to be considered and disposed of, by the Assembly immediately after the minimum mandatory period of 14 days. It was also urged, that the ruling political party – the INC, was no longer enjoying majority in the House, as its strength stood reduced to only 25 out of a total of 60 members. It was in this background, that a prayer was made by the concerned 13 legislators to the Governor, to cancel the summoning of the 6th session of the Assembly for 14.1.2016, and to re-summon the House at the earliest, so that the resolution could be settled without any delay. It was submitted, that the 13

MLAs had advised the Governor, that he had the power to modify the earlier summons, and prepone the date of summoning of the Assembly.

72. It is also relevant to mention, that on 27.11.2015 the Commissioner to the Governor, addressed a letter to the Secretary of the State Legislative Assembly, that the Governor was in receipt of a resolution signed by 13 members of the House, seeking the removal of the Speaker of the Assembly. On behalf of the Governor, the Commissioner sought the following information through the aforesaid communication:

- “1. Date of receipt of the notice of the resolution in the Legislative Assembly.
 2. Action being taken by the Legislative Assembly on the notice.
 3. Highlights of precedents, if any.
- Kindly ensure that replies to above points are sent at the earliest.”

73. Even though the aforesaid information was sought expeditiously, when no such information was furnished by the Secretary of the State Legislative Assembly, the Deputy Secretary to the Governor, addressed another letter dated 3.12.2015 to the above Secretary, seeking the same information again. The aforesaid communication also remained unanswered. Whereupon, a third communication dated 7.12.2015 was addressed to the Secretary of the Legislative Assembly for the same purpose. An extract of the letter dated 7.12.2015 is reproduced hereunder:

“To,
The Secretary,
Arunachal Pradesh Legislative Assembly,
Arunachal Pradesh,
Naharlagun.
Sub: Notice of Resolution for removal of Speaker.
Sir,

I am directed to refer to our letter of even number dated 27.11.2015 and 03.12.2015 on the above subject wherein you have

been requested to furnish the following information to this office for kind perusal of His Excellency the Governor.

1. Date of receipt of the notice of the resolution in the Legislative Assembly.

2. Action taken by the Legislative Assembly on the notice.

3. Highlight of the precedents, if any.

Required information have not been received from your end till date.

Kindly ensure that replies of above points are sent latest by 8th December, 2015.”

74. In the sequence of events, noticed above, it is also pertinent to mention, that the Chief Whip of the INC – Rajesh Tacho, filed a petition on 7.12.2015 seeking disqualification of 14 members of the House (respondent nos. 2 to 15), belonging to the INC, under Article 191(2) read with paragraphs 2(1)(a), 6(1) and (2) of the Tenth Schedule, read with Rules 3(7) and 6 of the Members of the Arunachal Pradesh Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987.

75. It was also pointed out, that the Secretary of the Legislative Assembly, through a communication dated 8.12.2015, informed the Governor that a notice of resolution for the removal of the Speaker – Nabam Rebia, had been received in his office on 19.11.2015. It was the case of the respondents, that on confirmation of the fact that 13 MLAs had issued a notice of resolution for the removal of the Speaker on 19.11.2015, the Governor sought legal opinion, with reference to the proceedings of disqualification initiated by the Chief Whip of the INC, and also, about the validity and legitimacy of the Speaker sitting in judgment over the adjudication of the disqualification proceedings under the Tenth Schedule, during the pendency of the notice of resolution for his own removal. Based on the advice tendered to him, the Governor entertained an impression, that there

was an attempt to subvert the provisions of the Constitution. The Governor therefore, it was urged, exercised his power under Article 174(1) *suo motu*, without any aid and advice, and rescheduled the 6th session of the House by preponing it from 14.1.2016 to 16.12.2015.

The first installment of legal submissions, on behalf of the respondents:

76. Based on the factual premise recorded above, it was the contention of Mr. Vikas Singh, and also, Mr. Shekhar Naphade, learned Senior Advocates, that the actions of high constitutional functionaries referred to above, were a clear testimony of the fact, that the democratic process in the State of Arunachal Pradesh, was being subverted and undermined. As such, it became the constitutional obligation of the Governor, to ensure that the constitutional functioning was restored, as would re-establish the purity of the democratic process. Additionally, it was the submission of learned counsel, that the action taken in this case, was akin to the one where the Governor requires the ruling party (or combination) to demonstrate its majority/strength, on the floor of the House. The instant action of the Governor, according to learned counsel, originated from the same logic and rationale, and therefore, could not have been dealt with differently. Accordingly it was urged, that this Court should not find fault with the legality or constitutionality of the action of the Governor, and also, with the Governor's *bona fides*, in having issued the order, and the message dated 9.12.2015.

77. It was the contention of Mr. Rakesh Dwivedi, learned Senior Advocate, that the House could have been summoned for any day after 3.12.2015. This because, the minimum notice period of 14 days mandated through the

first proviso under Article 179, expired on 3.12.2015. And yet, the Governor did not feel the urgency of summoning the House by preponing the meeting of the House. It was submitted, that the sense of urgency and compulsion, for convening the House assumed a different complexion when the Chief Whip of the INC – Rajesh Tacho, filed a petition for the disqualification of respondent nos. 2 to 15, on 7.12.2015. It was therefore, and in the above background, the urgency of the cause assumed significance. In conjunction with the above, the fact that the office of the Secretary of the Legislative Assembly confirmed on 8.12.2015, that he was in receipt of the notice of resolution for the removal of the Speaker – Nabam Rebia, dated 19.11.2015, revealed that a political dimension was being created, which was clearly undemocratic. The Governor, according to learned counsel, was well within his rights, in the above background, to take such action as he in his discretion considered appropriate, to re-establish the purity of the democratic process. By the order dated 9.12.2015, the Governor preponed the meeting of the 6th session of the Assembly originally scheduled for 14.1.2016, to 16.12.2015. For taking his order to its logical conclusion, according to learned counsel, the Governor through his message dated 9.12.2015, regulated the procedure of the House, as would not subvert or undermine the democratic process.

The fifth sequence of facts:

78. It was urged on behalf of the respondents, that the challenge raised by the appellants, to the order of the Governor dated 9.12.2015 (preponing the summoning of the House from 14.1.2016 to 16.12.2015), and to other connected issues, before the High Court by filing Writ Petition nos. 7745 of

2015 and 7998 of 2015 (on 17.12.2015 and 22.12.2015, respectively), was not only unfair and unreasonable, but was also illegitimate, and constituted a misuse of the jurisdiction of the High Court. It was the contention of learned senior counsel, that the office of the Governor received a letter dated 14.12.2015, from the Speaker of the Assembly – Nabam Rebia, recording his objection to the order of the Governor dated 9.12.2015 preponing the summoning of the House from 14.1.2016 to 16.12.2015. In his above letter dated 14.12.2015, the Speaker also contested the validity of the message of the Governor dated 9.12.2015 (providing the manner in which, proceedings of the 6th session of the Assembly should be conducted).

79. On the same day, i.e., 14.12.2015, the Commissioner to the Governor received a letter from the Officer on Special Duty to the Chief Minister, seeking a meeting of the Chief Minister and his Council of Ministers, and some other MLAs, with the Governor. The said letter was received by the Commissioner at 10.15 p.m. on 14.12.2015, and was endorsed to the SSP/ADC to the Governor, on 15.12.2015 at 7.45 a.m. It was also pointed out, that the aforesaid communication was brought to the notice of the Governor at 10 a.m. on 15.12.2015. Having accepted the aforesaid request, the Governor granted audience to the Council of Ministers at 6 p.m. on 15.12.2015 itself. It was submitted, that 9 Ministers including the Chief Minister came to meet the Governor at 6.15 p.m. on 15.12.2015, and committed acts of serious misbehaviour. Insofar as the details of their alleged misdemeanour are concerned, the same were disclosed by the Governor, to the High Court in IA No.29 of 2016, in the following words:

“..... that at around 6:15 P.M. 9 (nine) ministers including the Chief Minister Shri Nabam Tuki came to meet the Governor and the Chief Minister initiated the discussion, all of a sudden few ministers more particularly the Education Minister Shri. Tapang Taloh and Transport Minister without any provocation started abusing the Governor forcing his security personnel to interfere. There was infact an attempt to assault the Governor to force him to withdraw his order. The Commissioner to the Governor duly informed the incident to the Director General of Police which was videographed.”

It was also submitted, that a meeting of the Cabinet was held on 14.12.2015, with reference to the preponement of the Assembly Session from 14.1.2016 to 16.12.2015, whereupon the Cabinet passed the following resolution:

“MINUTES OF THE MEETING OF THE CABINET HELD ON 14TH DECEMBER, 2015 AT 1000 HRS IN THE CONFERENCE HALL OF THE HON'BLE CHIEF MINISTER'S RESIDENTIAL OFFICE, ARUNACHAL PRADESH, ITANAGAR

MEMBERS OF THE COUNCIL OF MINISTERS PRESENT:-

1. Shri Nabam Tuki, Chief Minister (In Chair)
2. Shri Tanga Byaling, Minister (Home, etc.)
3. Shri Tapang Taloh, Minister (Education, etc.)
4. Shri Gojen Gadi, Minister (PWD, etc.)
5. Shri Takam Pario, Minister (PHED&WS, etc.)
6. Shri Rajesh Tacho, Minister (Health & PW, etc.)
7. Shri Phurpa Tsering, Minister (AH&V, etc.)
8. Shri Jomde Kena, Minister (Transport, etc.)
9. Shri Tirong Aboh, Minister (DoTCL, etc.)

IN ATTENDANCE

1. Shri Ramesh Negi, Chief Secretary and Cabinet Secretary
2. Shri Tajom Taloh, Commissioner & Jt. Secretary to the Cabinet
3. Shri Onit Panyang, Secretary (Law & Parliamentary Affairs)

The Cabinet Secretary welcomed the Hon'ble Chief Minister and his Council of Ministers.

AGENDA ITEM NO.1. DISCUSSION ON THE MESSAGE DATED 9TH DECEMBER, 2015 OF THE GOVERNOR OF ARUNACHAL PRADESH FOR PRE-PONEMENT OF THE ASSEMBLY SESSION FROM 14TH JANUARY 2016 TO 16TH DECEMBER, 2015.

The Cabinet has discussed the opinion rendered by the Learned Advocate General dated 12.12.2015 on the constitutionality of the order and message of HE, the Governor. After careful examination, the Cabinet has resolved as under:

The State Cabinet at its meeting held on 14th December, 2015 at 1000 hrs in CM's conference hall again discussed in detail the Order

and the Message dated 09.12.2015 of His Excellency the Governor of Arunahal Pradesh.

Cabinet has received the opinion of the Ld. Advocate General dated 12.12.2015 and other legal experts on the said Order and Message. The Cabinet has perused the said opinion and is in complete agreement with views of the Ld. Advocate General.

The said Order dated 09.12.2015 issued by His Excellency the Governor of Arunachal Pradesh is in contradiction to Article 174 read with Article 163 of the Constitution of India and Rules 3 and 3A of the Rules of Procedure and Conduct of Business of the Arunachal Pradesh Legislative Assembly. Similarly, the Message is contrary to Article 175 of the Constitution read with Rule 245 of the said Rules. Moreover, the Hon'ble High Court of Gauhati has fixed the hearing of the case of resignation of 2 MLAs from the Assembly on 16th December, 2015.

Therefore, the Cabinet resolves ..., His Excellency, the Governor of Arunachal Pradesh to recall and cancel the Order and the Message dated 9th December, 2015 and allow the Session to be convened on 14th January, 2016 as already ordered and scheduled.

The Cabinet also resolves to endorse a copy each of this resolution and legal advice of the Ld. Advocate General to the Hon'ble Speaker.

... Secretary (Cabinet)”

80. It was reiterated during the course of hearing, that the meeting of the Governor with the Chief Minister and Ministers on 15.12.2015 was duly video-graphed. It was urged, that the entire episode as it had occurred, can be shown to this Court. The fact that an attempt was made by the Chief Minister – Nabam Tuki and his Ministers, to assault the Governor, in order to force him to withdraw the order/message dated 9.12.2015, it was submitted, was duly brought to the notice of the Director General of Police, by the Commissioner to the Governor.

81. Insofar as the request which the Chief Minister and some Ministers had made, in their letter dated 14.12.2015 is concerned, it was submitted, that the same was an absolute eyewash, because members of the INC still supporting the Chief Minister, had already taken a decision not to allow the House to meet, as required by the Governor's order dated 9.12.2015. In

order to substantiate this assertion, learned counsel placed reliance on a letter dated 14.12.2015 addressed by the then Speaker – Nabam Rebia, to the Minister (Home) – Tanga Byaling. The aforesaid letter, which has been extracted in the impugned order passed by the High Court, is reproduced below:

“Arunachal Pradesh Legislative Assembly
Speaker’s Cell
MOST URGENT

As the Govt. is aware of the fact that a serious law and order problem is likely to take place on 16th of December, 2015, in view of the unconstitutional and unprecedented summoning of the Sixth Session of Sixty Legislative assembly of Arunachal Pradesh by the Governor of Arunachal Pradesh. It is given to learn that thousand of anti-social elements are taking shelter in the state Capital with the motive to create law and order problem on that particular date. Illegal arms and ammunition are also reported to have been collected for the purpose. Sources have revealed that the main target of the anti—social elements would be to burn down the legislative building of the state Assembly at Naharlagun.

I would therefore request the Hon’ble Minister (Home) Govt. of Arunachal Pradesh to provide full-proof security in and around the Assembly building w.e.f. 15th – 18th December, 2015 on top-most priority basis. It is also requested that no individual including the Hon’ble Legislators be allowed to enter the Assembly building premises on 15th, 16th, 17th and 18th Dec’ 15.

Please treat this as most urgent.

Urgent
Illegible
SP/City
Deploy sufficient force
with monitoring system
with the administration
of IRBN + CPMF”

Sd/-
14.12.15
(NABAM REBIA)
Speaker

A perusal of the aforesaid communication reveals, that the Speaker asked the Home Minister to provide foolproof security and to protect the building of the State Legislative Assembly. And that, no one, not even MLAs be permitted to enter the building from 15.12.2015 to 18.12.2015. Accordingly, the Superintendent of Police (City), Itanagar, in compliance

with the directions issued by the Director General of Police, sufficient number of IRBN personnel were deployed, to secure the Assembly building premises from 15.12.2015 to 18.12.2015, so that no individual including legislators, could enter the same. It was pointed out, that the Speaker himself (whose continuation in the State Legislative Assembly was to be voted upon, on 16.12.2015), being aware of his position, was making all out efforts, to circumvent the holding of the said meeting.

82. In addition to the letter of the Speaker, referred to above, the Speaker also addressed a letter on the same day – 14.12.2015, to the Governor, wherein he contested the decision of the Governor, to summon the House by preponing the summoning date from 14.1.2016 to 16.12.2015. In the above letter of the Speaker – Nabam Rebia it was highlighted, that the provisions of the Constitution, did not authorize the Governor, to exercise his powers at his own free will. It was asserted, that all the powers of the Governor were to be exercised on the aid and advice of the Council of Ministers. For this, the Speaker had invited the Governor's attention to Article 163(1). It was also pointed out, that there was no provision either under the Constitution or the 'Conduct of Business Rules', which empowered the Governor to summon a meeting of the House, by preponing the date already fixed, in consultation with the Chief Minister and his Council of Ministers. In this behalf, reliance was placed on Rule 3 of the 'Conduct of Business Rules'. It was pointed out, that the 'Conduct of Business Rules' had been framed under Article 208, and were binding, not only on the MLAs, but also on the Governor. The Governor was accordingly

urged by the Speaker, not to press for the implementation of the order passed by him summoning the House for 16.12.2015, “in the interest of upholding the high moral principles enshrined in the Constitution”. It was also pointed out, that while preponing the session of the House, the secretariat of the Legislative Assembly had not been afforded sufficient time, to make necessary arrangements, for holding the preponed session. With respect to the order/message issued by the Governor, it was asserted, that the same was unconstitutional, and that, it impinged upon the functions of the “Business Advisory Committee”, constituted under Rule 244 of the ‘Conduct of Business Rules’. It was urged, that the Governor’s attention was invited to the fact, that it was the function of the “Business Advisory Committee” alone, to schedule the business of the House, and that, it was not within the realm of the Governor to require, the notice of resolution for the removal of the Speaker, to be taken up as the first item, on the agenda for the day. The Speaker – Nabam Rebia also invited the attention of the Governor to the resolution of the State Cabinet, in the meeting held on 14.12.2015. It was submitted, that for all the above reasons, the Governor was requested to refrain from interfering with the functioning of the Legislative Assembly. Based on the above communications, it was submitted, that the Speaker was bent upon frustrating, any final consideration on the notice of resolution for his removal.

A further instalment of legal submissions, on behalf of the respondents:

83. It was submitted by Mr. Rakesh Dwivedi, learned senior counsel, that the appellants were fully justified in their reference to Article 154 which

deals with the “executive power” of the State, and which also explicates, that the same is vested with the Governor. He also acknowledged, that the above “executive power” can be exercised by the Governor, in the manner expressed in Article 163 – on the aid and advice of the Council of Ministers with the Chief Minister as the head. It was however submitted, that the exercise of functions by the Governor at his own discretion, is recognized in Article 163(2) itself, which contemplates constitutional decision making “in his discretion” without any aid and advice.

84. It was urged, that insofar as the present controversy is concerned, a correct understanding of Article 163(2) would be of extreme relevance. Under Article 163(2), according to learned counsel, the Governor has the authority to act on his own, in respect of matters where the Governor is mandated to act in his own discretion “by or under” the Constitution. It was further submitted that when a question arises, as to whether such discretion is vested with the Governor “by or under” the Constitution, the decision of the Governor, on the above question, is final and binding. It was submitted, that Article 163(2) postulates three situations where, as an exception to the general rule, the Governor can act at his own will and discretion. Firstly, when he is required to discharge his functions by the mandate of some provision of the Constitution itself, in his own discretion. Secondly, when the Governor is assigned functions on the basis of enactments made under the Constitution, where he is mandated to discharge his functions by exercising his own discretion. And thirdly, where he is impliedly required to act in his own discretion.

85. It was pointedly contended, that in the present controversy, the question that needs to be determined is, whether Article 174 which vests the Governor with the authority to summon the Assembly, can be envisioned as one of the provisions, which requires the Governor to impliedly act at his own discretion? Learned counsel acknowledged, that the exercise of discretion by the Governor in the present case did not fall within the first two categorizations, postulated in his submission. Insofar as the implied power of the Governor with reference to the summoning of the House (vide order dated 9.12.2015) is concerned, the first and foremost submission canvassed was, that a clear distinction needed to be drawn between Article 174(1), which postulates the authority to summon the House, and Article 174(2) which vests the authority to prorogue or dissolve the Assembly. In dealing with the distinction between the two, it was pointed out, that the process of summoning a House can never be considered to be anti-democratic. Summoning the House, according to learned counsel, inevitably supports the cause of the democratic process. The same, according to learned counsel, may not be true with reference to proroguing or dissolving the House. When a House is prorogued or dissolved, the democratic process is sought to be deferred for the time being, or till the re-election of the members of the Legislative Assembly, respectively.

86. Learned senior counsel also pointedly focused on Article 179, and more particularly, sub-article (c) thereof. It was submitted, that an incumbent Speaker (or Deputy Speaker) can be removed under sub-article

(c) of Article 179, by a resolution of the Assembly passed by a majority of "... all the then members ..." of the Assembly. It was submitted, that the issue of removal of the existing Speaker (or Deputy Speaker) contemplated under Article 179, should not be confused with the exercise of "executive power" of the State. It was asserted, that the functions of an Assembly could be placed in two entirely separate categories. Firstly, its purely legislative activities. Legislative activity, according to learned counsel, included the responsibility of the "executive power of the State" represented through the Chief Minister and his Council of Ministers, to determine the field and nature of legislation, to be brought before the House for legislation. It was submitted, that in the discharge of the aforesaid activity, the Governor can have no role whatsoever. The realm of legislative activity, according to learned counsel, also included the actual consideration of a Bill. Herein again, it was submitted, that the Governor would have no role, except to the extent contemplated under Article 200, wherein, when a Bill is passed by the House, the same has to be approved by the Governor. And only when the Governor gives his assent to the Bill, the same assumes the status of a legislative enactment. It was pointed out, that Article 200 contemplates a situation, where the Governor can return the Bill with a message, requiring the House to reconsider the same, by examining the suggestions made by the Governor. This limited responsibility cast on the Governor, it was contended, fell within the legislative process. The Governor before whom a Bill (passed by the Legislative Assembly) is placed, has also the right to reserve the Bill, for the consideration of the President. This action of the

Governor, according to learned counsel, must be accepted as a further responsibility of the Governor within the legislative process. It was submitted, that in all the functions vested with the Governor under Article 200, are to be discharged by the Governor, in his independent discretion, and not on any guidance or advice. This, according to learned counsel, illustrates the third category of the Governor's functions, wherein the Governor is impliedly required to act in his own discretion, even though he is not expressly so required, by any written mandate emerging from Article 200.

87. Secondly, it was submitted, that there are functions and activities of the House, which are separate and distinct from its legislative functioning. The said activities may have no role, of the Chief Minister or his Council of Ministers. Illustratively, it was contended, that the issue of removal of a Speaker (or Deputy Speaker) under Article 179(c) is an exclusive function of the House, but is independent of its legislative business. Insofar as the issue of removal of the Speaker (or the Deputy Speaker) is concerned, it was acknowledged, that neither the Chief Minister nor his Council of Ministers has any determinative role in the matter. The Speaker (or the Deputy Speaker) can be removed from his office, only "... by a resolution of the Assembly passed by a majority of all the then members of the Assembly.". Insofar as the present controversy is concerned, it was pointed out, that the notice of resolution for the removal of the Speaker, dated 19.11.2015, was brought by 13 members of the House. According to learned counsel, it is necessary to understand, the aforesaid submission, in the background of

the position occupied by the Speaker. It was emphasized, that a Speaker is a neutral arbiter, between the ruling Government (which has the majority in the Assembly), and the opposition parties (which constitute the minority).

88. In continuation, learned senior counsel, invited our attention to Article 180. It was pointed out, that sub-article (1) thereof provides, that if the office of the Speaker is vacant, the duties of “the office” of Speaker, are to be performed by the Deputy Speaker. And if the office of the Deputy Speaker is also vacant, the duties of “the office” of Speaker, are to be performed by a person appointed by the Governor, out of the existing MLAs. It was highlighted, that in the above exigency, where the question of discharging duties of the Speaker arises, the Governor has been expressly vested with a constitutional responsibility. Based on the above analysis, it was submitted, that insofar as the non-legislative duties of the Assembly are concerned, the Governor has also been ascribed some specific responsibilities. And since the Chief Minister and the Council of Ministers have no role in the aforestated action/activity, the Governor need not make the choice of the person, to discharge the duties of Speaker, on the basis of any aid and advice of the Chief Minister and his Council of Ministers.

89. It was asserted, that the position prevailing after the conclusion of the 5th session of the Assembly on 21.10.2015, did occasion the applicability of sub-article (2) of Article 180, in the peculiar facts of this case. As such, it was urged, that it would be wholly incorrect to assume, that the action taken by the Governor with reference to the office of Speaker was

extraneous, specially when considered with reference to the relevant provisions of the Constitution.

90. Learned senior counsel seriously questioned the action of the Speaker in locking the premises of the Assembly, and thereby, consciously stalling the democratic process of the House. It was asserted, that if the Speaker was desirous of enforcing the order of disqualification (of 14 MLAs) by himself, under the Tenth Schedule, he may well have prevented the entry of the said 14 disqualified members into the premises of the House. It was submitted, that the action of the Speaker in disallowing the consideration of the notice of resolution for his removal, by preventing entry of all the legislators, into the building of the House, was really an action aimed at frustrating the democratic process. And, an escape route with reference to the notice of resolution for his own removal. It was pointed out, that the Speaker being an elected member of the Assembly, discharges vital legislative and non-legislative functions. His non-legislative functions include the duties as head of the Secretariat of the Assembly, and in addition thereto, his quasi-judicial functions are those postulated under the "Tenth Schedule", of the Constitution. The legislative functions, as well as, the duties vested with the Speaker under the Tenth Schedule, have a direct nexus to the democratic process, and as such, the discharge of the above responsibilities, while his position as a Speaker of the House was under challenge, constituted a serious constitutional impropriety.

91. On the duties assigned to the Governor under Article 174, it was submitted, that it was improper and unjustified to describe the action of the

Governor in summoning the House vide order dated 9.12.2015, as anti-democratic. According to learned counsel, only anti-democratic forces would contest a decision of the Governor, in summoning the House. It was asserted, that a Government which is confident of its majority on the floor of the House, would have nothing to fear, when the House is summoned. The summoning of the House by the Governor, at his own discretion, would be inconsequential where the Government can establish its numbers. For exactly the same reason, it was submitted, that the action of the Governor in summoning the House, for the consideration of a notice of resolution for the removal of the Speaker would be inconsequential, if the Speaker enjoyed the support of the majority of the members of the House. It was pointed out, that the action of shying away and stalling consideration, of a resolution for the removal of the Speaker, is an action which could be justifiably described as anti-democratic. It was submitted, that a party in power which claims to enjoy the majority, cannot be aggrieved in a situation where the Governor requires the Government to establish its majority, through a floor test. Likewise, a Speaker who enjoys the confidence of the House, cannot be an aggrieved party, when the Governor calls for the consideration of a notice of resolution for his removal.

92. Referring to the action of the Governor, based on the order dated 9.12.2015, it was submitted, that even in the worst case scenario, the action of the Governor could not be described, as an action in conflict with any provision of the Constitution, or even a constitutional norm/propriety. It was submitted, that the notice of resolution for the removal of the

Speaker was submitted on 19.11.2015. The Governor had made repeated efforts in writing, to confirm, whether such a notice had actually been submitted to the Secretary of the Legislative Assembly. Initiating action for summoning the House, by ordering its preponement, according to learned senior counsel, could be an option only if, the concerned 13 MLAs had actually submitted the above notice dated 19.11.2015, to the Secretary of the Legislative Assembly. Merely because a copy thereof had been furnished to the Governor, he could not have initiated any action. In spite of the high office of the Governor, and despite repeated communications were sent by the Governor, seeking information about the factual position, whether a notice of resolution for the removal of the Speaker – Nabam Rebia had been received, the same remained unanswered. Finally, the factual position came to the notice of the Governor, only on 8.12.2015, on the receipt of a communication from the Secretary of the Legislative Assembly. By this time the postulated 14 days' notice period, before such notice could be taken up for consideration, had expired (on 3.12.2015). Allowing the Speaker to discharge functions pertaining to the Secretariat of the Assembly, or under the Tenth Schedule to the Constitution, while his own position was under challenge, would not only be unconstitutional, but also undemocratic. It was urged, that it was in the aforesaid background, and based on the aforesaid understanding, and also to ensure that the functioning of the House was carried out in consonance with established democratic norms, that the Governor (in exercise of the powers vested with him under Article 174), had ordered the summoning of the House for

16.12.2015 (by preponing the 6th session of the Assembly, earlier scheduled for 14.1.2016). It was therefore contended, that the submissions advanced at the behest of learned counsel for the appellants, deserved to be rejected.

93. Mr. Rakesh Dwivedi, learned senior counsel, having concluded his submissions with reference to the order of the Governor dated 9.12.2015, similarly endeavoured to justify the message of the Governor dated 9.12.2015. His submissions to support the message dated 9.12.2015, were the same as in support of the order of the Governor dated 9.12.2015. According to learned counsel, the message was clear, that the Governor had authorised the House, to permit the resolution for removal of the Speaker to be moved. The message required the members of the Assembly, to discuss and put the same to vote, as "... the first item on the agenda of the House at the first sitting of the Sixth Session...". The Governor also required the Deputy Speaker, to hold the proceedings peacefully and truthfully, so as to ensure that they were conducted fairly. The message of the Governor, required the proceedings to be video-graphed. It was submitted, that the message of the Governor, would not only secure the enforcement of the democratic process, but would also ensure transparency and fairness. It was therefore the assertion of learned senior counsel, that no fault whatsoever could be found with the message of the Governor.

94. Having submitted thus far, learned senior counsel, pointedly referred to paragraph 5 of the message dated 9.12.2015. It was conceded, that the contents of paragraph 5, were instructions to the House, that until the 6th

session (to commence on 16.12.2015) of the Legislative Assembly was prorogued, no Presiding Officer would alter the party composition of the House. It was acknowledged, that this could only be understood to mean, that disqualification proceedings under the “Tenth Schedule”, would have to await the outcome of the motion against the Speaker under Article 179(c). In order to demonstrate the propriety and constitutional validity of paragraph 5 of the message, it was submitted, that once it is concluded (- that is, if this Court, on accepting the submissions advanced on behalf of the respondents, so concludes), that the Governor had the discretion to summon or prepone the sitting of the Assembly under Article 174(1) read with Articles 163 and 179(c), then it would also be up to the Governor to decide when and/or where, the House should meet. It was pointed out, that the Governor is undisputedly a high constitutional functionary. And as such, his decisions could neither be taken lightly, nor be easily interfered with. By inviting the Court’s attention to Article 174, it was urged, that the above provision vests responsibility in the Governor to summon, prorogue or dissolve the Assembly. The Governor is mandated to summon the Legislative Assembly “at such time and place as he thinks fit”. The instant connotation in Article 174, makes it abundantly clear, that the Governor has to discharge the above function, as he in his own discretion, considers appropriate. Premised on the aforesaid foundation, it was contended, that the instant discretion conferred on the Governor, could not be subservient to any aid and advice. It was pointed out, that the fixation of time for sitting of the Legislative Assembly, determined by the Governor under

Article 174, was an issue on which reasonable persons could differ widely. As such, it would not be proper for any Court to interfere with, the time and place fixed by the Governor in summoning the Assembly.

95. On the subject of the power of the judicial review, with reference to the exercise of discretion by the President (in relation to the removal of a Governor), it has to be accepted, that the power of judicial review has to be limited to situations wherein, it could be established that the President had exercised his discretion wantonly, whimsically or arbitrarily. It was urged that the same position would apply to decisions of Governors as well. It was submitted, that the appellants before this Court, were obliged to establish, that the Governor had acted deliberately in an unprincipled manner, and that, the action of the Governor would impair the constitutional trust assigned to him. On the present aspect of the matter, learned senior counsel placed reliance on *B.P. Singhal v. Union of India*⁸, and invited our attention to the following observations recorded therein:

“71. When a Governor holds office during the pleasure of the Government and the power to remove at the pleasure of the President is not circumscribed by any conditions or restrictions, it follows that the power is exercisable at any time, without assigning any cause. However, there is a distinction between the need for a cause for the removal, and the need to disclose the cause for removal. While the President need not disclose or inform the cause for his removal to the Governor, it is imperative that a cause must exist. If we do not proceed on that premise, it would mean that the President on the advice of the Council of Ministers, may make any order which may be manifestly arbitrary or whimsical or mala fide. Therefore, while no cause or reason be disclosed or assigned for removal by exercise of such prerogative power, some valid cause should exist for the removal. Therefore, while we do not accept the contention that an order under Article 156 is not justiciable, we accept the contention that no reason need be assigned and no cause need be shown and no notice need be issued to the Governor before removing a Governor.

⁸ (2010) 6 SCC 331

xxx

xxx

xxx

76. This Court has examined in several cases, the scope of judicial review with reference to another prerogative power — power of the President/Governor to grant pardon, etc. and to suspend, remit or commute sentences. The view of this Court is that the power to pardon is a part of the constitutional scheme, and not an act of grace as in England. It is a constitutional responsibility to be exercised in accordance with the discretion contemplated by the context. It is not a matter of privilege but a matter of performance of official duty. All public power including constitutional power, shall never be exercisable arbitrarily or mala fide. While the President or the Governor may be the sole Judge of the sufficiency of facts and the propriety of granting pardons and reprieves, the power being an enumerated power in the Constitution, its limitations must be found in the Constitution itself. The Courts exercise a limited power of judicial review to ensure that the President considers all relevant materials before coming to his decision. As the exercise of such power is of the widest amplitude, whenever such power is exercised, it is presumed that the President acted properly and carefully after an objective consideration of all aspects of the matter. Where reasons are given, the Court may interfere if the reasons are found to be irrelevant. However, when reasons are not given, the Court may interfere only where the exercise of power is vitiated by self-denial on wrong appreciation of the full amplitude of the power under Article 72 or where the decision is arbitrary, discriminatory or mala fide [vide Maru Ram v. Union of India 1981 (1) SCC 107, Kehar Singh v. Union of India 1989 (1) SCC 204, etc.].

xxx

xxx

xxx

82. The President in exercising power under Article 156(1) should act in a manner which is not arbitrary, capricious or unreasonable. In the event of challenge of withdrawal of the pleasure, the Court will necessarily assume that it is for compelling reasons. Consequently, where the aggrieved person is not able to establish a prima facie instance of arbitrariness or malafides, in his removal, the Court will refuse to interfere. However, where a prima facie case of arbitrariness or malafides is made out, the Court can require the Union Government to produce records/materials to satisfy itself that the withdrawal of pleasure was for good and compelling reasons. What will constitute good and compelling reasons would depend upon the facts of the case. Having regard to the nature of functions of the Governor in maintaining centre-state relations, and the flexibility available to the Government in such matters, it is needless to say that there will be no interference unless a very strong case is made out. The position, therefore, is that the decision is open to judicial review but in a very limited extent.

83. We summarise our conclusions as under:

(i) Under Article 156(1), the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor

from office at any time without assigning any reason and without giving any opportunity to show cause.

(ii) Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons. The compelling reasons are not restricted to those enumerated by the petitioner (that is physical/mental disability, corruption and behaviour unbecoming of a Governor) but are of a wider amplitude. What would be compelling reasons would depend upon the facts and circumstances of each case.

(iii) A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Nor can he be removed on the ground that the Union Government has lost confidence in him. It follows therefore that change in government at Centre is not a ground for removal of Governors holding office to make way for others favoured by the new government.

(iv) As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate prima facie that his removal was either arbitrary, malafide, capricious or whimsical, the Court will call upon the Union Government to disclose to the Court, the material upon which the President had taken the decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or malafide, the Court will interfere. However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient.”

Based on the legal position declared by this Court, it was submitted, that the prayer addressed by the appellants, to interfere with the discretion exercised by the Governor in his order, and his message dated 9.12.2015, ought to be rejected.

96. Learned senior counsel further contended, that interference with the action of the Governor could not be based on any alleged personal *mala fides*. It was asserted, that established malice in law only, could lead to an

adverse inference. In this behalf, reliance was placed on S.R. Bommai v. Union of India⁹, wherein it has been held as under:

“390. We find ourselves unable to agree with the High Court except on points (1) and (2). To begin with, we must say that question of 'personal bonafides' of Governor is really irrelevant.

391. We must also say that the observation under point (7) is equally misplaced. It is true that action under Article 356 is taken on the basis of satisfaction of the Union Council of Ministers but on that score it cannot be said that 'legal malafides' of the Governor is irrelevant. When the article speaks of the satisfaction being formed on the basis of the Governor's report, the legal malafides, if any, of the Governor cannot be said to be irrelevant. The Governor's report may not be conclusive but its relevance is undeniable. Action under Article 356 can be based only and exclusively upon such report. Governor is a very high constitutional functionary. He is supposed to act fairly and honestly consistent with his oath. He is actually reporting against his own government. It is for this reason that Article 356 places such implicit faith in his report. If, however, in a given case his report is vitiated by legal malafides, it is bound to vitiate the President's action as well. Regarding the other points made in the judgment of the High Court, we must say that the High Court went wrong in law in approving and upholding the Governor's report and the action of the President under Article 356. The Governor's report is vitiated by more than one assumption totally unsustainable in law. The Constitution does not create an obligation that the political party forming the ministry should necessarily have a majority in the Legislature. Minority Governments are not unknown. What is necessary is that that government should enjoy the confidence of the House. This aspect does not appear to have been kept in mind by the Governor. Secondly and more importantly, whether the Council of Ministers has lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere else except the floor of the House. The principle of democracy underlying our Constitution necessarily means that any such question should be decided on the floor of the House. The House is the place where the democracy is in action. It is not for the Governor to determine the said question on his own or on his own verification. This is not a matter within his subjective satisfaction. It is an objective fact capable of being established on the floor of the House. It is gratifying to note that Sri R. Venkataraman, the former President of India has affirmed this view in his Rajaji Memorial Lecture (Hindustan Times dated February 24, 1994).”

⁹ (1994) 3 SCC 1

Based on the above proposition declared by this Court, it was urged, that the submissions advanced on behalf of the appellants do not justify any interference, with the impugned actions of the Governor.

97. On the issue of discretion, learned senior counsel, placed reliance on Article 163(2). Based thereon, it was submitted, that the Governor's discretion, for all intents and purposes, must be deemed to be final. It was submitted, since Article 163(2) itself postulates, that "the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion", by itself absolves the Governor from a challenge to the discretion exercised by him. It was submitted, that Article 163(2) was neither a defunct nor a redundant provision, and as such, it could neither be overlooked nor ignored. It was contended, that the words employed in Article 163(2) must be given due weightage. And if that was to be done, there could be no doubt, that the discretion exercised by the Governor under Article 163(2), would have to be considered in a manner, as would protect it from the scope of any challenge.

98. With reference to the Governor's message dated 9.12.2015, it was submitted, that the same was justified under Article 175(2), whereunder, the Governor's message can be "with reference to a Bill then pending in the Legislature or otherwise". Article 175(2) by itself makes it abundantly clear, that messages are not limited to the Bills pending before the House. But could extend to and include other matters. Learned counsel clarified, that the authority vested with the Governor under Article 200, should not to be

confused by reference to the words “or otherwise” used in Article 175(2). The message sent by the Governor can also relate to a Bill under Article 200, as is apparent on from the expression “with respect to a Bill then pending in the Legislature” used in Article 175(2). It was submitted, that reliance placed by the appellants on *Union of India v. Valluri Basavaiah Chowdhary*¹⁰, for asserting that the Governor could not send any message under Article 175(2), with regard to a resolution pending before the Legislative Assembly, was wholly misconceived. It was pointed out, that the controversy dealt with in the above judgment pertained to Article 252, and in the context of the above provision, this Court held, that the State Legislature meant only the House of the Legislature. Insofar as the present controversy is concerned, it was submitted, that the same pertained to a notice of resolution for the removal of the Speaker under Article 179(c). It was pointed out, that the words “or otherwise” referred to in Article 175(2) had a wide import, and that, there was no justification whatsoever to limit the same, so as to unnecessarily curtail the authority of the Governor, to that which is contemplated under Article 200. It was submitted, that if the power of the Governor with reference to messages, was to be limited to the responsibility enshrined in him under Article 200, then the words “or otherwise” expressed in Article 175(2) would be superfluous and otiose. Additionally it was contended, that Article 175(2) also mandates, that the Legislative Assembly would deal with a message received from the Governor “with all convenient despatch”, and would take a call thereon, as may be “required by the message to be taken into consideration”. It was therefore

¹⁰ (1979) 3 SCC 324

contended, that a message addressed by the Governor under Article 175(2), to the State Legislative Assembly, was not actually in the nature of a command. And yet, the same was bound to be taken into consideration “with all convenient despatch”. In the above view of the matter, it was submitted, that the term “or otherwise” could not be ascribed a narrow or limited meaning, but was bound to be extended the widest amplitude, in harmony with the related provisions of the Constitution.

99. It was pointed out, that in the past also messages sent by the Governor were assailed through judicial proceedings. In this behalf, reference was made to *K.A. Mathialagan v. P. Srinivasan*¹¹, wherein also, the message sent by the Governor pertained to a vote of no confidence against the Speaker. Reference was also made to *Pratapsing Raojirao Rane v. Governor of Goa*¹², wherein also, the message of the Governor pertained to a notice of resolution for the removal of the Speaker. It was submitted, that the message (dated 9.12.2015) which has been assailed by the appellants in the present case, suggested that the House should not be adjourned, till the notice of resolution for the removal of the Speaker stood determined finally, one way or the other. It was submitted, that one of the proposed requirements contained in the message of the Governor was, that the notice of resolution for the removal of the Speaker would be taken up as the first item on the agenda. It was pointed out, that the Governor’s message was merely to bring to the notice of the House the procedure that the House, was required to follow. It was urged, that under Rule 153 of the ‘Conduct of

¹¹ AIR 1973 (Madras) 371

¹² AIR 1999 (Bom.) 53

Business Rules' a notice of resolution for the removal of the Speaker, had to be included in the list of business before any other business for the day, could be taken up. Reference was also made to Rule 151 of the 'Conduct of Business Rules', which mandates that after a notice of resolution for the removal of a Speaker is tabled, the House would not be adjourned till the motion of no confidence had been finally disposed of. In the above view of the matter, it was pointed out, that requiring the Assembly to take up the notice of resolution for the removal of the Speaker, as the first item in the agenda (in the message dated 9.12.2015), cannot be termed as an action at the hands of the Governor, based on his own whims and fancies. It was urged, that the message needed to be viewed as an advice tendered to the Assembly, so as to deal with an important issue, in consonance with the provisions of the 'Conduct of Business Rules'.

100. Learned senior counsel then invited the Court's attention to the second direction in the message dated 9.12.2015, whereby the Deputy Speaker was obliged to preside over the House, from the first moment of the first sitting of the House. It was submitted, that the above noted action was also in the nature of an advice, so as to make sure that the procedure adopted before the House would not infringe Article 181(1) read with Article 182. It was pointed out, that the above provisions postulate *inter alia*, that the Speaker would not preside over the proceedings of the Assembly, wherein a resolution for his own removal, was to be considered. As such, it was submitted, that during the period when the notice of resolution for the removal of the Speaker – Nabam Rebia, was under consideration of the

House, the Deputy Speaker was liable to preside over the proceedings of the House. In this behalf, while it was acknowledged, that even the Deputy Speaker – Tenzing Norbu Thongdok, should similarly be treated as being debarred from presiding over the proceedings of the House, because a resolution for his (the Deputy Speaker's) removal from office was pending consideration. It was however submitted, that the above factual position is not correct, as no notice of resolution for the removal of the Deputy Speaker, had actually been moved. It was submitted, that the fact that a notice of resolution for the removal of the Deputy Speaker (alleged to have been presented to the Secretary of the Legislative Assembly, on 16.11.2015), was a complete falsity, as despite repeated reminders addressed by the Governor, seeking a copy of the notice of resolution for the removal of the Deputy Speaker, the same was not furnished to him. It was emphasized, that even before this Court, the appellants have failed to establish, that such a notice of resolution for the removal of the Deputy Speaker – Tenzing Norbu Thongdok, had ever been moved. It was therefore urged, that it was wholly legitimate for the Governor, in the facts of the present case, to require the Deputy Speaker of the Assembly, to preside over the proceedings, of the notice of resolution for the removal of the Speaker – Nabam Rebia.

101. It was also the contention of learned senior counsel, that Speakers against whom resolutions for their removal have been moved, are known to have resorted to unsavoury means, to defer consideration thereon. In this behalf, learned counsel placed reliance on *State of Punjab v. Satya Pal*

Dang¹³, the K.A. Mathialagan case¹¹, and Nipamacha Singh v. Secretary, Manipur Legislative Assembly¹⁴.

102. It was also submitted, that the Tenth Schedule, was added to the Constitution, by the Constitution (Fifty-second Amendment) Act, 1985 which came into force with effect from 1.3.1985. It was pointed out, that under the Tenth Schedule power is vested with Speaker alone, for exercising quasi-judicial functions (under Paragraph 6, of the Tenth Schedule). It was contended, that any misuse of the power vested with the Speaker under the Tenth Schedule, could result in derailing the democratic process of the concerned State. Insofar as the present controversy is concerned, it was pointed out, that the concerned Speaker – Nabam Rebia, issued notices to 14 MLAs belonging to the INC, for their disqualification on 7.12.2015, and thereby, took active steps to derail the democratic process, specially when, a resolution for his own removal had already been moved (on 19.11.2015). It was asserted, that the action of the Governor in requiring, that “... no Presiding Officer shall alter the party composition in the House” in the message dated 9.12.2015, was only aimed at preserving the democratic process, so that the Speaker by exercising his quasi-judicial powers under the Tenth Schedule, would not so change the composition of the House, as would favourably tilt the motion for his removal, in his own favour. It was accordingly asserted, that no motive should be attributed to the message of the Governor dated 9.12.2015, more particularly, paragraph 5 thereof. It was submitted, that save and except the ultimate desire of the Governor to

¹³ AIR 1969 SC 903

¹⁴ AIR 2002 (Gauhati) 7

preserve the democratic process, the message dated 9.12.2015 had no other fall out/consequence. It was also contended, that as the question of removal of the Speaker was pending consideration before the House, it would have been a serious constitutional impropriety on the part of the Speaker, to carry on presiding over the proceedings of the House, and more particularly, to conduct or continue with the quasi-judicial functions vested with him, under the Tenth Schedule. In conclusion, it was pointed out, that the action proposed by the Governor, through paragraph 5 of the message dated 9.12.2015, was merely aimed at maintaining the constitutional integrity of the House, and preserving the constitutional morality expected of the Speaker of the House.

103. It was asserted by learned senior counsel, that it was apparent from the facts and circumstances of the present case, that the Speaker had entertained a petition for disqualification, against 14 MLAs belonging to the INC on 7.12.2015, well after, the Governor had sought information, about the notice for the removal of the Speaker. It was submitted, that in the first instance, the Secretary of the Legislative Assembly, maintained complete silence, and chose not to respond to the letter(s) of the Governor. Finally through a communication dated 7.12.2015, the Secretary of the Legislative Assembly wrote to the Governor, informing him that the Speaker was on tour, and the notice of resolution for his own removal (for the removal of the Speaker – Nabam Rebia), as well as, that of the Deputy Speaker – Tenzing Norbu Thongdok, were in the personal custody of the Speaker – Nabam Rebia. In the above view of the matter, it was submitted, that it was natural

for the Governor to have addressed the message dated 9.12.2015, with a clear description of the manner in which the proceedings of the House were to be conducted, when the 6th session commenced on 16.12.2015. This was done by the Governor, according to learned counsel, only to ensure that procedure adopted by the House, was in consonance with the provisions of the Constitution, and the 'Conduct of Business Rules'.

104. Based on the aforementioned submissions, it was the contention of Mr. Rakesh Dwivedi, learned senior counsel, that the prayers made by the appellants before this Court, being devoid of any merit, deserved to be rejected.

105. Mr. T.R. Andhyarujina, learned Senior Advocate, entered appearance on behalf of respondent no. 16 – the Governor of the State of Arunachal Pradesh. It would be pertinent to mention, that the Governor had entered appearance before the High Court, by moving an interlocutory application, for the limited purpose of justifying his order and message dated 9.12.2015, and also, in order to demonstrate that he was unaware of the notice of the resolution dated 16.11.2015, moved for the removal of the Deputy Speaker – Tenzing Norbo Thongdok.

The sixth sequence of facts:

106. It was contended by learned senior counsel, that there had been political turmoil in the State of Arunachal Pradesh, since March/April, 2015. It was pointed out, that the situation got worst in September, 2015, when a group of 21 MLAs belonging to the INC, clamoured for a change of guard, which was targeted at the Chief Minister – Nabam Tuki. It was

submitted, that the above 21 MLAs had camped in Delhi for three months, so as to press their claim before the central leadership (of the National Congress Party). During the above period, all the 21 MLAs belonging to the INC, had refused to attend meetings of the Congress Legislature Party in the State of Arunachal Pradesh. This factual position, according to learned senior counsel, has been acknowledged by the appellants themselves, even before this Court.

107. It was submitted, that on 14.9.2015, 17 of the 21 MLAs belonging to the INC, were invited for an informal dinner by the Chief Minister – Nabam Tuki, at his official residence. At the aforesaid dinner, they were coerced into signing identically worded resignation letters. It was submitted, that the Speaker – Nabam Rebia, was also present at the dinner hosted by the Chief Minister. It was brought out, that rather than accepting all the 17 resignation letters, the Speaker – Nabam Rebia, accepted resignation letters of only two of the MLAs - Gabriel D. Wangsu and Wanglam Sawin. Having accepted the two resignation letters, the Speaker issued a notification on 1.10.2015, declaring that their respective Assembly segments, had been rendered vacant (under Article 190). It was pointed out, that on 11.10.2015, the aforesaid MLAs addressed a letter to the Governor complaining about the manner in which their resignation letters were got signed under coercion, as also, the illegal acceptance thereof. It was pointed out, that the aforesaid letter(s) were available on the record. The letters referred to, are not being extracted herein for reasons of brevity. It was submitted, that the said two members of the House, whose resignations

were accepted, approached the Gauhati High Court, by filing Writ Petition (C) No.6193 of 2015. On 7.10.2015, the High Court passed an interim order staying the orders accepting their resignations. The above writ petition, it was submitted, was dismissed by the High Court on 12.1.2016, and a Petition for Special Leave to Appeal assailing the same, was dismissed by this Court. It was pointed out, that the subsequent dismissal of the judicial proceedings by the High Court, and by this Court, were inconsequential, inasmuch as, at the relevant juncture, the High Court having found *prima facie* merit in the claim raised by the two MLAs, against the acceptance of their resignation letters, had stayed the operation of the order by which their resignation letters had been accepted. It was urged, that it was relevant to keep in mind the impression which would have been created in the mind of the Governor, by the said interim directions.

108. It was submitted, that immediately after the resignation of the two MLAs was accepted, 21 MLAs belonging to the INC, wrote to the Governor on 11.10.2015, that the Chief Minister – Nabam Tuki, did not enjoy the majority of the House, and as such, was running a minority government. Shortly after the receipt of the communication dated 11.10.2015, 13 MLAs (11 from the BJP, and 2 Independent MLAs) issued a notice of resolution for the removal of the Speaker – Nabam Rebia, under Article 179(c) on 19.11.2015. It was submitted, that the aforesaid notice ought to have been taken up at the earliest, and in any case, soon after the expiry of 14 days (expressed in the first proviso, under Article 179). It was highlighted, that on the same day on which the notice was moved, a copy of the resolution

(dated 19.11.2015) was endorsed by the MLAs to the Governor. And on the same day – 19.11.2015, all the 13 signatories to the resolution for removal of the Speaker, made a written request, to the Governor, seeking preponement of the 6th session of the House. And for an urgent consideration by the House, of the resolution for the removal of the Speaker – Nabam Rebia. (this communication, has been extracted above).

109. It was further the submission of learned senior counsel, that in order to derail the action initiated by the 13 MLAs, seeking removal of the Speaker, the Chief Whip of the Congress Legislature Party – Rajesh Tacho, petitioned the Speaker under Article 191(2) on 7.12.2015, to disqualify 14 MLAs, belonging to the INC, on account of their having allegedly given up their allegiance/membership to the political party (- the INC) on whose ticket they had been elected to the House. The above petition, called for their disqualification under the Tenth Schedule. It was submitted, that the Governor having viewed the developments referred to hereinabove, found it appropriate to exercise his discretion under Article 174, to prepone the 6th session of the Assembly, from 14.1.2016 to 16.12.2015. It was asserted, that the aforesaid action of the Governor, would enable the House to consider the notice of resolution for the removal of the Speaker – Nabam Rebia, at the earliest, in consonance with Article 179(c) and Rules 151 to 153 of the ‘Conduct of Business Rules’.

110. It was submitted, that the factual position depicted hereinabove, had not been invented by the Governor, in order to satisfy the High Court or this Court, on the then prevailing political conditions, which necessitated the

passing of the order and the message dated 9.12.2015, but was apparent from the monthly letters, addressed by the Governor to the President. It was pointed out, that the first of the above letters, was addressed by the Governor to the President on 17.10.2015. An extract of the same is reproduced hereunder:

“No. GS/I(C)-129/2014 (Vol-II)
17th October, 2015

Hon'ble Shri Pranab Mukherjee Ji,

This is a Special Report on the latest significant political developments in my State of Arunachal Pradesh.

In view of the prevailing political imbroglio in the State arising out of growing dissidence in the Congress, the Congress Legislators seem to be divided into two groups, due to internal infighting among them for power and position and also one group demanding resignation of the Chief Minister Shri Nabam Tuki for alleged failure. Media reports indicate that the dissident group has been camping at New Delhi to appeal to the AICC Central Leadership for a change of leadership in the State, but AICC has not yet responded to their appeal. As per media report, Shri Kalikho Pul, the former Finance Minister of the State and sitting MLA is allegedly leading the dissident group and about 37 Legislators in the 60-Member State Assembly have agreed to support Shri Kalikho Pul's bid for leadership. The State BJP termed it as unfortunate and demanded the resignation of Chief Minister Shri Nabam Tuki, accusing him of failing to honour the people's mandate alleging that, as a result, the developmental activities continued to be adversely affected due to the existing political scenario. It is pertinent to mention here that Arunachal Pradesh has a 60-Member Assembly, out of which Congress has 47, BJP-11 and 2 Independent Legislators. However, the Arunachal Pradesh Congress Committee Chief Shri Padi Richo said that the report was false, fabricated and misleading.

It is reported that, in a high political drama, on 16th September, 2015, Shri Gabriel Denwang Wangsu and Shri Wanglam Sawin, both Congress MsLA, were invited to a dinner party at the residence of Shri Nabam Tuki, Chief Minister where 17 MsLA of the Congress party attended. Some loyalists of Shri Nabam Tuki compelled them to sign in resignation letters without even reading the content therein, in front of Shri Nabam Tuki, Chief Minister, Shri Nabam Rebia, Speaker of the State Assembly and the President of Pradesh Congress Committee. On 1st October, 2015 the Secretary, Legislative Assembly notified the resignation of two Legislators – Shri Gabriel Denwang Wangsu, MLA Kanubari and Shri Wanglam Sawin, MLA Khonsa (East) have resigned from the Arunachal Pradesh Legislative Assembly and

the Speaker has accepted their resignations under the provision of Rules of Procedure and Conduct of Business of the Assembly. The Notification further informed that consequent upon their resignation, the seats of 55-Khonsa East (ST) AC and 58-Kanubari (ST) AC respectively have fallen vacant. (Notification at Annexure-I). The two MsLA in a written complaint dated 11th October, 2015 to the Governor informed about their being coerced to submit typed resignation letters addressed to the Speaker “under complete duress” and requested for instituting an enquiry into the whole ‘resignation incident’ through an agency like the CBI. A copy of Joint Complaint letter dated 11th October, 2015, addressed to the Governor by Shri Gabriel Denwang Wangsu, MLA Kanubari and Shri Wanglam Sawin, MLA Khonsa (East) is enclosed at Annexure-II for your kind perusal.

They also submitted another complaint stating that some anti-social elements and local miscreants frequently visited their official residences at Itanagar and private property giving mental agony and raising fears in them and their families. In view of the above, I advised the State Home Minister with copies to the State Chief Minister, Chief Secretary and DGP to look into the issue and direct all concerned to provide necessary security to Shri Wanglam Sawin, MLA and Shri Gabriel D. Wangsu, MLA and also to their family members, and that the miscreants / culprits involved in the intimidation cases be apprehended and brought to justice, at the earliest. (Copy at Annexure-III).

While condemning the move to obtain resignation letter of 17 MsLA by coercing them and putting them under duress, the People’s Party of Arunachal (PPA) termed the alleged forced resignation as ‘murder of democracy’ and demanded immediate intervention of the Governor on the matter to ascertain that the two Legislators should get back their constitutional rights. Opposition Leader Shri Tamiyo Taga (BJP), who himself was once the Speaker of the State Assembly, questioned the role of the Speaker Shri Nabam Rebia, for misusing his power and position by creating political drama over the resignation of two sitting MsLA, and stated that the MsLA resigned from the State Assembly under duress.

Aggrieved by the Order of the Hon’ble Speaker, Sarvashri Wangsu and Sawin filed Writ Petition before the Hon’ble Gauhati High Court vide WP(C) 6193/2015 praying for relief. The Hon’ble Gauhati High Court on 7th October, 2015 stayed the Notification of the Speaker of Arunachal Pradesh Legislative Assembly dated 01.10.2015 accepting the resignation letters of the two Congress MsLA and declaring the seats vacant in their respective constituencies, and directed that the Election Commission shall not take any action on the basis of the Notification to hold bye-election. In another development, in a joint letter addressed to the Governor, the Arunachal Students’ Federation (ASF) and the Wancho Students’ Union (WSU) urged to impose President’s Rule in the State, following the disclosure of the resignation of two MsLA.

Meanwhile, Shri Kalikho Pul, MLA recently complained to me about threats being issued to him by unknown miscreants and also threats meted out to his family members by a group of miscreants / criminals at his Official Bungalow. He requested for providing adequate security to him and his family members as he apprehended grave threats to their lives. I advised the State Home Minister with intimation to the Chief Minister, Chief Secretary and DGP to take immediate steps to provide necessary security to Shri Pul and his family and also to direct the Police authorities to take up investigation of the Case, identify and arrest the culprits and bring them to book under the Law, at the earliest.

xxx

xxx

xxx

For kind information of Hon'ble President of India please.

With Esteemed Regards,

Yours sincerely,
signed (illegible)
(J.P. Rajkhowa)"

111. The second of the letters addressed by the Governor to the President was dated 19.11.2015. An extract of the same is reproduced hereunder:

"No. GOV-AP/SPL-REP/2015
19th November, 2015

Hon'ble Shri Pranab Mukherjeeji,

This is a Special Report highlighting some latest significant developments in my State of Arunachal Pradesh.

In continuation to my Special Report on Political Development in the State vide No.GS/I(C)-129/2014 (Vol-II) dated 17th October, 2015 and my subsequent Monthly Report for the Month of October, 2015 No. G/ML/2015 dated 1st November 2015, it has been observed that the political imbroglio in the State has been storming with growing dissidence amongst the Congress Legislators, including some Ministers due to internal infighting for changing of leadership in the State.

The Congress Legislature Party (CLP) with 47 MsLA in a 60-Member House has cracked into two rival factions in the recent past. It was reported that the Congress Legislature Party (CLP) Meeting was held at Rajiv Gandhi Bawan, Itanagar on 8th November, 2015, which was attended by 25 Congress Legislators including Shri Nabam Tuki, Chief Minister, Shri V. Narayanasamy, General Secretary, AICC and Dr. K. Jaya Kumar, Secreary, AICC, both In-Charge of Arunachal Pradesh also attended the Meeting along with Shri Padi Richo, Aunachal Pradesh Congress Committee (APCC), Office Bearers of APCC, and prominent leaders of INC Party from all the Districts of Arunachal Pradesh. Those in support of Shri Nabam Tuki are stationed in Itanagar, the Capital City, making occasional appearances before the media with the Chief Minister, while the

dissidents group, comprising 21 Congress Legislators, seeking a change of leadership, citing “ineffective governance”, financial mismanagement, corruption and autocratic way of functioning of the Chief Minister Shri Nabam Tuki, have been camping in Delhi for the past two months or so.

The Legislators present in the Meeting condemned the dissident Legislators for abstaining from the CLP Meeting. The Legislators who attended the CLP Meeting were, (1) Shri Nabam Tuki, Chief Minister, (2) Shri Tanga Byaling, Home Minister, (3) Shri Gojen Gadi, Minister PWD & Election, (4) Shri Rajesh Tacho, Minister Health & Family Welfare & Parliamentary Affairs, (5) Shri Tapang Taloh, Minister, Education, Libraries, Textile, Handloom & Handicrafts & Department of Water Resources Development, (6) Shri Jomde Kena, Minister, Transport and Civil Aviation, Cooperation, (7) Shri Phurpa Tsering, Minister, Animal Husbandry & Veterinary, Power (Civil), (8) Shri Tirong Aboh, Minister, Department of Development of Tirap, Changlang Districts and Mines with additional department of Civil Supplies and Consumer Affairs, (9) Shri Takam Pario, Minister, Public Health Engineering & Water Supply, Department of Disaster Management, (10) Shri Techi Kaso, Parliamentary Secretary, (11) Shri Kumsi Sidisow, Parliamentary Secretary, (12) Shri Alo Libang, Parliamentary Secretary, (13) Shri Mama Natung, Parliamentary Secretary, (14) Shri Jambey Tashi, Parliamentary Secretary, (15) Shri Tapuk Taku, Parliamentary Secretary, (16) Shri Pani Taram, Parliamentary Secretary, (17) Shri Nikh Kamin, Parliamentary Secretary, (18) Shri Dikto Yekar, Parliamentary Secretary, (19) Smt. Gum Tayeng, Parliamentary Secretary, (20) Shri Karya Bagang, Parliamentary Secretary, (21) Shri Bamang Felix, Parliamentary Secretary, (22) Shri Nyamar Karbak, Parliamentary Secretary, (23) Shri Punji Mara, Parliamentary Secretary, (24) Shri Likha Saaya, Parliamentary Secretary & (25) Shri Tatung Jamoh, Parliamentary Secretary.

As per the media report, Shri V. Narayanasamy, AICC In-charge Arunachal Pradesh declared Shri Nabam Tuki, Chief Minister as the undisputed leader and claimed the State Government 100% stable. He termed the absence of 21 dissident MsLA in CLP Meeting as an act of indiscipline and alleged State BJP and Union Minister of State for Home Affairs Shri Kiren Rijiju to be behind this open defiance and have been creating disturbance and hurdles in developmental activities. In the Meeting, it was reportedly decided to initiate disciplinary action against the dissident Legislators, who did not attend the CLP Meeting. He also reportedly stated that he would submit a report to the Party High Command on the situation and suggest disciplinary action against the 21 MsLA. Prominent among the 21 Legislators included former Ministers Shri Kalikho Pul, Shri Chowna Mein, Shri Kumar Waii, Shri Wanglin Lowangdong, Shri Thangwang Wangham, Shri Kamlung Mossang, most of whom were dropped from the Ministry led by Shri Nabam Tuki recently.

The State BJP strongly condemned the above unwarranted statements of Shri Narayanasamy as political statements not based on truth and out of frustration due to their failure to put their house in order.

Meanwhile, State BJP Legislators have submitted a Memorandum dated 12th November, 2015 to the Governor apprising him the recent political crisis in the State and requested to take appropriate and proactive action on the issue (copy at Annexure-I). They alleged that the “stretched” political stalemate has put the State under “complete darkness” and the continuation of the present Congress Government has made each and every citizen very “vulnerable”. In the Memorandum they claimed that in the House of total 60 Members, any Legislature Party to form a Government must enjoy the confidence or support of minimum 31 Members of the House, but the Government led by Shri Nabam Tuki commands the support and confidence of only 25 Legislators. They also requested the Governor to ask the State Government not to take any major decisions in financial matters because Chief Minister Shri Nabam Tuki’s Government has been reduced to a minority. The State BJP also reiterated its demand that the ruling Congress Government in the state should surrender paving way for new regime to take over. Highlighting the present political situation in the state, the BJP, in a Press Statement, claimed that the long political stalemate in the rebel-plagued Government has brought all developmental activities to a grinding halt and the long absence of the rebel MLAs from the state has totally paralyzed the State.

In the meantime, Peoples’ Party of Arunachal (PPA) in a Press Statement said that the Leader of the Opposition should immediately call upon the Governor of the State and urge him to instruct the Chief Minister to prove his majority or step down, owning moral responsibility.

xxx

xxx

xxx

I will keep you informed of the subsequent developments, if any, on the above issues, in my subsequent Report.

With Esteemed Regards,

Yours sincerely,
signed (illegible)
(J.P. Rajkhowa) ”

112. The last letter addressed by the Governor to the President, before the issuance of the order, and the message dated 9.12.2015 was dated 1.12.2015. An extract of the same is reproduced hereunder:

“No. G/ML/2015
01 Dec, 2015

Hon’ble Shri Pranab Mukherjee ji,

My report for the month of November, 2015, briefly giving an outline of various events in Arunachal Pradesh is placed below for your kind perusal.

xxx

xxx

xxx

On 19th November, 2015, thirteen Legislators submitted a Memorandum to the Governor, praying to rescind the Summons issued for the House to meet on 14th January, 2016 and re-issue the Summons for the House to meet at an emergent date so that the Resolution aforesaid is considered and disposed at the earliest in accordance with the scheme, purpose and timeframe envisaged by the Constitution makers.” (Copy at Annexure-I).

Further, 13 Members of the Arunachal Pradesh Legislative Assembly (APLA), addressing a letter to the Secretary of the Assembly, issued a Notice of the following Resolution, under Article 179(c) read with Article 181 of the Constitution of India and Rules 151 to 154 of the Rules of Procedure and Conduct of Business of APLA, for removal of the present Speaker.

“That this House removes Shri Nabam Rebia from the Office of the Speaker of the Arunachal Pradesh Legislative Assembly with immediate effect.” The signatories have given five grounds, in justification, including one of committing the “moral turpitude of the highest order thereby making him ineligible to occupy the high office of the Speaker”, since he was reportedly “caught in an ugly scandal involving a woman from the State” who lodged an FIR on 15-11-2015 in the Women Police Station, Itanagar. (copy at Annexure-II).

While voicing on the same tune, the Peoples’ Party of Arunachal (PPA) also demanded the Governor to prepone the Session of Legislative Assembly slated to be held from 14th January, 2016, alleging that the present Nabam Tuki led Govt. has completely lost the confidence of the people and has been reduced to a minority and hence needs to prove his majority in the floor of the House.

It is pertinent to mention here that the present political scenario of such a long-drawn impasse extending over nearly three months, with 21 Congress Legislators camping in Delhi to impress upon the party Central Leadership for removing Shri Nabam Tuki from the post of Chief Minister, is not at all in the interest of the people and the State, which requires urgent and immediate redressal, keeping in mind that political stability is of utmost importance for the welfare of the people of this strategic border State.

The attention of the Raj Bhavan has been drawn to the news item in one of the local dailies, the Dawnlit Post, with headline ‘Tuki led Government is 100 percent stable: Narayanasamy; Eastern Sentinel, with Headline ‘Tuki, undisputed leader: Narayanasamy’; Arunachal Front, with a headline ‘AICC top brasses elicit 25 CLP MsLA view to report to Delhi’, where it states that ‘Modi replaced all the Governors by RSS men and the present State Governor wrote a letter against the Hollongi Greenfield Airport without consulting the CM which was unconstitutional. The Governor has turned the Raj

Bhavan into BHP Hqs, Narayanasamy alleged. I expressed strong disapproval to such wild allegation by a former Union Minister of State, Shri V. Narayanasamy, who is one of the senior leaders of one of the major political parties of the country. A copy of the Press Release issued from the Raj Bhavan is attached vide Annex-'B'.

xxx

xxx

xxx

During the month under report, the insurgent activities, like forcible tax collection by three factions of NSCN (K), NSCN (IM) and NSCN (R) in three Districts, i.e. Tirap, Changlang and Longding are still continuing.

The Detailed Report is enclosed herewith.

With kindest regards,

Yours sincerely,
signed (illegible)
(J.P. Rajkhowa)"

113. Based on the three monthly reports submitted by the Governor to the President, it was contended, that there was sufficient material before the Governor to arrive at the conclusion, that the Speaker was likely to discharge his duties in a manner as would result in extending political favours to the INC. It was submitted, that it was legitimately apprehended (- by the Governor), that the Speaker who was facing a notice of resolution for his removal, would exercise his powers under the Tenth Schedule, to disqualify the dissident MLAs (belonging to the INC), and thereby stage manage his majority in the House, with the support of the Chief Minister. This in turn, it was urged, would ward off the threat to the position of the Chief Minister, as well. It was submitted that, it was in the above background, that the Governor expressed in his message dated 9.12.2015, that the Presiding Officer during the course of consideration of the notice of resolution for the removal of the Speaker, would not alter the party composition in the House. It was submitted, that the aforesaid apprehension entertained by the Governor, came out to be true, when the

Speaker of the Legislative Assembly, issued notices on 7.12.2015 (returnable for 14.12.2015) for the removal of the said 14 MLAs, belonging to the INC. It was pointed out, that even though none of the above MLAs were served, proceedings against them were simply adjourned to the following day - 15.12.2015. Even the adjourned date was not to the knowledge of the MLAs proceeded against. And despite the fact, that none of the MLAs whose disqualification was sought, had been served or had entered appearance in the proceedings, they were all disqualified by the Speaker, on 15.12.2015. According to learned senior counsel, this action of the Speaker resulted in depletion of the strength of the Assembly. This depleted strength had the effect of reviving and securing his own majority, which was sufficient to effectively defeat the notice of resolution for his removal. It was submitted, that it is evident that the order, and the message of the Governor dated 9.12.2015, were based on good and sound reasons, and were aimed at preserving an honest democratic process in the State.

The next instalment, of the legal response, on behalf of the respondents:

114. Relying on the decisions rendered by this Court in the Samsher Singh case¹, and in Madhya Pradesh Special Police Establishment v. State of Madhya Pradesh¹⁵, as also, in State of Gujarat v. Justice R.A. Mehta¹⁶, and especially in the Satya Pal Dang case¹³, it was submitted, that the Governor's power to prorogue the Legislative Assembly under Article 174(2) was absolute, and without any restriction and restraint, and that, the

¹⁵ (2004) 8 SCC 788

¹⁶ (2013) 3 SCC 1

Governor could exercise his said power, in his own discretion without any aid or advice.

115. Having invited our attention to Article 163(2), it was submitted, that the power of the Governor with reference to a situation, in which he is to act in his own discretion is not only final, but also that, the validity of the exercise of such discretion by the Governor, cannot be called in question, before any Court. It was asserted, that no one whatsoever had the right to determine, whether the Governor ought or ought not to have acted, in his discretion. It was submitted, that the only situation, where the exercise of discretion by the Governor, can be called in question is, when it can be established, that the Governor's action was perverse or capricious or fallacious or extraneous or for a motivated consideration. In other words, when the exercise of discretion, can be described as *mala fide*. Then, and then alone, according to learned counsel, the same can be questioned by adopting a process of judicial review. It was submitted, that the scope of interference in the discretion of the Governor under Article 163(2), has to be accepted as extremely limited. It was pointed out, that Article 163(2) is a unique provision. It was acknowledged, that its ambit and scope had not yet been determined by this Court. It was urged, that the power of the Governor to exercise functions on his own, without the aid and advice of the Council of Ministers headed by the Chief Minister, is well known. Illustratively, reference was made to Articles 200, 239(2), 356, 371(2), 371A(1)(b), 371C(1), 371F(g), and in addition thereto, the powers vested with the Governor under Paragraph 9 of the Sixth Schedule. It was further

urged, that there were other situations also, wherein discretion to act independently, has been conferred on the Governor, even though not specifically expressed, by or under any provision of the Constitution. Reference was made to the selection of the Chief Minister after fresh elections under Article 164; the authority to obtain a fresh vote of confidence; where it appears to the Governor that the Chief Minister and his Council of Ministers no longer enjoy the majority in the House. Reference was also made to the Samsher Singh case¹ (paragraph 154 – already extracted above), wherein this Court referred to obvious situations, in which the Governor would act at his own.

116. Reference was also made to the Madhya Pradesh Special Police Establishment case¹⁵, wherein this Court recognised the fact, that there would be many situations where, for reasons of peril to democratic principles, the Governor was liable to act at his own, without subjecting himself to the aid and advice of the Chief Minister and his Council of Ministers. It was explained, that in matters where the Governor is of the view, that the advice of the Council of Ministers was likely to be biased or partisan, or where there is a conflict of interest between the Council of Ministers on the issue under consideration, it would be open to a Governor to act at his own. And in such cases, even if advice is tendered by the Council of Ministers, the Governor could legitimately ignore the same. It was pointed out, that the above position was reiterated in the Justice R.A Mehta case¹⁶, wherein this Court while interpreting Article 163(2) concluded, that it would be permissible for the Governor to act without

ministerial advice, even in the absence of an express provision in the Constitution.

117. Insofar as the present controversy is concerned, learned senior counsel asserted, that Article 174 itself vests the power with the Governor, to summon, prorogue or dissolve the Legislative Assembly. It was submitted, that a perusal of Article 174 reveals, that there are no restrictions on the powers of the Governor, in the above matters. The Governor's decision determining the place and time, where and when the House would meet, according to learned counsel, is also demonstrative of the determination of the same, by himself. It was submitted, that summoning the Assembly is a part of the discretion referred to in Article 163(1), where the Governor can act without the aid and advice of the Council of Ministers. And further that, the decision of the Governor in the above matter is final, and cannot be questioned, because it is so mandated, under Article 163(2). It was therefore asserted, that the discretion exercised by the Governor in preponing the meeting of the Assembly from 14.1.2016 to 16.12.2015, was fully justified and within the individual domain of the Governor.

118. On the subject of judicial review, in respect of the discretion exercised by the Governor under Article 163(2), it was submitted, that this Court in *Kesavananda Bharati v. State of Kerala*¹⁷, held that the provisions of the Constitution cannot be amended, so as to alter the basic structure of the Constitution. It was acknowledged, that the power of judicial review has been recognised as a part of the basic structure of the Constitution. It was

¹⁷ (1973) 4 SCC 25

submitted, that the concept of the basic structure, is not applicable to the original provisions of the Constitution. It was emphasized, that Article 163(2) is an original provision of the Constitution, and therefore, it cannot be tested on the touchstone of the concept of the basic structure. It was pointed out, that the founding fathers of the Constitution, desired to vest absolute discretion with the Governor, to determine whether he ought to act in his discretion. It was urged, that the founding fathers made it explicitly clear, that the decision of the Governor taken in his discretion would be final, and additionally, anything done by the Governor while exercising his discretion under Article 163(2), would not be called in question. It was submitted, that a plain reading of the above provision, leaves no room for any doubt, that the framers of the Constitution vested with the Governor an unambiguous authority to exercise his discretion under the provisions of the Constitution. The founding fathers also desired, that such discretion exercised by the Governor should be final. It was therefore submitted, that the very suggestion at the hands of the appellants, that the order and message of the Governor dated 9.12.2015, were subject to judicial review, was liable to be rejected.

119. In order to demonstrate the uniqueness of the position of the Governor, learned senior counsel desired this Court to contrast Article 163 with Article 74. It was pointed out, that Article 74 requires the President, to exercise his functions in accordance with the aid and advice tendered to him by the Council of Ministers (with the Prime Minister as the head). And under no circumstances, in his own discretion. It was urged, that while

examining the scope of functions vested with the Governor, it needs to be visualized that Article 163(1) postulates situations, wherein the Governor is to exercise his functions, as provided for by or under the Constitution, in his own discretion. It was highlighted, that under Article 163(2), in case of a dispute, whether or not a particular function could or could not be exercised by the Governor in his own discretion, the Governor and the Governor alone, is mandated to take call on the matter. And his decision on the matter, is final. According to learned senior counsel, in the discharge of functions under the Constitution, the determination at the hands of the Governor is different from that of the President. The Governor has clear discretionary powers, whereas the President has none. Furthermore, as noticed above, Article 163(2) assigns finality to the determination by the Governor, as to whether he was required by or under the Constitution to act in his own discretion. Not only that, the said determination by the Governor "... shall not be called in question on the ground that he ought or ought not to have acted in his discretion ...".

120. It was therefore submitted, that in all matters where, by a constitutional provision, the Governor is required to discharge a particular function, the manner in which that function is to be discharged, would have to be determined by the Governor himself. It was submitted, that that could be the only legitimate conclusion, on an effective comparison and understanding of Articles 74 and 163. It was in the instant background, that learned senior counsel drew our attention to Article 174, which according to him, unambiguously vests in the Governor, the responsibility

to summon the State Legislature. Not only that, it was submitted, that the Governor is also vested with the responsibility to determine “as he thinks fit”, when and where the House would meet. Likewise, the Governor is authorized to prorogue and dissolve the House, from time to time, as he may choose. It was therefore submitted, that in the facts and circumstances of the present case, when the Governor by his order dated 9.12.2015, took the decision by exercising his discretion, to summon the House by preponing the 6th session of the Assembly from 14.1.2016 (as earlier fixed), to 16.12.2015. The above discretion exercised by the Governor was bound to be accepted as final, and could not be called in question. It was submitted, that judicial review of the above order, was clearly barred, except if it could be shown, that the above discretion was not exercised by the Governor *bona fide* and on due consideration. It was submitted, that the exercise of discretion at the hands of the Governor under Article 163(2), was an area of non-justiciability. And that, it was impossible to get over the bar, except to the limited extent referred to hereinabove.

121. In the above view of the matter, for exactly the same reasons expressed by learned counsel with reference to the order dated 9.12.2015, it was submitted, that the discretion exercised by the Governor in addressing the message dated 9.12.2015 under Article 175, was also in exercise of due discretion, without any oblique motives, and to further the democratic process, in consonance with the provisions of the Constitution, as also, the ‘Conduct of Business Rules’ (framed under Article 208). It was therefore the

vehement contention of learned senior counsel, that the prayers made by the appellants against the impugned order of the Governor dated 9.12.2015, as well as, the impugned message of the Governor dated 9.12.2015, deserved to be rejected.

The last segment of legal submissions, on behalf of the respondents:

122. Mr. Ashok H. Desai, Senior Advocate entered appearance last of all. His representation was on behalf of respondent nos. 21 to 30. He assisted the Court by primarily expounding the constitutional parameters contemplated under Articles 163 and 174. Learned counsel examined the aforesaid provisions, to highlight his understanding of the scope and powers of the Governor. In order to broadly demonstrate the functions of the Governor, it was submitted, that the Constitution has vested with the Governor executive, as well as, legislative functions. It was submitted, that Article 154 postulates the range of the executive power of the State, accorded to the Governor. He placed reliance on Article 168, which declares the office of the Governor, to be a component of the State Legislature. It was also pointed out, that the Governor was bestowed with legislative power under Article 213, which authorized him to promulgate Ordinances, during the period the State Legislature was not in session. As against the above, it was submitted, that all executive actions of the State Government, are expressed in the name of the Governor, under Article 166. According to learned counsel, Article 166 also requires the Governor to make rules for the convenient transaction of business of the State Government, and for the allocation of governmental business amongst Ministers. It was also

highlighted, that the Governor of a State has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute sentences of persons convicted of offences relating to matters to which the executive power of the State extends under Article 161. It was submitted, that under Article 174, the Governor is required to summon Houses of the State Legislature, at such time and place as he thinks fit. The Governor likewise, has the authority to prorogue and dissolve the Assembly. It was pointed out, that in a State Legislature having both a Legislative Council and a Legislative Assembly, the Governor is authorized to make rules relating to procedure, with respect to the business of the House, under Article 208. It was submitted, that no Bill can be passed by State Legislature(s) to become law, unless on being presented to the Governor under Article 200, the Governor accords his assent to the same. It was urged, that even though Article 163 provides, that a Governor would exercise his functions on the aid and advice of a Council of Ministers with the Chief Minister as the head, yet the same Article notably authorizes the Governor to carry out certain functions in his own discretion, without any aid and advice. It was pointed out, that it was *inter alia* on the receipt of a report from the Governor of a State, that the President may, in case of failure of the constitutional machinery, declare that the power of the Legislature of the State, would be exercised under the authority of the Parliament. It was contended, that the power and position of the Governor and the contours, while interpreting the scope and extent of his powers and

functions, should be determined on the basis of the responsibilities and the functions assigned to him under different provisions of the Constitution.

123. It was urged by learned senior counsel, that a Governor is required to discharge the functions assigned to him, keeping in mind the true scope and ambit of each of the functions. It was pointed out, that in case of conflict between the views expressed by the Union Government and a concerned State Government, the Governor must assume the position of an impartial/neutral umpire. It was submitted, that the State of Arunachal Pradesh (of which respondent no.17, was the Governor), could not be handled in the same manner as other States recognized by the Indian Constitution. It was submitted, that the State of Arunachal Pradesh is located in the north-east of India, and has one of the longest international boundaries of any State. It was urged, that the State had been subjected to recurrent insurgencies from within, as also, from outside the country. It was also pointed out, that China which has a common border with the State of Arunachal Pradesh, is claiming a large part of the Indian territory falling in the State. It was submitted, that Article 371H recognizes the special position of the Governor of the State of Arunachal Pradesh. Article 371H is extracted hereunder:

“371H. Special provision with respect to the State of Arunachal Pradesh.—Notwithstanding anything in this Constitution,—

(a) the Governor of Arunachal Pradesh shall have special responsibility with respect to law and order in the State of Arunachal Pradesh and in the discharge of his functions in relation thereto, the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken:

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this clause required to act in the exercise of his individual judgment, the decision of the

Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment:

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Arunachal Pradesh, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;

(b) the Legislative Assembly of the State of Arunachal Pradesh shall consist of not less than thirty members.”

Based on the aforesaid provision, it was pointed out, that the Governor of the State of Arunachal Pradesh, is provided with special responsibilities with respect to law and order. It was submitted, that the Governor, after consulting the Council of Ministers, is authorized to exercise his individual judgment, as to the action to be taken, with respect to maintaining law and order in the State. And that, any such action taken by the Governor in his individual judgment, has been assigned the status of being final and binding, so as not be called in question, on the plea that he ought or ought not to have acted, in exercise of his individual judgment. It was however acknowledged, that the exercise of the responsibility by the Governor under Article 371H would remain, so long as, the approval for the same continues to be accorded by the President.

124. On the pointed interpretation of Article 163(1), it was asserted, that a Governor would ordinarily exercise his functions on the aid and advice of the Council of Ministers with the Chief Minister as the head. It was however pointed out, that under the very same provision, the Governor is authorised by the Constitution “to exercise his functions or any of them in his discretion”. It was urged, that the constitutional powers which the

Governor is mandated to exercise under Article 163(1), extend to situations provided for expressly “by or under” the provisions of the Constitution. It was asserted, that besides the functions assigned to a Governor under the Constitution, a Governor may be required to discharge functions and exercise powers, under ordinary legislative enactments. It was submitted, that the authority exercised by the Governor under a statutory provision, may or may not be required to be performed, on any aid and advice. Relying on the judgment in the Samsher Singh case¹, it was urged, that a seven-Judge Bench by way of illustration indicated, a number of situations, where the Governor could act without any aid and advice. It was highlighted, that in the Samsher Singh case¹ the Court emphasized, that the instances depicted in the judgment were only illustrative, and not exhaustive. A relevant extract of the above judgment is reproduced hereunder:

“54. The provisions of the Constitution which expressly require the Governor to exercise his powers in his discretion are contained in Articles to which reference has been made. To illustrate, Article [239\(2\)](#) states that where a Governor is appointed an Administrator of an adjoining Union Territory he shall exercise his functions as such administrator independently of his Council of Ministers. The other Articles which speak of the discretion of the Governor are paragraphs 9(2) and 18(3) of the Sixth Schedule and Articles [371A\(1\)\(b\)](#), [371A\(1\)\(d\)](#) and [371A\(2\)\(b\)](#) and [371A\(2\)\(f\)](#). The discretion conferred on the Governor means that as the Constitutional or formal head of the State the power is vested in him. In this connection, reference may be made to Article [356](#) which states that the Governor can send a report to the President that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution. Again Article [200](#) requires the Governor to reserve for consideration any Bill which in his opinion if it became law, would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fill under the Constitution.

55. In making a report under Article 356 the Governor will be justified in exercising his discretion even against the aid and advice of his Council of Ministers. The reason is that the failure of the constitutional machinery may be because of the conduct of the Council of Ministers. This discretionary power is given to the Governor to enable him to report to the President who, however, must act on the advice of his Council of Ministers in all matters. In this context Article 163(2) is explicable that the decision of the Governor in his discretion shall be final and the validity shall not be called in question. The action taken by the President on such a report is a different matter. The President acts on the advice of his Council of Ministers. In all other matters where the Governor acts in his discretion he will act in harmony with his Council of Ministers. The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers.

56. Similarly Article 200 indicates another instance where the Governor may act irrespective of any advice from the Council of Ministers. In such matters where the Governor is to exercise his discretion he must discharge his duties to the best of his judgment. The Governor is required to pursue such courses which are not detrimental to the State.

xxx

xxx

xxx

154. We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various Articles, shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations. Without being dogmatic or exhaustive, these situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House; (b) the dismissal of a Government which has lost its majority in the House, but refuses to quit office; (c) the dissolution of the House where an appeal to the country is necessitous, although in this area the Head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister) who will eventually take the responsibility for the step. We do not examine in detail the constitutional proprieties in these predicaments except to utter the caution that even here the action must be compelled by the peril to democracy and the appeal to the House or to the country must become blatantly obligatory. We have no doubt that de Smith's statement regarding royal assent holds good for the President and Governor in India:

Refusal of the royal assent on the ground that the Monarch strongly disapproved of a Bill or that it was intensely controversial would nevertheless be unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable

would be if the Government itself were to advise such a course—a highly improbable contingency—or possibly if it was notorious that a Bill had been passed in disregard to mandatory procedural requirements; but since the Government in the later situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to, prudence would suggest the giving of assent.”

Reliance was also placed on *State of Maharashtra v. Ramdas Shrinivas Nayak*¹⁸, and our attention was drawn to the following observations recorded therein:

“10. We may add, there is nothing before us to think that any such mistake occurred, nor is there any ground taken in the petition for grant of special leave that the learned Judges proceeded on a mistaken view that the learned counsel had made a concession that there might arise circumstances, under which the Governor in granting sanction to prosecute a minister must act in his own discretion and not on the advice of the Council of Ministers. The statement in the judgment that such a concession was made is conclusive and, if we may say so, the concession was rightly made. In the facts and circumstances of the present case, we have no doubt in our mind that when there is to be a prosecution of the Chief Minister, the Governor would, while determining whether sanction for such prosecution should be granted or not under Section 6 of the Prevention of Corruption Act, as a matter of propriety, necessarily act in his own discretion and not on the advice of the Council of Ministers.”

Our attention was also drawn to the *Madhya Pradesh Special Police Establishment* case¹⁵, where this Court held as under:

“12.Thus, as rightly pointed out by Mr. Sorabjee, a seven- Judge Bench of this Court has already held that the normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. But there are exceptions under which the Governor can act in his own discretion. Some of the exceptions are as set out hereinabove. It is, however, clarified that the exceptions mentioned in the judgment are not exhaustive. It is also recognized that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. It is recognized that there may be situations where by reason of peril to democracy or democratic principles an action may be compelled which from its nature is not amenable to Ministerial advice. Such a

¹⁸ (1982) 2 SCC 463

situation may be where bias is inherent and/or manifest in the advice of the Council of Ministers.

xxx xxx xxx

19. Article 163 has been extracted above. Undoubtedly, in a matter of grant of sanction to prosecute the Governor is normally required to act on aid and advice of the Council of Ministers and not in his discretion. However, an exception may arise whilst considering grant of sanction to prosecute a Chief Minister or a Minister where as a matter of propriety the Governor may have to act in his own discretion. Similar would be the situation if the Council of Ministers disables itself or disentitles itself.”

Learned counsel also invited the Court’s attention to the conclusions drawn by this Court in the Justice R.A. Mehta case¹⁶, wherefrom he laid emphasis on the following observations

“37. In M.P. Special Police Establishment v. State of M.P., (2004) 8 SCC 788, the question that arose was whether, for the purpose of grant of sanction for the prosecution of Ministers, for offences under the Prevention of Corruption Act and/or, the Penal Code, the Governor, while granting such sanction, could exercise his own discretion, or act contrary to the advice rendered to him by the Council of Ministers. The Court, in this regard, first considered the object and purpose of the statutory provisions, which are aimed at achieving the prevention and eradication of acts of corruption by public functionaries. The Court then also considered, the provisions of Article 163 of the Constitution, and took into consideration with respect to the same, a large number of earlier judgments of this Court, including Samsher Singh v. State of Punjab, (1974) 2 SCC 831 and State of Maharashtra v. Ramdas Shrinivas Nayak, (1982) 2 SCC 463, and thereafter, came to the conclusion that, in a matter related to the grant of sanction required to prosecute a public functionary, the Governor is usually required to act in accordance with the aid and advice rendered to him by the Council of Ministers, and not upon his own discretion. However, an exception may arise while considering the grant of sanction required to prosecute the Chief Minister, or a Minister, where as a matter of propriety, the Governor may have to act upon his own discretion. Similar would be the situation in a case where, the Council of Ministers disables or disentitles itself from providing such aid and advice. Such a conclusion by the Court, was found to be necessary, for the reason that the facts and circumstances of a case involving any of the aforementioned fact situations, may indicate the possibility of bias on the part of the Chief Minister, or the Council of Ministers. This Court carved out certain exceptions to the said provision. For instance, where bias is inherent or apparent, or, where the decision of the Council of Ministers is

wholly irrational, or, where the Council of Ministers, because of some incapacity or other situation, is disentitled from giving such advice, or, where it refrains from doing so as matter of propriety, or in the case of a complete break down of democracy.

38. Article 163(2) of the Constitution provides that it would be permissible for the Governor to act without ministerial advice in certain other situations, depending upon the circumstances therein, even though they may not specifically be mentioned in the Constitution as discretionary functions e.g. the exercise of power under Article 356(1), as no such advice will be available from the Council of Ministers, who are responsible for the breakdown of constitutional machinery, or where one Ministry has resigned, and the other alternative Ministry cannot be formed. Moreover, clause 2 of Article 163 provides that the Governor himself is the final authority to decide upon the issue of whether he is required by or under the Constitution, to act in his discretion. The Council of Ministers therefore, would be rendered incompetent in the event of there being a difference of opinion with respect to such a question, and such a decision taken by the Governor, would not be justiciable in any court. There may also be circumstances where, there are matters, with respect to which the Constitution does not specifically require the Governor to act in his discretion, but the Governor, despite this, may be fully justified to act so e.g. the Council of Ministers may advise the Governor to dissolve a House, which may be detrimental to the interests of the nation. In such circumstances, the Governor would be justified in refusing to accept the advice rendered to him, and act in his discretion. There may even be circumstances where ministerial advice is not available at all, i.e. the decision regarding the choice of Chief Minister under Article 164(1), which involves choosing a Chief Minister after a fresh election, or in the event of the death or resignation of the Chief Minister, or dismissal of the Chief Minister who loses majority in the House and yet refuses to resign, or agree to dissolution. The Governor is further not required to act on the advice of the Council of Ministers, where some other body has been referred for the purpose of consultation i.e. Article 192(2) as regards decisions on questions related to the disqualification of Members of the State Legislature.”

Last of all, learned counsel placed reliance on the judgment of this Court in *Rajendra Singh Verma v. Lt. Governor (NCT of Delhi)*¹⁹, and our attention was invited to the following observations made therein:

“135. Thus, it is fairly well settled by a catena of decisions of this Court that in the matter of compulsory retirement of a Judicial Officer the Governor cannot act on the aid and the advice of Council of

¹⁹ (2011) 10 SCC 1

Ministers but has to act only on the recommendation of the High Court. Though the Lt. Governor is a party to these appeals, he has not raised any plea that the recommendation made by the Delhi High Court was not binding on him and he could have acted in the matter only on the aid and advice of his Council of Ministers. Thus the order of the Lt. Governor compulsorily retiring the appellants without seeking aid and advice of his Council of Ministers is neither ultra vires nor illegal and is rightly sustained by the High Court. The Governor could not have passed any order on the aid and advice of Council of Ministers in this case. The advice should be of no other authority except that of the High Court in the matter of judicial officers. This is the plain implication of Article 235.”

Based on the declared position of law by this Court, in the judgments on which reliance was placed by learned counsel, it was submitted, that where constitutional issues arise, because of an unacceptable and constitutionally impermissible conduct of the Council of Ministers, or in case of a disputation relating to the choice of the Chief Minister, or with reference to the resolution of the House, or on account of the democratic process being undermined, it was open to a Governor to act on his own, without any aid and advice. It was urged, that the individual determination of the Governor would extend to issues where propriety requires him to discharge his functions in his own discretion, as for instance, sanction of prosecution of a Chief Minister or a Member of the Council of Ministers.

125. It was urged, that the sequence of facts narrated by the learned counsel representing the respondents has highlighted a situation, where MLAs belonging to the INC did not support their own Chief Minister – Nabam Tuki. It was also highlighted, that the Speaker – Nabam Rebia, who ought to have been functioning as a neutral arbiter in the activities of the House, was demonstrating a partisan attitude by siding with the Chief Minister – Nabam Tuki. And in order to support the Chief Minister, the

Speaker had endeavoured to misuse the power vested with him, under the Tenth Schedule. It was therefore submitted, that the action taken by the Governor, through his order dated 9.12.2015 and his message dated 9.12.2015, was surely aimed at restoring balance in the democratic process, and as such, could not have been performed on the aid and advice of the Council of Ministers with the Chief Minister as the head. It was pointed out, that not only the Council of Ministers and the Chief Minister, but also the Speaker were misusing the constitutional powers vested with them, to derail the democratic process, and in the facts and circumstances of the case, the Governor was well within his rights in exercise of the discretion vested with him under Article 163, to endeavour to preserve the democratic process without himself interfering therewith.

126. Learned senior counsel then placed reliance on the first, third, fourth, fifth and sixth sequences of facts, to contend that the constitutional turmoil which prevailed in the State of Arunachal Pradesh was of a nature, wherein it was futile to seek the aid and advice of the Council of Ministers with the Chief Minister as the head. In fact, it was his pointed contention, that the situation which prevailed in the Legislative Assembly of the State of Arunachal Pradesh, had erupted on account of the complicity between the Chief Minister and the Speaker, neither of whom enjoyed the confidence of the House. It was submitted, that the democratic process was in peril. It was urged, that the Governor in compliance with the oath subscribed to by him, at the time of assumption of office under Article 159, had passed the order dated 9.12.2015, as also, issued the message dated 9.12.2015, which

were aimed at preserving, protecting and defending the Constitution, and the laws. It was submitted, that there was no question of seeking any aid and advice, for the purpose of preponing the 6th session of the Assembly, in exercise of the power vested with the Governor under Article 174. It was submitted, that his exercise of discretion to prepone the 6th session of the Assembly from 14.1.2016 to 14.12.2015, was in consonance with the discretion vested with him under Article 163(2). In order to justify his above contention, it was submitted, that there was no cause for the Governor to consult the Chief Minister – Nabam Tuki, who had lost support of the majority of the MLAs. It was asserted, that in the same manner, as the Governor can summon the House for a floor test, to determine whether or not the ruling party had support of the majority, so also, the Governor was well within his rights, to determine whether or not the Speaker, continued to enjoy majority support. It was submitted, that the right of a Speaker to conduct proceedings against MLAs (who had been proceeded against under the Tenth Schedule), can be considered to be constitutionally justified, only if the Speaker enjoys majority support. Once the Governor entertained the belief, that the Speaker – Nabam Rebia, had lost support of the majority of the MLAs, he could not be permitted to discharge the onerous constitutional responsibility, under the Tenth Schedule. It was urged, that it was in the aforestated background, that the Governor had in his own discretion, summoned the Assembly under Article 174. It was submitted, that the instant situation is comparable to the other circumstances, wherein, even though the Governor has not been so expressly authorized (to deal with a

matter in his own discretion), not doing so, would amount to defeating the constitutional purpose sought to be achieved. In the above view of the matter, it was reiterated, that in the backdrop of the vast and onerous functions vested with the Governor, it cannot be doubted, that the Governor has the power to summon the Assembly, in exercise of his discretionary powers, specially in the ongoing exceptional circumstances, and the sensitivity of the State of Arunachal Pradesh.

127. Even though we have not highlighted and repeated the different sequence of facts relied upon by the learned senior counsel, yet it may be mentioned, that the Governor was allegedly in possession of material indicating that the Speaker was under a serious cloud, and did not command the confidence of the majority of the MLAs. Additionally, there were serious allegations of complicity between the Chief Minister and the Speaker. In the above factual situation, it was submitted, that the Governor was fully justified in not consulting the Speaker and/or the Chief Minister (or the Council of Ministers). It was asserted, that consulting the Speaker was out of question, as the Speaker cannot be a judge in his own cause. Insofar as consultation with the Chief Minister is concerned, it was submitted, that there was sufficient material before the Governor to suggest, that the Chief Minister and the Speaker were partners in an illegal conspiracy, to subvert the democratic process in the State. In the above view of the matter, it was reiterated, that the Governor was fully vindicated in having exercised his independent judgment, in not consulting the Chief Minister. It was also pointed out, that the complicity between the Chief

Minister and the Speaker stands established, from the fact that the Chief Minister – Nabam Tuki, and the Speaker – Nabam Rebia are first cousins. Therefore, the principle of conflict of interest/bias is clearly applicable even in the case on hand. In the above view of the matter, it was urged, that an expeditious disposal of the notice of resolution for the removal of the Speaker – Nabam Rebia was fully justified, having regard to the fact that a number of legislators forming more than 1/5th of the MLAs, had expressed their want of confidence in the Speaker.

128. Besides the submissions noticed hereinabove, it was also the contention of Mr. Ashok H. Desai, learned senior counsel, that the exercise of discretion by the Governor was final and binding. The Court's attention was invited to Article 163(2) which mandates, that "...the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.". While it was acknowledged, that there is no bar to judicial review, learned senior counsel was emphatic, that judicial review was permissible only in situations where the Governor had exercised his discretion in a wanton manner. It was submitted, that the exercise of power by the Governor can legitimately be placed in the following categories. Firstly, the exercise of executive powers in consonance with the provisions of the Constitution, by or under the order of the Governor, wherein full judicial review is available. Secondly, orders passed by the Governor on the aid and advice of the Council of Ministers headed by the Chief Minister, wherein also full judicial review is available. Thirdly,

orders like the grant of pardon under Article 161, and orders passed by the President based on a report submitted by the Governor under Article 356, wherein limited judicial review is available. And fourthly, where the Governor acts without the aid and advice of the Council of Ministers headed by the Chief Minister, in his own discretion. It was submitted, that in the fourth situation, no judicial review is permissible, as is explicit from a plain reading of Article 163(2).

129. To support his aforesaid contention, with reference to assailability of the order of the Governor dated 9.12.2015, as well as, the message of the Governor dated 9.12.2015, learned counsel placed reliance on the Pratapsing Raojirao Rane case¹², and invited the Court's attention to the following:

"43. While dealing with Full Bench judgment of the Madras High Court the noted Constitutional Expert H.M. Seervai in "Constitutional Law of India", 4th Edition, Volume I, at page 2070, Note 18.79 has opined that the view taken by Full Bench that in respect of his official acts, the Governor is not answerable to the Court even in respect of a charge of mala fides is correct.

44. We concur with this position. We also agree with the learned author that in such eventuality Governor cannot be said to be under duty to deal with allegations of mala fides in order to assist the Court, which in effect would mean that he is answerable to the Court.

45. The Governor in terms of Article 156 of the Constitution holds office during the pleasure of the President. Any mala fide actions of the Governor may, therefore, conceivably be gone into by the President. Another effective check is that the Ministry will fall if it fails to command a majority in the Legislature Assembly.

46. Thus, the position in law is clear that the Governor, while taking decisions in his sole discretion, enjoys immunity under Article 361 and the discretion exercised by him in the performance of such functions is final in terms of Article 163(2). The position insofar as the dismissal of the Chief Minister is concerned would be the same, since when the Governor acts in such a matter, he acts in his sole discretion. In both the situations, namely, the appointment of the Chief Minister and the dismissal of the Chief Minister, the Governor is the best judge of the situation and he alone is in possession of the

relevant information and material on the basis of which he acts. The result, therefore, would be that such actions cannot be subjected to judicial scrutiny at all.”

And on Mahabir Prasad Sharma v. Prafulla Chandra Ghose²⁰, wherefrom the Court’s attention was drawn to the following conclusions:

“44. There are other provisions in the Constitution which empower the Governor to make an appointment to an office. As for example, the power under Article 165(1) to appoint a person as the Advocate-General of the State. This power, however, has been conditioned by the restrictions imposed thereby, namely, that a person can be appointed Advocate-General if he is qualified to be a Judge of a High Court. If this condition is violated, and a person is appointed who is not qualified to be a Judge of a High Court, the appointment can certainly be questioned in writ proceedings, as was done in the writ petition filed in the Nagpur High Court. Then again under Article 310(1) various public servants mentioned therein hold office during the pleasure of the President and a Governor. Article 310(1) opens with the words: "except as expressly provided by this Constitution." Article 311 provides for dismissal, removal or reduction in rank of person employed in civil capacities under the Union or the States, and the pleasure of the President or the Governor contemplated by Article 310(1) is conditioned by the limitations prescribed by Article 311 of the Constitution. If the conditions and the limitations created by Article 311 are violated in dismissing, removing or reducing in rank a servant of the Union or a State, the order of the President or the Governor can be questioned in appropriate proceedings. But there is no such limitation or condition to the pleasure of the Governor prescribed by Article 164(1) and it must, therefore, be held that the right of the Governor to withdraw the pleasure, during which the Ministers hold office, is absolute and unrestricted. Furthermore having regard to the provisions in Clause (2) of Article 163 the exercise of the discretion by the Governor in withdrawing the pleasure cannot be called in question in this proceedings.”

Reliance was also placed on Constitutional Law of India (Fourth Edition) Volume II, authored by H.M. Seervai, and the Court’s attention was drawn to paragraph 18.78 on page 2070 thereof, which is extracted below:

“18.78 As to Brief Note (A), it is submitted that after the Sup. Ct.’s decision in Samsher Singh’s Case the proposition that the Governor is required to act in his discretion only by express provision

²⁰ (1968) 72 C.W.N. 328

is no longer good law, for, as we have seen, both the judgments in that case held that in some cases the Governor had power to act in his discretion as a matter of necessary implication. Again, the statement that the words “in his discretion” have the technical meaning given to them under the G.I. Act, 35, is also not good law, for the Sup. Ct. gave those words their plain natural meaning, namely, that where the Governor acts “in his discretion” he is not obliged to follow the advice given to him by the Council of Ministers. The Full Bench did not give weight to the language of Art. 163(2) which postulates that a question might arise whether by or under the Constitution the Governor is required to act in his discretion; and Art. 163(2) provides an answer by making the Governor the sole and final judge of that question, and by further providing that no action of the Governor shall be called in question on the ground that he ought or ought not to have acted in his discretion. It is submitted that in view of Art. 163(2) the court had no jurisdiction to decide whether the Governor ought or ought not to act in his discretion as rightly held by the Calcutta High Court in M.P. Sharma’s Case (1968) 72 C.W.N. 328. It was unfortunate that this decision was not cited to, or considered by, the Full Bench. Secondly, when the petition raised a question whether the Governor acted on the advice of his Chief Minister and whether such advice was misleading, the petition raised questions which the court could not inquire into, because Art. 163(3) provides that “The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court”.

Based on the two judgments referred to hereinabove, as also, the opinion expressed by the jurist, it was asserted, that in the facts and circumstances of the present controversy, since it could not be concluded or inferred, that the Governor had acted in a wanton manner, it must necessarily be held, that there was no scope to invoke judicial review, as against the order of the Governor dated 9.12.2015, as also, the message of the Governor dated 9.12.2015.

The consideration and the conclusions:

I .

Article 163 of the Constitution

163. “Council of Ministers to aid and advise Governor.-(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.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.”

130. To demonstrate, that the order and message of the Governor dated 9.12.2015 were well within the domain and authority of the Governor, learned counsel for the respondents were emphatic in pointing out, the distinction between Article 74 and Article 163. It was pointed out, that in consonance with Article 74 the Council of Ministers with the Prime Minister as the head, is to aid and advise the President. And that, the President is to exercise all his functions in consonance with the advice tendered to him. It was highlighted, that no discretionary power whatsoever has been conferred with the President, to enable him to exercise his functions in his own discretion. At best, the President can require the Council of Ministers to reconsider the advice tendered to him. And on such reconsideration, if the position is reiterated, the President is bound to act in consonance with the desire of the Council of Ministers. In contrast to the above, even though Article 163 similarly provides, that the Governor of a State is to exercise his functions in consonance with the aid and advice tendered to him by the Council of Ministers with the Chief Minister as the head, yet Article 163(1) confers discretionary power with the Governor, when it is so expressly mandated by or under the Constitution. There can therefore be no doubt,

that to a limited extent, Article 163(1) authorizes the Governor to act in his own discretion. And in that sense, there is a clear distinction between the power vested with the President, and the power vested with the Governor.

131. According to the respondents, the scope and ambit of the discretionary power of the Governor, must necessarily be traced from Article 163(2). It was urged, that even the simple dictionary meaning assigned to the language adopted in Article 163(2) would reveal, that the above provision allows the Governor to choose matters on which he needs to exercise his own discretion. Such choice made by the Governor, according to learned counsel for the respondents, has been accorded finality, and is beyond the purview of being questioned. It was clarified, that the validity of an action taken by the Governor in exercise of his own discretion, has been assigned a constitutional protection. Inasmuch as, the same cannot be called in question, even by way of judicial review, on the ground whether the Governor ought or ought not to have acted in his discretion. Based on the interpretation emerging from a plain reading of Article 163, it was asserted on behalf of the respondents, that the order of the Governor dated 9.12.2015, as well as, his message dated 9.12.2015, were actions taken by the Governor in his own independent discretion, under Article 163(2). It was accordingly urged, that the same enjoyed absolute constitutional immunity/protection, which placed the said order and message beyond the scope of being questioned.

132. It was also submitted on behalf of the respondents, that there are judicially recognized situations, wherein the Governor can function without

any aid and advice. These were illustratively referred to, by adverting to Articles 200, 239(2), 356, 371(2), 371A(1)(b), 371C(1) and 371F(g), as also, the power vested with the Governor under Paragraph 9 of the Sixth Schedule. It was also pointed out, that contrary to the plain reading of Article 163(1), namely, that the Governor can exercise his functions in his own discretion, only in situations provided for “by or under” the Constitution, this Court has held, that in certain situations the Governor can still act in his own discretion (without any aid or advice), even though the Governor has not been so expressly required to act in his own discretion. Insofar as the situations where there is no such express provision, and yet the Governor has been held to be authorized to exercise the same in his own discretion, reference was made to Article 164, whereunder the Governor is required to choose the person to be sworn as the Chief Minister, after fresh elections are held. Similarly, wherein the Government in power, appears to have lost its majority in the Legislature. The Governor can require, the party holding the reins of Government, or the party desirous to form Government, to demonstrate their majority by way of a floor test. Reference was also made to situations wherein, there is a conflict of interest between the Council of Ministers on the one hand, and the issue under consideration on the other. In such matters also, even though there is no express provision allowing the Governor to act in his own discretion, this Court has repeatedly declared the right of the Governor, to act on his own, without any aid and advice.

133. Based on the declared position of law by this Court, it was also submitted on behalf of the respondents, that where constitutional issues arise, because of an unacceptable and constitutionally impermissible conduct of the Government, or in cases of a disputation relating to the choice of the Chief Minister, or with reference to an undemocratic resolution of the House, or on account of the democratic process being otherwise undermined, it is open to the Governor to act on his own, without any aid and advice. It was urged, that the individual determination of the Governor, would additionally extend to issues, where propriety required, that the Governor should discharge his functions in his own discretion.

134. Insofar as the question of judicial review is concerned, it was submitted, that this Court in the Kesavananda Bharati case¹⁷ had recognized judicial review, as a part of the 'basic structure' of the Constitution. It was also acknowledged, that a series of judgments rendered by this Court thereafter, have reiterated the above position. It was however submitted, that a challenge can only be raised under the 'basic structure doctrine' to assail an amended provision of the Constitution. It was contended, that the aforesaid doctrine is not applicable to the provisions of the original Constitution. It was emphasized, that Article 163(2), as it presently exists, is in the same format in which it was originally expressed, by the framers of the Constitution. It was therefore asserted, that if and when the Governor exercises his constitutional functions in his own discretion, the same are protected through a constitutional immunity (postulated through, sub-article (2) of Article 163), even from judicial review.

In view of the above, it was contended, that this Court should not entertain a challenge raised by the appellants, to the order of the Governor dated 9.12.2015, and his message dated 9.12.2015, since both were decisions of the Governor taken under Article 163(2), in his own discretion, without any aid and advice.

135. Even though the position expressed in the preceding paragraph is clear and explicit, yet learned counsel representing the respondents, at his own accord acceded to one exception to the proposition canvassed by him, namely, that a determination at the hands of the Governor in his own discretion, would be subject to judicial review, when it can be shown that the discretion exercised by the Governor was not *bona fide*, or not on due consideration. It was illustratively submitted, that the Governor's exercise of discretion, would be open to challenge, where it can be shown to be perverse, or capricious, or fallacious, or extraneous, or for a motivated consideration, and in situations of the like nature. Stated simply, it is conceded, that an order passed by the Governor in exercise of his own discretion (without any aid or advice) can be successfully assailed, if it can be shown, that in the discretion exercised by the Governor, he had acted wantonly, whimsically or arbitrarily.

136. The aforesaid submissions at the hands of the learned counsel for the respondents, though extremely attractive, and seemingly emerging from a plain reading of Article 163(2), cannot be accepted. The reasons for our determination are being narrated in the following paragraphs.

137. First of all, it is extremely essential to understand, the nature of powers and the functions of the Governor, under the provisions of the Constitution. Insofar as the instant aspect of the matter is concerned, it is apparent that the Governor has been assigned functions and powers, concerning the executive and the legislative affairs of the State. The executive functioning of the States is provided for under Part VI Chapter II of the Constitution, which includes Articles 153 to 167. Article 154 mandates, that the executive power of the State is vested with the Governor, and is to be exercised by him either directly or through officers subordinate to him “in accordance with this Constitution”. Article 163 further warrants, that the Governor would exercise his functions, on the aid and advice of the Council of Ministers with the Chief Minister as the head. The above edict is not applicable, in situations where the Governor is expressly required to exercise his functions, “...by or under this Constitution...”, “... in his discretion...”. The question that will need determination at our hands is, whether the underlying cardinal principle, with reference to the discretionary power of the Governor, is to be traced from Article 163(1) or from Article 163(2). Whilst it was the contention of the learned counsel for the appellants, that the same is expressed in sub-article (1) of Article 163, the contention on behalf of the respondents was, that the amplitude of the discretionary power of the Governor is evinced and manifested in sub-article (2) of Article 163. Undoubtedly, all executive actions of the Government of a State are expressed in the name of the Governor, under Article 166. That, however, does not *per se* add to the functions and powers of the Governor.

It is also necessary to appreciate, that in the discharge of executive functions, the Governor of a State has the power to grant pardons, reprieves, respites or remissions of punishments or to suspend, remit or commute sentences (under Article 161). The Governor's power under Article 161, is undisputedly exercised on the aid and advice of the Chief Minister and his Council of Ministers. The Governor has power to frame rules for the convenient transaction of executive business of the Government, under Article 166. The instant responsibility is also discharged, on aid and advice. All in all, it is apparent, that the Governor is not assigned any significant role in the executive functioning of the State. We would also endeavour to examine the duties and responsibilities of the Governor in the legislative functioning of a State. Details with reference to the same are found incorporated in Part VI Chapter III of the Constitution, which includes Articles 168 to 212. Even though Article 168 postulates, that the legislature of a State would comprise of the Governor, yet the Governor is not assigned any legislative responsibility in any House(s) of the State Legislature, irrespective of whether it is the legislative process relating to Ordinary Bills or Money Bills. Article 158 (dealing with the conditions of the Governor's office) provides, that the "... Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule ...". Insofar as the legislative process is concerned, the only function vested with the Governor is expressed through Article 200 which *inter alia* provides, that a Bill passed by the State Legislature, is to be presented to the Governor for his assent. And its

ancillary provision, namely, Article 201 wherein a Bill passed by the State Legislature and presented to the Governor, may be reserved by the Governor for consideration by the President. The only exception to the non-participation of the Governor in legislative functions, is postulated under Article 213 (contained in Part VI Chapter IV of the Constitution), which apparently vests with the Governor, some legislative power. The Governor under Article 213 can promulgate Ordinances, during the period when the House(s) of the State Legislature, is/are not in session. This function is exercised by the Governor, undisputedly, on the aid and advice of the Council of Ministers with the Chief Minister as the head. The Governor is also required to summon the House or Houses of State Legislature, or to prorogue or dissolve them under Article 174. We shall exclusively deal with the connotations of the instant responsibility entrusted with the Governor, immediately after drawing our conclusions with reference to Article 163. Articles 178 to 187 deal with the officers of the State Legislature, including the Speaker and the Deputy Speaker, as well as, the secretariat of the State Legislature. The above Articles are on the subject of appointment and removal of the Speaker and the Deputy Speaker of the Legislative Assembly, as also, the Chairman and Deputy Chairman of the Legislative Council, as well as, other ancillary matters. Whilst Article 179 provides for vacation, resignation and removal of the Speaker (and the Deputy Speaker) of the Legislative Assembly. Article 183 provides for vacation, resignation and removal of the Chairman (and the Deputy Chairman) of the Legislative Council. In neither of the above Articles, the

Governor has any assigned role. The only responsibility allocated to the Governor under Article 208, is of making rules as to the procedure with respect to communications between the two Houses of State Legislature. All in all, it is apparent, that the Governor is not assigned any significant role even in the legislative functioning of the State.

138. The above position, leaves no room for any doubt, that the Governor cannot be seen to have such powers and functions, as would assign to him a dominating position, over the State executive and the State legislature. The interpretation placed on Article 163(2), on behalf of the respondents, has just that effect, because of the following contentions advanced on behalf of the respondents. Firstly, whenever a question arises, whether in discharging a particular function, the Governor can or cannot act in his own discretion. According to the respondents, the discretion of the Governor, on the above question, is final. Secondly, since the provision itself postulates, that “ ... the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion...”, according to the respondents, makes the Governor’s orders based on his own discretion, immune from judicial review. Accepting the above position, will convert the Governor into an all-pervading super-constitutional authority. This position is not acceptable because an examination of the executive and legislative functions of the Governor, from the surrounding provisions of the Constitution clearly brings out, that the Governor has not been assigned any significant role either in the executive

or the legislative functioning of the State. The position adopted on behalf of the appellants, on the other hand, augurs well in an overall harmonious construction of the provisions of the Constitution. Even on a cursory examination of the relevant provisions of the Constitution, we are inclined to accept the contention advanced on behalf of the appellants.

139. In our considered view, a clear answer to the query raised above, can *inter alia* emerge from the Constituent Assembly debates with reference to draft Article 143, which eventually came to be renumbered as Article 163 in the Constitution. It would be relevant to record, that from the queries raised by H.V. Kamath, T.T. Krishnamachari, Alladi Krishnaswami Ayyar, and from the response to the same by Dr. B.R. Ambedkar, it clearly emerges, that the general principle with reference to the scope and extent of the discretionary power of the Governor, is provided for through Article 163(1). It also becomes apparent from Article 163(1), which provides for the principle of ministerial responsibility. The crucial position that gets clarified from a perusal of the Constituent Assembly debates, arises from the answer to the query, whether the Governor should have any discretionary power at all? The debates expound, that the retention of discretionary power with the Governor was not, in any way, contrary to the power of responsible Government, nor should the same be assumed as a power akin to that vested with a Governor under the Government of India Act, 1935. And from that, emerges the answer that the retention and vesting of discretionary powers with the Governor, should not be taken in the sense of being contrary to, or having the effect of negating, the powers of responsible

Government. Significantly, with reference to the Governor's discretionary powers, it was emphasized by Dr. B.R. Ambedkar, that "the clause is a very limited clause; it says: 'except insofar as he is by or under this Constitution'. Therefore, Article 163 will have to be read in conjunction with such other Articles which specifically reserve the powers to the Governor". "It is not a general clause giving the Governor power to disregard the advice of his Ministers, in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my Hon'ble friend...". In our considered view, the Constituent Assembly debates, leave no room for any doubt, that the framers of the Constitution desired to embody the general and basic principle, describing the extent and scope of the discretionary power of the Governor, in sub-article (1) of Article 163, and not in sub-article (2) thereof, as suggested by the learned counsel for the respondents.

140. Insofar as the instant issue is concerned, reference may also be made to the Justice Sarkaria Commission report on "Centre - State Relations" and the Justice M.M. Punchhi Commission report on "Constitutional Governance and Management of Centre - State Relations". The conclusions drawn in both the above reports are clear and explicit. In paragraph 4.1.03 of the Justice M.M. Punchhi Commission report, the observations of Dr. B.R. Ambedkar have been highlighted to the effect, that insofar as the constitutional role of the Governor is concerned, ".....the Governor under the Constitution has no function which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to

perform, and I think the House will do well to bear in mind this distinction.”. “.....This Article, nowhere, either in clause (a) or clause (b) or clause (c), says that the Governor in any particular circumstances may overrule the Ministry. Therefore, the criticism that has been made that this Article somehow enables the Governor to interfere or to upset the decision of the Cabinet is entirely beside the point, and completely mistaken.” And thereafter, in paragraph 4.2.14 of the Justice M.M. Punchhi Commission report, it is observed as under:

“4.2.14 In a very limited field, however, the Governor may exercise certain functions in his discretion, as provided in Article 163(1). The first part of Article 163(1) requires the Governor to act on the advice of his Council of Ministers. There is, however, an exception in the latter part of the clause in regard to matters where he is by or under the Constitution required to function in his discretion. The expression "required" signifies that the Governor can exercise his discretionary powers only if there is a compelling necessity to do so. It has been held that the expression "by or under the Constitution" means that the necessity to exercise such powers may arise from any express provision of the Constitution or by necessary implication. We would like to add that such necessity may also arise from rules and orders made "under" the Constitution.”

4.2.15 Thus, the scope of discretionary powers as provided in the exception in clause (1) and in clause (2) of Article 163 has been limited by the clear language of the two clauses. It is an accepted principle that in a parliamentary democracy with a responsible form of government, the powers of the Governor as Constitutional or formal head of the State should not be enlarged at the cost of the real executive, viz. the Council of Ministers. The scope of discretionary powers has to be strictly construed, effectively dispelling the apprehension, if any, that the area for the exercise of discretion covers all or any of the functions to be exercised by the Governor under the Constitution. In other words, Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. The area for the exercise of his discretion is limited. Even this limited area, his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith and tempered by caution.”

The important observations in the Justice M.M. Punchhi Commission report, with reference to Article 163(2), are contained in paragraph 4.3.03.

Relevant extract of the same is reproduced below:

“Article 163(2) gives an impression that the Governor has a wide, undefined area of discretionary powers even outside situations an impression needs to be dispelled. The Commission is of the view that the scope of discretionary powers under Article 163(2) has to be narrowly construed, effectively dispelling the apprehension, if any, that the so-called discretionary powers extends to all the functions that the Governor is empowered under the Constitution. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area, his choice of action should not be nor appear to be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.

The Governor's discretionary powers are the following: to give assent or withhold or refer a Bill for Presidential assent under Article 200; the appointment of the Chief Minister under Article 164; dismissal of a Government which has lost confidence but refuses to quit, since the Chief Minister holds office during the pleasure of the Governor; dissolution of the House under Article 174; Governor's report under Article 356; Governor's responsibility for certain regions under Article 371-A, 371-C, 371-E, 371-H etc. These aspects are now considered below: ...”

We are of the considered view, that the inferences drawn in the Justice M.M. Punchhi Commission report extracted hereinabove, are in consonance with the scheme of the functions and powers assigned to the Governor, with reference to the executive and legislative functioning of the State, and more particularly with reference to the interpretation of Article 163. We endorse and adopt the same, as a correct expression of the constitutional interpretation, with reference to the issue under consideration.

141. Though the debate could be endless, yet we would consider it apposite to advert to the decisions rendered by this Court in the Sardari Lal case² and the Samsher Singh case¹. Insofar as the Sardari Lal case² is

concerned, this Court had held therein, that the President or the Governor, as the case may be, would pass an order only on his personal satisfaction. In the above case, this Court while examining the case of an employee under Article 311(2) (more particularly, under proviso (c) thereof), recorded its conclusions, in the manner expressed above. The same issue was placed before a seven-Judge Bench constituted to re-examine the position adopted in the Sardari Lal case². The position came to be reversed. This Court in the Samsher Singh case¹ declared, that wherever the Constitution required the satisfaction of the President or the Governor, for the exercise of any power or function, as for example under Articles 123, 213, 311(2), 317, 352(1), 356 and 360, the satisfaction required by the Constitution was not the personal satisfaction of the President or the Governor. "... but is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of Government ...". It is therefore clear, that even though the Governor may be authorized to exercise some functions, under different provisions of the Constitution, the same are required to be exercised only on the basis of the aid and advice tendered to him under Article 163, unless the Governor has been expressly authorized, by or under a constitutional provision, to discharge the concerned function, in his own discretion.

142. We are therefore of the considered view, that insofar as the exercise of discretionary powers vested with the Governor is concerned, the same is limited to situations, wherein a constitutional provision expressly so provides, that the Governor should act in his own discretion. Additionally,

a Governor can exercise his functions in his own discretion, in situations where an interpretation of the concerned constitutional provision, could not be construed otherwise. We therefore hereby reject the contention advanced on behalf of the respondents, that the Governor has the freedom to determine when and in which situation, he should take a decision in his own discretion, without the aid and advice of the Chief Minister and his Council of Ministers. We accordingly, also turn down the contention, that whenever the Governor in the discharge of his functions, takes a decision in his own discretion, the same would be final and binding, and beyond the purview of judicial review. We are of the view, that finality expressed in Article 163(2) would apply to functions exercised by the Governor in his own discretion, as are permissible within the framework of Article 163(1), and additionally, in situations where the clear intent underlying a constitutional provision, so requires i.e., where the exercise of such power on the aid and advice, would run contrary to the constitutional scheme, or would be contradictory in terms.

143. We may therefore summarise our conclusions as under:

Firstly, the measure of discretionary power of the Governor, is limited to the scope postulated therefor, under Article 163(1).

Secondly, under Article 163(1) the discretionary power of the Governor extends to situations, wherein a constitutional provision expressly requires the Governor to act in his own discretion.

Thirdly, the Governor can additionally discharge functions in his own discretion, where such intent emerges from a legitimate interpretation of the concerned provision, and the same cannot be construed otherwise.

Fourthly, in situations where this Court has declared, that the Governor should exercise the particular function at his own and without any aid or advice, because of the impermissibility of the other alternative, by reason of conflict of interest.

Fifthly, the submission advanced on behalf of the respondents, that the exercise of discretion under Article 163(2) is final and beyond the scope of judicial review cannot be accepted. Firstly, because we have rejected the submission advanced by the respondents, that the scope and extent of discretion vested with the Governor has to be ascertained from Article 163(2), on the basis whereof the submission was canvassed. And secondly, any discretion exercised beyond the Governor's jurisdictional authority, would certainly be subject to judicial review.

Sixthly, in view of the conclusion drawn at Fifthly above, the judgments rendered in the Mahabir Prasad Sharma case²⁰, and the Pratapsing Raojirao Rane case¹², by the High Courts of Calcutta and Bombay, respectively, do not lay down the correct legal position. The constitutional position declared therein, with reference to Article 163(2), is accordingly hereby set aside.

144. The conclusions recorded hereinabove will constitute the foundational basis for determining some of the other important issues, that arise for consideration in the present controversy.

II.

Article 174 of the Constitution

174. "Sessions of the State Legislature, prorogation and dissolution – (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2)The Governor may from time to time –

(a)prorogue the House or either House;

(b)dissolve the Legislative Assembly."

145. A forceful and determined contention was advanced by the learned counsel for the respondents, that the process of summoning the Assembly can never be considered as anti-democratic. It was asserted, that the summoning a Legislature, can only further the democratic process, as it opens the House for carrying out legislative activity. As against the above, it was pointed out, that when the Assembly is prorogued or dissolved, the democratic/legislative processes are placed in suspended animation. An action which prorogues or dissolves the Legislature, according to learned counsel, can be taken to be actions whereby the democratic/legislative process is either temporarily stalled, or brought to an end. According to learned counsel for the respondents, there can therefore be no justification, to find fault with the order of the Governor dated 9.12.2015, or with his message dated 9.12.2015, by which the summoning of the 6th session of the Assembly, was preponed from 14.1.2016 to 16.12.2015, and thereby the democratic/legislative process was brought into active animation, from a date earlier than originally determined.

146. Adverting to the plain reading of Article 174, it was submitted, that the Governor has not only been vested with the authority to summon the House, but has also been vested with the authority to determine, at which

venue and at what time, the House should be summoned. For this, reference was made to the words “as he thinks fit” in Article 174(1), which signify and imply, that the Governor, would exercise his discretion and power to summon the Assembly, on his own, and without any aid or advice. It was contended on behalf of the respondents, by inviting the Court’s attention to sub-article (2) of Article 174, that even the question of proroguing and dissolving the House, had been left to the free will and discretion of the Governor.

147. In connection with the interpretation of Article 174(1) which pertains to the power of the Governor, to summon the House, it was urged, that the words “as he thinks fit” satisfy the requirement of Article 163(1), inasmuch as it fulfills the constitutional stipulation, that the Governor would exercise functions in his discretion, which he is expressly required, “by or under” the Constitution, to exercise on his own. It was therefore asserted, that it being clearly and expressly mandated under Article 174(1) itself, that the Governor could summon the State Legislature “as he thinks fit” the requirement of Article 163(1) stands satisfied.

148. Yet again, the contention advanced at the hands of the learned counsel for the respondents, at first blush seems to be most acceptable. But, the Constituent Assembly debates in connection with Article 174, the historical background depicting the manner in which Article 174 came to be drafted, and treatises on the issue, clearly lead to the conclusion, that the submission advanced at the behest of the respondents, cannot be accepted.

We shall hereinafter, detail our reasons, for not accepting the respondents' contention.

149. It would be relevant to mention, that draft Article 153 eventually came to be renumbered as Article 174 of the Constitution. draft Article 153 has been extracted in paragraph xxx 48 xxx, above. A perusal of the draft Article 153(2) would reveal, that the same through the words "as he thinks fit", vested discretion with the Governor to choose the time and place at which the House(s) were to be summoned. The above words have been retained in Article 174. The retention of the said words, would lean in favour of the submission canvassed on behalf of the respondents. It is however relevant to notice, that the power to summon the House or Houses of the State Legislature was postulated under draft Article 153(2)(a), whereas the power to prorogue and dissolve the House or Houses of the State Legislature was expressed in draft Articles 153(2)(b) and (c) respectively. The most significant feature of draft Article 153 was expressed in sub-article (3) thereof, wherein it was provided, that the functions of the Governor with reference to sub-clauses (a) and (c), namely, the power to summon and dissolve the House or Houses of the State Legislature "... shall be exercised by him in his discretion." The words used in sub-article (3) of draft Article 153, were in consonance with the requirements postulated under Article 163(1). Needless to mention, that under Article 163(1), the Governor can exercise only such functions in his own discretion which he is expressly required, by or under the Constitution, to exercise in his discretion. The manner in which draft Article 153(3) was originally drawn,

would have left no room for any doubt, that the Governor would definitely have had the discretion to summon or dissolve the House or Houses of the State Legislature, without any aid or advice. After the debate, draft Article 153 came to be renumbered as Article 174. Article 174 reveals, that sub-article (3) contained in draft Article 153 was omitted. The omission of sub-article (3) of draft Article 153, is a matter of extreme significance, for a purposeful confirmation of the correct intent underlying the drafting of Article 174. The only legitimate and rightful inference, that can be drawn in the final analysis is, that the framers of the Constitution altered their original contemplation, and consciously decided not to vest discretion with the Governor, in the matter of summoning and dissolving the House, or Houses of the State Legislature, by omitting sub-article (3), which authorized the Governor to summon or dissolve, the House or Houses of Legislature at his own, by engaging the words "... shall be exercised by him in his discretion...". In such view of the matter, we are satisfied in concluding, that the Governor can summon, prorogue and dissolve the House, only on the aid and advice of the Council of Ministers with the Chief Minister as the head. And not at his own.

150. The historical reason relevant for the present determination, emerges from the fact, that a Governor under the Constitution, is not an elected representative. A Governor is appointed by a warrant issued under the hand and seal of the President under Article 155, and his term of office enures under Article 156, during the pleasure of the President. A Governor is an executive nominee, and his appointment flows from the aid and advice

tendered by the Council of Ministers with the Prime Minister as the head, to the President. The President, on receipt of the above advice, appoints the Governor. Likewise, the tenure of the Governor rightfully subsists, till it is acceptable to the Council of Ministers with the Prime Minister as its head, as the Governor under Article 156 holds office, during the pleasure of the President. In our considered view, such a nominee, cannot have an overriding authority, over the representatives of the people, who constitute the House or Houses of the State Legislature (on being duly elected from their respective constituencies) and/or even the executive Government functioning under the Council of Ministers with the Chief Minister as the head. Allowing the Governor to overrule the resolve and determination of the State legislature or the State executive, would not harmoniously augur with the strong democratic principles enshrined in the provisions of the Constitution. Specially so, because the Constitution is founded on the principle of ministerial responsibility. The acceptance of the submission advanced on behalf of the respondents, would obviously negate the concept of responsible Government. Summoning of the Legislature, initiates the commencement of the legislative process; prorogation of the Legislature temporarily defers the legislative process; and the dissolution of the Legislature brings to an end, the legislative process. In the absence of any legislative responsibility, acceptance of the contention advanced on behalf of the respondents, would seriously interfere with the responsibility entrusted to the popular Government, which operates through the Council of Ministers with the Chief Minister as the head. It is for the instant reasons

also, that the submission advanced on behalf of the respondents, with reference to the interpretation of Article 174, does not merit acceptance.

151. For an insight into Article 174, reference may also be made to the observations recorded in the Justice Sarkaria Commission report on “Centre – State Relations”, and the Justice M.M. Punchhi Commission report on “Constitutional Governance and Management of Centre – State Relations”. With reference to Article 174, the Justice M.M. Punchhi Commission report makes the following remarks:

“4.5.04 Summoning, proroguing and dissolution of the legislative assembly

Article 174 of the Constitution empowers the Governor to summon, prorogue or dissolve the House. It is a well-recognised principle that, so long as the Council of Ministers enjoys the confidence of the Assembly, its advice in these matters, unless patently unconstitutional must be deemed as binding on the Governor. It is only where such advice, if acted upon, would lead to an infringement of a constitutional provision, or where the Council of Ministers has ceased to enjoy the confidence of the Assembly, that the question arises whether the Governor may act in the exercise of his discretion. The Sarkaria Commission recommended that, if the Chief Minister neglects or refuses to summon the Assembly for holding a "Floor Test", the Governor should summon the Assembly for the purpose. As regards proroguing a House of Legislature, the Governor should normally act on the advice of the Chief Minister. But where the latter advises prorogation when a notice of no-confidence motion against the Ministry is pending, the Governor should not straightaway accept the advice. If he finds that the no-confidence motion represents a legitimate challenge from the Opposition, he should advise the Chief Minister to postpone prorogation and face the motion. As far as dissolution of the House is concerned, the Governor is bound by the decision taken by the Chief Minister who has majority. However, if the advice is rendered by a Chief Minister who doesn't have majority, then the Governor can try to see if an alternate government can be formed and only if that isn't possible, should the house be dissolved. This Commission reiterates the recommendations of the Sarkaria Commission in this regard.”

The extract of the report reproduced above, makes it abundantly clear, that as long as the Council of Ministers enjoys the confidence of the House, the

aid and advice of the Council of Ministers headed by the Chief Minister is binding on the Governor, on the subject of summoning, proroguing or dissolving the House or Houses of the State Legislature. The above position would stand altered, if the Government in power has lost the confidence of the House. As and when the Chief Minister does not enjoy the support from the majority of the House, it is open to the Governor to act at his own, without any aid and advice. Aid and advice sustains and subsists, till the Government enjoys the confidence of the Legislature. We find no justification in taking a different view, than the one expressed by the Justice Sarkaria Commission report, conclusions whereof were reiterated by the Justice M.M. Punchhi Commission report. We endorse and adopt the same, as a correct expression of the constitutional interpretation, insofar as the present issue is concerned.

152. In addition to the above, reference may also be made to the treatise by M.N Kaul and S.L. Shakhder – “Practice and Procedure of Parliament” (5th Edition) published by the Lok Sabha Secretariat. In the above text, Chapter IX bears the heading – “Summoning, Prorogation of the Houses of Parliament and the Dissolution of the Lok Sabha”. Relevant portion of the above chapter, has been extracted in paragraph xxx 47 xxx, above. The same clearly expresses the view of the authors, that the Governor would summon or prorogue the House or Houses of the State Legislature, on the aid and advice of the Chief Minister. The narration by the authors reveals, that it would be open to the Governor to suggest an alternative date for summoning or proroguing the House or Houses of the State Legislature, but

the final determination on the above issue rests with the Chief Minister or the Cabinet, which may decide to accept or not to accept, the alternate date suggested by the Governor. The opinion of M.N Kaul and S.L. Shakti is in consonance with the Constituent Assembly debates. The position only gets altered, when the Government in power loses its majority in the House. With reference to prorogation, the opinion expressed by the authors is, that the same is also to be determined by the Council of Ministers with the Chief Minister as the head, except in a situation wherein the Government's majority in the House, is under challenge. From the above exposition it emerges, that the Chief Minister and his Council of Ministers, lose their right to aid and advise the Governor, to summon or prorogue or dissolve the House, when the issue of the Government's support by a majority of the members of the House, has been rendered debatable. We have no hesitation in endorsing the above view. But, what is of significance and importance in the opinion expressed by M.N Kaul and S.L. Shakti, which needs to be highlighted is, that the mere fact that some members of the ruling party have defected, does not necessarily prove that the party has lost confidence of the House. And in such a situation, if there is a no confidence motion against the Chief Minister, who instead of facing the Assembly, advises the Governor to prorogue or dissolve the Assembly, the Governor need not accept such advice. In the above situation, the Governor would be well within his right, to ask the Chief Minister to get the verdict of the Assembly, on the no confidence motion. The above authors also express the view, that if the Chief Minister recommends dissolution of the Assembly,

when the budget has not been voted, whilst the Ministry claims majority support, the Ministry in such a situation should face the Assembly and get the budget passed, before seeking dissolution for whatever reasons. However, where there is reason to believe, that the Government in power no longer enjoys majority support, it is open to the Governor, to take steps to determine the issue of majority by a floor test. And in case the Government in power fails to succeed in the same, to take steps to ascertain the possibility of installing another Government, which is in a position to command majority support, so as to get the budget passed. Not taking the aforesaid course, would lead to a financial impasse, in which situation, it would be open to the Governor, to move the President under Articles 356 or 360. In the instant situation also, M.N Kaul and S.L. Shakhder have opined, that it would be open to the Governor to act at his own, without any aid and advice of the Council of Ministers headed by the Chief Minister. Neither of the aforesaid two situations emerge in the facts and circumstances of the present case.

153. In view of the consideration recorded hereinabove, we are of the view, that in ordinary circumstances during the period when the Chief Minister and his Council of Ministers enjoy the confidence of the majority of the House, the power vested with the Governor under Article 174, to summon, prorogue and dissolve the House(s) must be exercised in consonance with the aid and advice of the Chief Minister and his Council of Ministers. In the above situation, he is precluded to take an individual call on the issue at his own will, or in his own discretion. In a situation where the Governor

has reasons to believe, that the Chief Minister and his Council of Ministers have lost the confidence of the House, it is open to the Governor, to require the Chief Minister and his Council of Ministers to prove their majority in the House, by a floor test. Only in a situation, where the Government in power on the holding of such floor test is seen to have lost the confidence of the majority, it would be open to the Governor to exercise the powers vested with him under Article 174 at his own, and without any aid and advice.

154. Since it is not a matter of dispute, that the Governor never called for a floor test, it is reasonable for us to infer, that the Governor did not ever entertain any doubt, that the Chief Minister and his Council of Ministers were still enjoying the confidence of the majority, in the House. Nor was a motion of no confidence moved against the Government. In the above situation, the Governor just could not have summoned the House, vide his order dated 9.12.2015, in his own discretion, by preponing the 6th session of the Legislative Assembly from 14.1.2016 to 16.12.2015. This, for the simple reason, that the Governor neither had the jurisdiction nor the power to do so, without the aid and advice of the Council of Ministers with the Chief Minister as the head.

III.

Article 175 of the Constitution

175. "Right of Governor to address and send messages to the House or Houses - (1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect of a Bill then pending in the Legislature or otherwise, and a House to which

any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.”

155. On the ambit and scope of messages which can be addressed by the Governor to the House or Houses of State Legislatures under Article 175, it was submitted on behalf of the respondents, that the same can be with respect to “... a Bill then pending in the Legislature or otherwise”. Based on the use of the above expression in Article 175(2), it was asserted on behalf of the respondents, that the text of the message need not necessarily be limited to a Bill then pending before the Legislature. It was submitted, that a message can extend to additional and ancillary issues, as was apparent from the words “or otherwise” used in conjunction with the words “with respect to a Bill then pending in the Legislature”. It was also sought to be clarified, that the power vested with the Governor to address a message to the House or Houses of the State Legislature, should not be confused with the power vested with the Governor under Article 200, which authorizes the Governor *inter alia* to accord his assent to a Bill, or to return a Bill (if it is not a Money Bill) together with a message requesting the House or Houses of the State Legislature to reconsider the Bill, or any specified provisions thereof, and/or the desirability of introducing such amendments in the Bill, as the Governor may recommend in his message. It was submitted, that the power exercised by the Governor under Article 200, relates to a Bill passed by the State Legislature, whereas the message referred to in Article 175, is expressly relatable to a Bill then pending before the State Legislature. It was pointed out, that the use of the words “or otherwise” in

Article 175(2) has the consequence of extending and enlarging the subject and context on which a message can be addressed by the Governor, to the State Legislature.

156. It was further submitted on behalf of the respondents, that the message of the Governor dated 9.12.2015 (which has been impugned by the appellants before this Court), contained three directions. Firstly, the Assembly should not be adjourned, till the notice of resolution for the removal of the Speaker – Nabam Rebia dated 19.11.2015, was finally determined, one way or the other. Secondly, the notice of resolution for the removal of the Speaker – Nabam Rebia, should be taken up for consideration in the list of business of the Assembly, before any other business of the day is taken up. And thirdly, until the 6th session of the Assembly was prorogued, the Presiding Officer “shall” not alter the party composition in the House. Insofar as the directions contained in the impugned message dated 9.12.2015 are concerned, it was asserted, that the same merely brought to the notice of the members of the Assembly, the provisions of the Constitution, supplemented by the ‘Conduct of Business Rules’, to ensure that the functioning of the House, in a situation of turmoil and turbulence, was carried out in consonance with established norms. Insofar as the first direction is concerned, reference was made to Rule 151 of the ‘Conduct of Business Rules’, which provides, that after a notice of resolution for the removal of a Speaker is tabled, the House shall not be adjourned till the motion of no confidence has been finally disposed of. Insofar as the second direction is concerned, it was pointed out, that the

same is postulated under Rule 153 of the 'Conduct of Business Rules', which provides, that a notice of resolution for the removal of the Speaker would be included in the list of business, before any other business of the day is taken up. And insofar as the third direction is concerned, reference was made to Article 179(c), which provides that a Speaker may be removed from his office by a resolution of the Assembly "... passed by a majority of all the then members of the Assembly". It was therefore contended on behalf of the respondents, that the alleged directions contained in the message addressed by the Governor to the Assembly, dated 9.12.2015, were not matters emerging out of any independent will or fancy of the Governor, but were in consonance with the prescribed and postulated rules of procedure, which were in any case bound to be followed, while considering a notice of resolution for the removal of the Speaker. It was accordingly asserted, that the impugned message dated 9.12.2015 should be viewed as advice and guidance, tendered by the Governor to the Assembly, so as to preserve recognized constitutional norms.

157. Based on the assertions recorded hereinabove, it was submitted on behalf of the respondents, that save and except, the ultimate desire of the Governor to preserve the democratic process, the impugned message dated 9.12.2015, had no other fallout/consequence, nor was the same aimed at a gain or loss, for one or the other political party. It was contended, that no extraneous motive, could be attributed to the Governor, with reference to the message dated 9.12.2015. It was also urged, that any action taken by the Assembly, in breach of the message dated 9.12.2015, would have

constituted a serious constitutional impropriety. In conclusion, it was submitted, that the message dated 9.12.2015, should be taken as a *bona fide* gesture at the hands of the Governor, to require the Assembly to carry out its functions, in the peculiar circumstances which prevailed at that juncture, in accordance with the provisions of the Constitution. It was also pointed out, that the message dated 9.12.2015 was addressed by the Governor, by taking note of the actions of the Speaker, who was manipulating the situation, so as to defer consideration on the notice of resolution, for his own removal.

158. We must yet again acknowledge, that the submissions advanced at the behest of the respondents, emerge from common sense, rationale and acceptable logic. The question which arises for our consideration, however is, whether a message addressed by the Governor, could extend to subjects on which the above message dated 9.12.2015 was addressed. And also whether, the Governor could address a message to the Assembly in his own discretion, without seeking the aid and advice of the Chief Minister and his Council of Ministers. Having given our thoughtful consideration to the above, it is not possible for us to accept the submissions advanced on behalf of the respondents. Our reasons for not agreeing with the respondents are recorded hereinafter.

159. It is not disputed, that Section 63 of the Government of India Act, 1935 was a precursor to Article 175. Section 63 aforementioned has been extracted in paragraph xxx 50 xxx, herein above. A perusal of Section 63 of the Government of India Act, 1935, reveals that sub-section (2) thereof had

the words “in his discretion”, incorporated therein, with reference to the scope and ambit of the Governor’s messages, to the Legislature. It is therefore apparent, that under the Government of India Act, 1935, the discretion to send messages to the Legislature, was clearly and precisely bestowed on the Governor, as he may consider appropriate, in his own wisdom. Article 175 has no such or similar expression. It is apparent therefore, that the framers of the Constitution did not intend to follow the regimen, which was prevalent under Section 63 of the Government of India Act, 1935. It must have been for the above reason, that the Constituent Assembly framed Article 175, by excluding and omitting the discretion which was vested with the Governor, in the matter of sending messages, under the Government of India Act, 1935. Had it been otherwise, the phrase “in his discretion” would have been retained by the Constituent Assembly in Article 175. It was also the contention on behalf of the appellants, that the messages addressed by the Governor should be construed by accepting, that the Governor is in no manner associated with the legislative process, except under Article 200. A detailed consideration in this behalf has already been recorded hereinabove. In our considered view, the Governor’s connectivity to the House in the matter of sending messages, must be deemed to be limited to the extent considered appropriate by the Council of Ministers headed by the Chief Minister. In fact, it is not possible for us to conclude otherwise, because Article 175 does not expressly provide, in consonance with Article 163(1), that the Governor would exercise his above functions “in his discretion”. Thus viewed, we have no hesitation

in concluding, that messages addressed by the Governor to the House(s) have to be in consonance with the aid and advice tendered to him.

160. During the course of hearing it emerged, that one of the primary reasons for addressing the message dated 9.12.2015, was the fact, that a notice of resolution for the removal of the Speaker – Nabam Rebia, dated 19.11.2015, was addressed by 13 MLAs (-11 belonging to the BJP, and 2 Independent MLAs), to the Secretary of the Legislative Assembly. Accordingly, in the understanding of the Governor, it would constitute a constitutional impropriety, if the above notice of resolution for the removal of the Speaker, was not taken up for consideration forthwith, namely, immediately after the expiry of 14 days, provided for in the first proviso under Article 179. Insofar as the instant aspect of the matter is concerned, whilst we do not doubt the *bona fides* of the Governor, it cannot be overlooked that the Governor has no express or implied role under Article 179 on the subject of “the removal of Speaker or Deputy Speaker”. The aforesaid issue of removal of the Speaker (or Deputy Speaker), squarely rests under the jurisdictional authority of the Members of the Legislative Assembly, who must determine at their own, whether the notice of resolution for the removal of the Speaker (or the Deputy Speaker) should be adopted or rejected. In the instant view of the matter, the participatory role at the hands of the Governor, in the matter concerning the removal of the Speaker, can neither be understood nor accepted, and may well be considered as unwarranted.

161. Another important reason, for addressing the message dated 9.12.2015 to the House was, that a petition had been preferred by the Chief Whip of the Congress Legislature Party – Rajesh Tacho on 7.12.2015, for disqualification of 14 MLAs belonging to the INC, under the Tenth Schedule. It was therefore, that the Governor in his message dated 9.12.2015, ventured to inform the Presiding Officer of the House, that till the 6th session of the Assembly was prorogued, the party composition of the House “shall” not be altered. Once again, for exactly the same reasons, as recorded in the preceding paragraph, it is imperative for us to express, that the Governor has no role, in the disqualification of members of the Assembly. The exclusive jurisdiction on the above issue, rests with the Speaker of the Assembly, under Paragraph 6 of the Tenth Schedule. Whether the Speaker’s actions fall within the framework of the Constitution, or otherwise, does not fall within the realm of consideration of the Governor. The remedy for any wrong doing under the Tenth Schedule, lies by way of judicial review. Neither the provisions of the Constitution nor the ‘Conduct of Business Rules’ assign any such role to the Governor. It does not lie within the domain of the Governor, to interfere with the functions of the Speaker. The Governor is not a guide or mentor to the Speaker. The Governor cannot require the Speaker to discharge his functions in the manner he considers constitutionally appropriate. Both the Governor and the Speaker have independent constitutional responsibilities. The Governor’s messages with reference to such matters (as were expressed in the message dated 9.12.2015), do not flow from the functions assigned to

him. The Governor cannot likewise interfere in the activities of the Assembly, for the reason that the Chief Minister, or the entire Council of Ministers, or an individual Minister in the Cabinet, or for that matter even an individual MLA, are not functioning in consonance with the provisions of the Constitution, or in the best interest of the State. The State Legislature, does not function under the Governor. In sum and substance, the Governor just cannot act as the Ombudsman of the State Legislature.

162. In view of the above, we have no hesitation in concluding, that the messages addressed by the Governor to the Assembly, must abide by the mandate contained in Article 163(1), namely, that the same can only be addressed to the State Legislature, on the aid and advice of the Council of Ministers with the Chief Minister as the head. The message of the Governor dated 9.12.2015, was therefore beyond the constitutional authority vested with the Governor.

163. For all the reasons recorded hereinabove, we are of the considered view, that the impugned message of the Governor dated 9.12.2015 is liable to be set aside. We order accordingly.

IV.

Article 179 of the Constitution

179. "Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker – 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 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 meeting of the Assembly after the dissolution.”

164. The deliberations and the discussions recorded hereinabove substantiate, that even though in terms of Article 154, the executive power of the State vests in the Governor, and further, the executive power vested with the Governor would be exercised by him either directly or through officers subordinate to him “in accordance with this Constitution”, and further, the mandate contained in Article 166 enjoins, that all executive actions of the Government of a State are expressed in the name of the Governor, yet Article 163(1) leaves no room for any doubt, that the Governor is ordained, to exercise his functions on the aid and advice of the Council of Ministers with the Chief Minister as the head. Articles 154, 163 and 166 referred to above, are contained in Chapter II of Part VI of the Constitution, which relate to the State Executive. It is therefore apparent, that the exercise of executive power by the Governor, is by and large notional. All in all, the Governor had a limited scope of authority, relating to the exercise of executive functions, in his own discretion, i.e., without any aid and advice. The aforesaid limited power of the Governor is exercisable in situations, expressly provided for “by or under” the provisions of the Constitution. The position which has briefly been recorded above, has been examined in some detail in paragraph xxx 139 xxx of this judgment.

165. Likewise, even though Article 168 includes the Governor, and pronounces him to be a part of the State Legislature, the provisions of the Constitution extend no legislative responsibility to him, within the precincts of the House or Houses of the State Legislature. Article 158 provides, that the "... Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule ...". The Governor does not participate in debates within the Legislature, nor does he have any role in any activity which would result in the passing of a Bill, on the floor of the House. All in all, the legislative functionality constitutionally extended to the Governor, is extremely limited. The role assigned to a Governor in the entire gamut of the legislative process, is as ascribed under Article 200. Needless to mention, that when the House or Houses of the State Legislature are not in session, the Governor has the power to promulgate Ordinances under Article 213. No such legislative power is vested with the Governor, while the House or Houses of the State Legislature are in session. But even the power to issue Ordinances, cannot be exercised by the Governor, on his own. Ordinances can be issued by the Governor, only on the aid and advice of the Council of Ministers with the Chief Minister as the head. In sum and substance, the Governor is vested with extremely limited legislative functions. The position which has been recorded above, has been examined in some detail in paragraph xxx 139 xxx of this judgment.

166. It also needs to be kept in mind, that the appointment of the Governor is made under Article 155, not by way of an electoral process, but

by a warrant issued under the hand and seal of the President. The constitutional Governor, is to hold his office under Article 156, during the pleasure of the President. Since the President exercises his functions on the aid and advice of the Prime Minister and his Council of Ministers, the tenure of the office of the Governor has also to coincide with the aid and advice of the Prime Minister and his Council of Ministers.

167. It is in the above background, that the ambit and scope of the role of the Governor requires to be examined, with reference to the issue of removal of the Speaker (or the Deputy Speaker) under Article 179(c). Insofar as the issue of the removal of the Speaker is concerned, the same would depend on the result of the vote, on the notice of resolution for his removal. If the majority votes in favour of the motion, the resolution is liable to be adopted. Failing which, it is liable to be rejected. In the above situation, it is apparent, that neither the Chief Minister, nor the Council of Ministers, has any determinative role on the subject of removal of the Speaker (or the Deputy Speaker). Their individual participation is limited to their individual vote, either in favour or against the motion for the removal of the Speaker (or the Deputy Speaker). Even the above bit, is not available to the Governor. The Governor has no role whatsoever in the removal of the Speaker (or the Deputy Speaker). Therefore, in our considered view, no role direct or indirect can be assumed by the Governor, under Article 179(c). The assumption of such a role, and the fulfillment thereof by addressing a message to the Assembly under Article 175, can only be ascribed as an ingenuity, without any constitutional sanction. In the above view of the

matter, we are of the opinion, that the impugned message of the Governor dated 9.12.2015, cannot be endorsed as constitutionally acceptable.

168. Despite the above, the facts and circumstances of the present case reveal, that the Governor in his alleged *bona fide* determination issued the impugned message dated 9.12.2015, statedly to advise and guide the State Legislature, to carry out its functions in consonance with the provisions of the Constitution, and the rules framed under Articles 166 and 208. The question which arises for adjudication is not, that of the Governor's *bona fides*. The question is of the jurisdictional authority of the Governor, in the above matter. The Governor has no direct or indirect constitutionally assigned role, in the matter of removal of the Speaker (or the Deputy Speaker). The Governor is not the conscience keeper of the Legislative Assembly, in the matter of removal of the Speaker. He does not participate in any executive or legislative responsibility, as a marshal. He has no such role assigned to him, whereby he can assume the position of advising and guiding the Legislative Assembly, on the question of removal of the Speaker (or Deputy Speaker). Or to require the Legislative Assembly to follow a particular course. The Governor can only perform such functions, in his own discretion, as are specifically assigned to him "by or under this Constitution", within the framework of Article 163(1), and nothing more. In our final analysis, we are satisfied in concluding, that the interjects at the hands of the Governor, in the functioning of the State Legislature, not expressly assigned to him, however *bona fide*, would be extraneous and without any constitutional sanction. A challenge to an action beyond the

authority of the Governor, would fall within the scope of the judicial review, and would be liable to be set aside.

169. For all the reasons recorded hereinabove, we are of the considered view, that the impugned order and message of the Governor dated 9.12.2015 are liable to be set aside. We order accordingly.

V.

Tenth Schedule to the Constitution.

TENTH SCHEDULE

[Articles 102(2) and 191(2)]

“6. Decision on questions as to disqualification on ground of defection.—(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212.”

170. Paragraph 6 of the Tenth Schedule has been extracted above. It *inter alia* postulates, that if a question arises, whether a member of the Legislative Assembly has become subject to disqualification, the adjudicatory role for determining the above question, will fall within the exclusive authority of the Speaker; and in case of a member of the Legislative Council, solely on the shoulders of the Chairman. Sub-paragraph (2) of Paragraph 6, by a constitutional fiction, adopts all

proceedings carried out by the Speaker or the Chairman under the Tenth Schedule, as proceedings of the State Legislature.

171. It is apparent from a perusal of the provisions of the Tenth Schedule, that no role whatsoever has been assigned to the Governor, in the matter of removal of a member of the Assembly/Council. In the above view of the matter, even where a petition is filed for disqualification of one or more MLAs under the Tenth Schedule, the Governor's direct or indirect participation in the same, is impermissible. The role of the Governor in such matters, would fall beyond the spectrum of constitutional sanction. Besides the fact that the Governor has no role whatsoever in the proceedings carried out under the Tenth Schedule, he cannot have any interest in the outcome of the disqualification proceedings under the Tenth Schedule. The Governor can, therefore, never be concerned with the proceedings under the Tenth Schedule, one way or the other. The fictional assumption, that the proceedings under the Tenth Schedule have a legislative flavour, and are akin to the proceedings before the State Legislature, further removes the Governor from any participatory role in the same. Accordingly, in our considered view, any exercise of authority by the Governor based on pending proceedings against members of the Legislative Assembly, under the Tenth Schedule, are clearly beyond his constitutional authority. An order or message of the Governor, based on an underlying consideration relating to pending action(s) of disqualification, against a member or members of the State Legislature, would be constitutionally unsustainable. It was acknowledged by both sides, that the impugned

order and message of the Governor dated 9.12.2015, were prompted by the petition filed on 7.12.2015, by the Chief Whip of the Congress Legislature Party, seeking disqualification of 14 MLAs belonging to the INC. The above position is also evident from a perusal of the order and message dated 9.12.2015. In the above view of the matter, it is obvious, that the order and message were actuated by a constitutionally impermissible consideration. The same are accordingly liable to be set aside. We order accordingly.

172. The issue canvassed and answered hereinabove with reference to the Tenth Schedule, does not fully answer the controversy which has arisen for consideration before us. The proposition canvassed, also relates to the propriety of Speaker, in conducting proceedings under the Tenth Schedule, when his own position as the Speaker of the Legislative Assembly, is under challenge. After all, this was the real basis of the Governor having passed the impugned order and message dated 9.12.2015. The challenge to the Speaker's position, in the instant case, was based on a notice of resolution for his removal dated 19.11.2015. The resolution was moved by 13 MLAs (-11 belonging to the BJP, and 2 Independent MLAs). Despite the above, unmindful of the challenge raised to his own position, the Speaker went on with the disqualification proceedings initiated by the Chief Whip of the Congress Legislature Party on 7.12.2015, by issuing a notice to them on 7.12.2015 itself, seeking their response by 14.12.2015. All the 14 MLAs aforementioned, were disqualified by an order passed by the Speaker on 15.12.2015, under the Tenth Schedule. Was this action of the Speaker, justified? Learned counsel for the rival parties, pointedly addressed us on

this issue. We are also of the view, that this issue needs to be determined in view of the directions which will eventually emerge on the basis of the consideration recorded hereinabove. A repeat performance of the earlier process, would bring the parties back to the threshold of this Court, for the redressal of the same dispute, which is already before us.

173. When the position of a Speaker is under challenge, through a notice of resolution for his removal, it would “seem” just and appropriate, that the Speaker first demonstrates his right to continue as such, by winning support of the majority in the State Legislature. The action of the Speaker in continuing, with one or more disqualification petitions under the Tenth Schedule, whilst a notice of resolution for his own removal, from the office of Speaker is pending, would “appear” to be unfair. If a Speaker truly and rightfully enjoys support of the majority of the MLAs, there would be no difficulty whatsoever, to demonstrate the confidence which the members of the State Legislature, repose in him. The office of Speaker, with which the Constitution vests the authority to deal with disqualification petitions against MLAs, must surely be a Speaker who enjoys confidence of the Assembly. After all, disposal of the motion under Article 179(c), would take no time at all. As soon as the motion is moved, on the floor of the House, the decision thereon will emerge, forthwith. Why would a Speaker who is confident of his majority, fear a floor test? After his position as Speaker is affirmed, he would assuredly and with conviction, deal with the disqualification petitions, under the Tenth Schedule. And, why should a Speaker who is not confident of facing a motion, for his removal, have the

right to adjudicate upon disqualification petitions, under the Tenth Schedule? The manner in which the matter has been examined hereinabove, is on ethical considerations. A constitutional issue, however, must have a constitutional answer. We shall endeavour to deal with the constitutional connotation of the instant issue, in the following paragraphs.

174. Just like the other provisions of the Constitution (interpreted by us hereinabove), it would be apposite to ascertain the desired intent of the framers of the Constitution, emerging from the Constituent Assembly debates, with reference to Article 179(c). In the draft Constitution, the present Article 179 was numbered as draft Article 158. One of the issues debated, with reference to draft Article 158(c) was, with reference to the words "all the then members of the Assembly", used therein. The above words were used to define, those who would participate in the motion, for the removal of the Speaker. Needless to mention, that the said words were retained in the final draft, in Article 179(c). One of the members of the Constituent Assembly had suggested substitution of the above words, by the words, "the members of the Assembly present and voting", as under:

"Mr. Mohd. Tahir: Sir, I beg to move:

"That in clause (c) of article 158, for the words 'all the then members of the Assembly' the words 'the members of the Assembly present and voting' be substituted."

Clause (c) runs as follows:

"(c) may be removed from his office for incapacity or want of confidence by a resolution of the Assembly passed by a majority of all the then members of the Assembly."

Sir, so far as I can understand the meaning of the wording, "all the then members of the Assembly", it includes all the members of the Assembly. Supposing a House is composed of 300 members then, it will mean all the members of the Assembly, that is 300. Supposing fifty members of the House are not present in the House, then, those members will not have the right to give their votes so far as this

question is concerned. Therefore, I think that it would be better that this matter should be considered by only those members who are present in the Assembly and who can vote in the matter. If this phrase "all the then members of the Assembly" means the members who are present in the Assembly, then, I have no objection. If it means all the members of which the House is composed, I think it is not desirable to keep the clause as it stands.

With these few words, I move my amendment."

The Constituent Assembly debates, do not appear to have recorded any discussion on the above amendment. The decision on the proposed amendment was however minuted as under:

"Mr. President: The question is:
"That in clause (c) of article 158, for words 'all the then members of the Assembly' the words 'the members of the Assembly present and voting' be substituted."
The amendment was negated."

It is apparent, that the Constituent Assembly chose to retain the words, "all the then members of the Assembly.", and declined to substitute them with the words, "the members of the Assembly present and voting". We are of the view, that the acceptance of one set of words, and the rejection of the suggested substitution, would effectively render a constitutional answer to the issue in hand.

175. Article 179(c) provides, that a Speaker (or Deputy Speaker), "may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly". A notice of resolution for the removal of the Speaker (or the Deputy Speaker) of the Assembly, would therefore, have to be passed by a majority "of all the then members of the Assembly". The words "all the then members" included in Article 179(c), are a conscious adage. If the words "all the then members" are excluded from clause (c) of Article 179, it would affirm the interpretation which the

appellants, wish us to adopt. The connotation placed by the appellants, would legitimize the action of the Speaker, in going ahead with the proceedings under the Tenth Schedule, even though a notice of resolution for his removal from the office of Speaker was pending. The words “all the then members” were consciously added to Article 179(c), and their substitution was not accepted by the Constituent Assembly. We are satisfied, that the words “passed by a majority of all the then members of the Assembly”, would prohibit the Speaker from going ahead with the disqualification proceedings under the Tenth Schedule, as the same would negate the effect of the words “all the then members”, after the disqualification of one or more MLAs from the House. The words “all the then members”, demonstrate an expression of definiteness. Any change in the strength and composition of the Assembly, by disqualifying sitting MLAs, for the period during which the notice of resolution for the removal of the Speaker (or the Deputy Speaker) is pending, would conflict with the express mandate of Article 179(c), requiring all “the then members” to determine the right of the Speaker to continue.

176. It would also be relevant to notice, that the Tenth Schedule was inserted in the Constitution, by the Constitution (Seventy-third Amendment) Act, 1992, with effect from 24.4.1993. The purpose sought to be achieved through the Tenth Schedule, is clear and unambiguous. The same is unrelated to, and distinct from, the purpose sought to be achieved through Article 179(c). Neither of the above provisions, can be seen as conflicting with the other. Both, must therefore freely operate, within their

individual constitutional space. Each of them will have to be interpreted, in a manner as would serve the object sought to be achieved, without treading into the constitutional expanse of the other. The interpretation would have to be such, as would maintain constitutional purpose and harmony. We would now venture to examine the instant issue from the above perspective, in the following paragraph.

177. If a Speaker survives the vote, on a motion for his removal from the office of Speaker, he would still be able to adjudicate upon the disqualification petitions filed under the Tenth Schedule. The process of judicial review, cannot alter the above position. But, if a disqualification petition is accepted by the Speaker, the disqualified MLAs will have no right to participate in the motion moved against the Speaker under Article 179(c). A disqualified MLA, as we all know, can assail the order of his disqualification, by way of judicial review. If he succeeds, and his disqualification from the House is set aside, such a disqualified MLA, would be deprived of the opportunity to participate in the motion against the Speaker, under Article 179(c). In this situation, the process of judicial review, can also alter the position, if a disqualification order passed by the Speaker, is set aside by a Court of competent jurisdiction. In the event of an MLA having been disqualified by the Speaker, the notice of resolution for the removal of the Speaker, would surely be dealt with, and will be disposed of, during the period when the concerned MLA stood disqualified. Alternatively, if an MLA has not been disqualified when the motion for the removal of the Speaker is taken up, he would have the right to vote on the

motion pertaining to the removal of the Speaker, whereafter, the petition for his own disqualification would certainly be considered and decided, by the Speaker. It is apparent, that the difficulty arises only, if the disqualification petition is taken up first, and the motion for the removal of the Speaker is taken up thereafter. The possibility of a disqualification petition being decided on political considerations, rather than on merits, cannot be ignored. In fact, that is a real possibility. Therefore, while it will not adversely affect the Speaker, if he faces the motion of his own removal from the office of Speaker, before dealing with the disqualification petitions, it could seriously prejudice MLAs facing disqualification, if petitions for their disqualification are taken up and dealt with first. The adoption of the former course, would also result in meaningfully giving effect to the words “all the then members” used in Article 179(c), as discussed in the foregoing paragraph. This interpretation would also purposefully give effect to the rejection of the amendment suggested during the Constituent Assembly debates, that the motion for removal of the Speaker, should be the majority of “the members of the Assembly present and voting”. This interpretation would also result in disregarding the retention of the words “all the then members of the Assembly”, in Article 179(c). If the Speaker faces the motion of his own removal first, both the constitutional provisions would have their independent operational space preserved. None of the concerned constitutional provisions would interfere with the free functionality of the other, nor would one usurp the scheme postulated for the other. We are therefore of the view, that constitutional purpose and constitutional

harmony would be maintained and preserved, if a Speaker refrains from adjudication of a petition for disqualification under the Tenth Schedule, whilst his own position, as Speaker, is under challenge. This would also, allow the two provisions (Article 179(c), and the Tenth Schedule) to operate in their individual constitutional space, without encroaching on the other.

178. For the reasons recorded hereinabove, we hereby hold, that it would be constitutionally impermissible for a Speaker to adjudicate upon disqualification petitions under the Tenth Schedule, while a notice of resolution for his own removal from the office of Speaker, is pending.

VI.

The political imbroglio.

179. The first sequence of facts projected by the appellants, discloses the alleged discord and dissension amongst MLAs of the ruling INC. It was suggested, that the Governor having taken charge on 1.6.2015, acted in support of BJP causes. It would be necessary to record, that in the 60-member Arunachal Pradesh State Legislative Assembly, 47 MLAs had allegiance to the INC, 11 MLAs to the BJP, and there were 2 Independent MLAs. It was urged, that MLAs owing allegiance to the INC, had joined up with non-INC MLAs, to exploit the situation. To harness the rebelling MLAs, resignation letters were allegedly taken from at least 17 legislators belonging to the INC. Eventually resignation letters of two MLAs – were accepted on 6.10.2015, leading to their removal from the House. Efforts made by the General Secretary AICC, in-charge for North-Eastern States – V. Narayanasamy, President of the Arunachal Pradesh Congress Committee – Padi Richo, the Chief Minister – Nabam Tuki and others, to reign in the

dissident MLAs, did not have any positive effect. The dissident MLAs even addressed letters to the Governor, in furtherance of their objective, namely, to change the Chief Minister – Nabam Tuki. On 12.10.2015, the President of the Congress Legislature Party, issued a show cause notice to 19 MLAs of the INC, for indulging in anti-party activities. The same was repulsed by a press note issued by 21 MLAs of the INC, denouncing the leadership of the Chief Minister.

180. On 16.11.2015, a notice of resolution for the removal of the Deputy Speaker – Tenzing Norbu Thongdok, was statedly moved by 16 MLAs belonging to the INC. The Deputy Speaker, had been elected to the House on an INC ticket. On 19.11.2015, 13 MLAs (-11 belonging to the BJP, and 2 Independent MLAs), moved a similar notice of resolution for the removal of the Speaker – Nabam Rebia. On 7.12.2015, the Chief Whip of the Congress Legislature Party – Rajesh Tacho, filed a petition under the Tenth Schedule, seeking disqualification of 14 dissident MLAs of the INC, including the Deputy Speaker – Tenzing Norbu Thongdok, on account of their anti-party activities.

181. On 9.12.2015, to ensure that the notice for the removal of the Speaker was taken up for consideration without any delay, the Governor ordered the preponement of the 6th session of the Assembly earlier scheduled for 14.1.2016, to 16.12.2015. The above order dated 9.12.2015, was passed by the Governor, without consulting the Chief Minister and his Council of Ministers or the Speaker. The Governor additionally required, that the party composition of the House should not be altered, till the

motion on the above notice, was disposed of. This was done by the Governor through a message dated 9.12.2015. Through the above message, the Governor attempted to forestall the proceedings initiated for disqualification of 14 MLAs of the INC, under the Tenth Schedule. The above message dated 9.12.2015, was issued by the Governor, without the aid and advice of the Chief Minister and his Council of Ministers.

182. On 14.12.2015, the Chief Minister in a Cabinet meeting, resolved that the order of the Governor dated 9.12.2015 was unconstitutional. And so also, the message dated 9.12.2015. The Speaker through his letter dated 14.12.2015, brought the above position to the notice of the Governor. Disregarding the edict of the Governor, the Speaker – Nabam Rebia proceeded against the 14 MLAs of the INC under the Tenth Schedule on 14.12.2015, and ordered their disqualification and consequent removal, from the Assembly on 15.12.2015. On the same day – 15.12.2015, the Deputy Speaker – Tenzing Norbu Thongdok, quashed the order of disqualification of the 14 MLAs of the INC, including his own disqualification. In the preponed 6th session of the Assembly held on 16.12.2015, the resolution for the removal of the Speaker – Nabam Rebia was adopted. All the 14 disqualified MLAs, participated in the resolution moved against the Speaker. The motion was passed. Nabam Rebia, ceased to be the Speaker of the State Legislature, with effect from 16.12.2015.

183. The third sequence of facts projected by the respondents, highlights a factual dispute between the parties, namely, whether or not a notice of resolution for the removal of the Deputy Speaker – Tenzing Norbu Thongdok

dated 16.11.2015, had actually been moved by 16 MLAs belonging to the INC. The instant determination is in addition to the consideration and conclusion (in paragraph 69, above) recorded by us on the same aspect of the matter hereinbefore. During the course of hearing of the present controversy, we examined the material produced before us by the rival parties, to substantiate the respective assertions. Based on the above examination, we may record the following:

Firstly, a copy of the above notice dated 16.11.2015 had been called for, by the Governor through a communication dated 7.12.2015. Associated information about the date of receipt of the notice, and the action taken thereon, was also asked for. Even though the associated information was furnished, yet a copy of the above notice dated 16.11.2015 was not furnished to the Governor.

Secondly, in the response of the Secretary of the Legislative Assembly dated 8.12.2015 (addressed to the office of the Governor), it was asserted, that the notice dated 16.11.2015 was under consideration of the Speaker. All the same, a copy of the notice for the removal of the Deputy Speaker – Tenzing Norbu Thongdok, was not forwarded to the Governor.

Thirdly, the Superintendent of Police-cum-ADC to the Governor, visited the Secretary of the Legislative Assembly, and other officers of the Secretariat of the Legislative Assembly, on 8.12.2015. He recorded the entire position in a note dated 8.12.2015. He was informed by the staff, that the notice of resolution for the removal of the Deputy Speaker dated 16.11.2015, was in a file lying at the official residence of the Speaker – Nabam Rebia, at

Itanagar. The removal of the Deputy Speaker, is to be dealt with by the Assembly, and not by the Speaker. Accordingly, it was pointed out on behalf of the respondents, that there was no reason/opportunity for the above file to be at the official residence or custody of the Speaker.

Fourthly, the Speaker – Nabam Rebia is the appellant before us. He has not disputed the factual position indicated in the letter of the Secretary of the Legislative Assembly dated 8.12.2015, or in the note of the Superintendent of Police-cum-ADC to Governor.

Fifthly, the Speaker – Nabam Rebia did not produce the original of the notice dated 16.11.2015, when called for by this Court. The stance adopted by him was, that the same is in the custody of the respondents.

Sixthly, the original notice dated 16.11.2015, was not produced before this Court, despite the same having been called for.

The appellant – Nabam Rebia, has not produced sufficient material before this Court to demonstrate, that such a notice was actually issued (or was ever received by him). We will therefore have to proceed on the assumption, that no such notice of resolution for the removal of the Deputy Speaker, was ever issued on 16.11.2015, as alleged. The instant inference has been drawn by us, for the disposal of the present controversy. The above factual dispute, is however left open. If such a question arises again, the rival or concerned parties, will have the liberty to lead evidence, to enable a Court of competent jurisdiction, to determine the true factual position, with respect to the issuance of the aforesaid notice of resolution for the

removal of the Deputy Speaker – Tenzing Norbu Thongdok, dated 16.11.2015.

184. The fourth sequence of facts projected by the respondents reveals, that a notice of resolution for the removal of the Speaker – Nabam Rebia, was moved on 19.11.2015 by 13 MLAs (– 11 belonging to the BJP, and 2 Independent MLAs). The above event took place, after the 5th session of the Legislative Assembly was prorogued on 21.10.2015. The Governor had originally, by his order dated 3.11.2015, summoned the House to meet on 14.1.2016 for the 6th session of the Assembly. After issuing the above notice of resolution for the removal of the Speaker – Nabam Rebia on 19.11.2015, the concerned 13 MLAs addressed a letter on the same day – 19.11.2015, to the Governor. They sought consideration on the notice, immediately on the completion of the notice period, provided for in the first proviso under Article 179(c). In their letter to the Governor, it was alleged, that the ruling political party did not enjoy confidence and majority of the House, as its strength had been reduced to 25 out of the 60-member Legislative Assembly.

185. Immediately on receipt of the above letter dated 19.11.2015, the Governor sought details about the notice (-dated 19.11.2015) from the Secretary of the Legislative Assembly, requiring him to confirm the factual position, through a series of communications dated 27.11.2015, 3.12.2015 and 7.12.2015. While the situation stood thus, the Chief Whip of the INC – Rajesh Tacho sought disqualification of 14 MLAs (respondent nos. 2 to 15), belonging to his own political party – the INC, under the Tenth Schedule, on

7.12.2015. A day thereafter, i.e., on 8.12.2015, the Secretary of the Legislative Assembly informed the Governor, that a notice of resolution for the removal of the Speaker – Nabam Rebia, had been received in the Legislative Assembly on 19.11.2015. On confirmation of the above fact, that 13 MLAs had actually sought the removal of the Speaker, the Governor sought legal opinion about the validity and legitimacy of the Speaker sitting in judgment over the removal of 14 MLAs, even though a notice of resolution for the removal of the Speaker himself, was pending in the Assembly. Believing that there was an attempt to subvert the provisions of the Constitution, the Governor rescheduled the 6th session of the Assembly by preponing the same to 16.12.2015, by his order dated 9.12.2015.

186. The fifth sequence of facts projected by the respondents highlights, that a challenge was raised by the appellants, to the order and message of the Governor dated 9.12.2015, and in respect of other connected issues, by filing Writ Petition (C) Nos. 7745 of 2015 and 7998 of 2015 (on 17.12.2015 and 22.12.2015, respectively) before the Gauhati High Court. It was asserted on behalf of the respondents, that appreciation of the actual facts would establish, that the challenge raised before the High Court through the above petitions, was not only unfair and unreasonable, but also illegitimate and constituted a misuse of the jurisdiction of the High Court. Relying on the communication addressed by and on behalf of the Speaker – Nabam Rebia and the Chief Minister – Nabam Tuki, it was pointed out, that their projection through the above letters was, that the order and message of the Governor dated 9.12.2015 were unconstitutional. MLAs belonging to

the INC who were continuing to extend support to the Chief Minister had taken a decision, not to allow the House to meet in terms of the order and message dated 9.12.2015. In fact, the Speaker of the House, it was pointed out, had addressed a letter to the Home Minister to ensure, that no individual be allowed to enter the Legislative Assembly building from 15.12.2015 to 18.12.2015 (- during the entire duration, of the 6th session of the Legislative Assembly). Not even MLAs duly elected to the House, were to be allowed entry in the premises of the Legislative Assembly. A request was also made by the Speaker – Nabam Rebia, for the deployment of IRBn (Indian Reserve Battalion) and CPMF (Central Para Military Force) personnel, along with monitoring systems. The respondents desire us to infer from the above sequence of events, that if those opposing the validity – legal and constitutional, of the order and message of the Governor, were certain about their standpoint, they ought to have sought judicial redress immediately. If they were right, the High Court would have immediately ordered, course correction. It was submitted, that all efforts were made to subvert the proceedings of the State Legislature. Only when they had failed in their illegitimate action, they approached the High Court on 17.12.2015 and 22.12.2015, by which time, due process had resulted in the decisions referred to above.

187. The sixth sequence of facts projected by the respondents, was founded on the prevailing political situation in the State since March/April 2015, which got worst in September 2015 when 21 MLAs of the INC started to oppose their own party leadership, by calling for the removal of the Chief

Minister – Nabam Tuki, and for the installation of Kalikho Pul (a former Finance Minister of the State), in his place. In order to quell the above dissensions, resignation letters of two MLAs - Wanglam Sawin and Gabriel D. Wangsu were accepted, as it was felt that this would rein in the others. The above two MLAs approached the High Court, which stayed the order accepting their resignations, on 7.10.2015. It was at this juncture, that the above two MLAs amongst 21 MLAs approached the Governor, on 11.10.2015. They made complaints against the Chief Minister – Nabam Tuki and the Speaker – Nabam Rebia, to the Governor. Shortly thereafter on 19.11.2015, 13 MLAs (- 11 from the BJP and 2 Independent MLAs) sought the removal of the Speaker – Nabam Rebia under Article 179(c). On the same day – 19.11.2015, the above 13 MLAs met the Governor, and sought preponement of the 6th session of the House.

188. The above sequence of facts, according to learned counsel for the respondents, and the impressions of the Governor, expressed in his letters addressed to the President dated 17.10.2015, 19.11.2015 and 1.12.2015 should be visualized together. It was pointed out, that only then, it will be possible to appreciate the Governor's thought process, when he issued the order and message dated 9.12.2015. In the letter dated 17.10.2015, the Governor informed the President about the growing dissidence amongst the MLAs of the INC, who seemed to be divided into two groups, one headed by Nabam Tuki – the Chief Minister, and the other by Kalikho Pul – a former Finance Minister of the State. The Governor also narrated details of the acceptance of the resignation letters of two MLAs of the INC, and their

intimation to the Governor, that they had been coerced to resign. The Governor also disclosed the alleged threats issued by unknown miscreants, to the two MLAs who had resigned, and to Kalikho Pul. His letter pointed out, that similar threats were also allegedly extended to members of their families. In the letter dated 19.11.2015, the Governor informed the President about the prevailing political complexity, and growing dissidence amongst MLAs belonging to the INC, including some Ministers. In his letter, the Governor also narrated the contents of the memorandum issued by MLAs on 12.11.2015 calling for the removal of the ruling INC Government, for paving the way for a new regime to take over. And also, the press statement issued by the Peoples Party of Arunachal, calling upon the Governor to require the Chief Minister to prove his majority on the floor of the House, failing which – to step down. In the letter dated 1.12.2015, the Governor informed the President about the receipt of a memorandum dated 19.11.2015, requiring him to prepone the 6th session of the Assembly. This request, according to the Governor's letter, was supported by the Peoples Party of Arunachal, on the ground that the Government headed by Nabam Tuki, had completely lost the confidence of the people, and had been reduced to a minority. A notice of resolution for the removal of the Speaker – Nabam Rebia dated 19.11.2015 signed by 13 MLAs, as well as, the dissidents within the MLAs of the INC, was again highlighted.

189. During the course of hearing, learned counsel for the respondents, had placed reliance on the first, third, fourth, fifth and sixth sequence of facts, to contend that the political turmoil which prevailed in the State

Legislature was of a nature, which would render seeking advice from the Council of Ministers and the Chief Minister, purposeless and futile. It was submitted, that personal interests of constitutional authorities – the Chief Minister and the Speaker, had brought political volatility, which was having an adverse effect on the democratic functioning of the State Legislature. Some of the salient features highlighted to substantiate the above assertions, may be summarized below:

Firstly, the Chief Minister – Nabam Tuki was not being accepted as the Leader of the House by at least 21 dissident MLAs, belonging to his own political party – the INC. In the 60-member State Legislative Assembly, having 47 MLAs from the INC, with the 21 dissident MLAs from the INC, the Chief Minister, according to the dissidents, could not have mustered a vote of confidence.

Secondly, efforts made by the party leadership, including the General Secretary AICC in-charge for North Eastern States, the President of Arunachal Pradesh Congress Committee, and other party leaders, could not rein in the 21 dissident MLAs.

Thirdly, resignation letters were taken from 17 MLAs on 6.10.2015. Resignation letters of 2 MLAs were accepted. The said 2 MLAs from the INC - Wanglam Sawin and Gabriel D. Wangsu, alleged that they had been coerced into resigning from their membership of the Legislative Assembly. The above two MLAs approached the High Court, which stayed the order of acceptance of their resignation on 7.10.2015, clearly giving the Governor

the impression, that their assertion of being coerced into resigning from the membership of the Legislative Assembly, was *prima facie* correct.

Fourthly, the political turmoil in the Legislative Assembly, was on account of the complicity between the Chief Minister – Nabam Tuki and the Speaker – Nabam Rebia. Both were related, and had joined hands to frustrate the democratic process, to subvert the action of the rival MLAs, aimed at their removal. The Chief Minister and the Speaker being cousins, were adopting all sorts of means, in support of one another.

Fifthly, on 12.10.2015, the President of the Congress Legislature Party issued a show cause notice to 19 MLAs of the INC, for indulging in anti-party activities. The action was denounced by 21 MLAs of the INC, through a press note.

Sixthly, a strong impression was created, that a notice of resolution for the removal of the Deputy Speaker – Tenzing Norbu Thongdok dated 16.11.2015 had been moved by 16 MLAs belonging to the INC. We have already concluded hereinabove, that the appellants have not been able to produce sufficient material to establish, that such a notice was ever issued.

Seventhly, on 19.11.2015, 13 MLAs (-11 belonging to the BJP, and 2 Independent MLAs) issued a notice for the removal of the Speaker – Nabam Rebia. A copy, as also, confirmation of the aforesaid notice sought by the Governor, was furnished to him by the Secretary of the Legislative Assembly.

Eighthly, the 13 MLAs who had signed the notice for the removal of the Speaker, by their letter dated 19.11.2015, sought preponement of the 6th

session of the House, so as to be convened immediately on the completion of the notice period, provided for, in the first proviso under Article 179(c).

Ninthly, the Governor addressed three communications to the Secretary of the Legislative Assembly dated 27.11.2015, 3.12.2015, and 7.12.2015, seeking a copy of the notice of resolution dated 16.11.2015, but the same was never furnished to him.

Tenthly, the Governor's letters dated 17.10.2015, 19.11.2015 and 1.12.2015 to the President, depicting the prevailing political turmoil in the State of Arunachal Pradesh, and highlighting the intra-party dispute between the MLAs belonging to the INC.

Eleventhly, a meeting of the Congress Legislature Party was held on 3.12.2015. During the said meeting the activities of 21 MLAs of the INC were discussed, and their anti-party activities were highlighted.

Twelfthly, on 7.12.2015, the Chief Whip of the Congress Legislature Party – Rajesh Tacho, sought disqualification of 14 MLAs belonging to the INC, under the Tenth Schedule.

It was further pointed out, that the sequence of facts which transpired after 9.12.2015 (after the Governor's order and message, dated 9.12.2015) reveals, that the inferences drawn by the Governor, about the prevailing political imbroglio in the Legislative Assembly, had been correctly appreciated and understood by him. The subsequent events are narrated hereunder:

Thirteenthly, on 12.12.2015, the Advocate General of the State of Arunachal Pradesh, on being asked, tendered his opinion with reference to the order

and message of the Governor dated 9.12.2015. As per his opinion, the above order and message were unconstitutional, and in violation of the 'Conduct of Business Rules'.

Fourteenthly, a Cabinet meeting was held on 14.12.2015, wherein, based on the opinion of the Advocate General, the Cabinet resolved, that the order of the Governor dated 9.12.2015 was contrary to Article 174 read with Article 163 and Rule 3 of the 'Conduct of Business Rules'. And also, that the message of the Governor dated 9.12.2015 was contrary to Article 175 and Rule 245 of the 'Conduct of Business Rules'.

Fifteenthly, the Secretary of the Legislative Assembly wrote a letter to the Governor dated 14.12.2015, indicating that Article 174 did not contemplate preponement or postponement of an Assembly session, without consultation with the Government and the Speaker. A reference was also made to Article 175, so as to point out, that a message can be addressed by the Governor, only when the House is in session.

Sixteenthly, the Officer-on-Special Duty to the Chief Minister addressed a letter dated 14.12.2015 on behalf of the Chief Minister and his Council of Ministers and some other MLAs, requesting for a meeting with the Governor. Nine Ministers including the Chief Minister met the Governor on 15.12.2015, and allegedly committed acts of serious misbehaviour, at the office/residence of the Governor, details whereof were disclosed by the Governor to the High Court, through I.A. No.29 of 2016.

Seventeenthly, on 14.12.2015, a Cabinet meeting was held, wherein a resolution was passed by the Council of Ministers and the Chief Minister,

requesting the Governor to recall and cancel, the order and message dated 9.12.2015, and allow the session to be convened on 14.1.2016, as earlier scheduled.

Eighteenthly, the Speaker – Nabam Rebia, through a communication dated 14.12.2015, requested the Minister (Home) – Tanga Byaling, to provide foolproof security, in and around the Legislative Assembly building, from 15.12.2015 to 18.12.2015, and to ensure that no individual including MLAs, enter the Assembly building, during the above period.

Nineteenthly, on 15.12.2016, the Speaker – Nabam Rebia, disqualified 14 members of the Assembly belonging to the INC, including the Deputy Speaker – Tenzing Norbu Thongdok.

Twentiethly, the Deputy Speaker on 15.12.2015 itself, set aside the disqualification order (-dated 15.12.2016), including his own disqualification order.

Twenty-firstly, the notice of resolution for the removal of the Speaker – Nabam Rebia, was taken up for consideration as the first item, in the agenda of the Assembly on 16.12.2015. The resolution was adopted resulting in the removal of Nabam Rebia, from the office of Speaker.

Twenty-secondly, during the course of the proceedings of the House held on 17.12.2015, the Government headed by the Chief Minister – Nabam Tuki, was declared as having lost confidence of the Legislative Assembly. Kalikho Pul, another INC MLA, was chosen to replace the Chief Minister.

190. Premised on the aforesaid factual position, it was asserted on behalf of the respondents, that it was wholly unjustified for the Governor to remain

silent. It was submitted that the prevailing situation called for immediate redressal, so as to preserve the democratic process in the State Legislature, and more particularly, to prevent high constitutional functionaries including the Chief Minister, the Speaker, and Cabinet Ministers, from acting with constitutional impropriety.

191. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the respondents. We shall now endeavour to deal with the position highlighted through the factual narration summarized above. It is apparent from the discussion and reflection recorded by us, that a Governor of a State, has clearly defined duties, functions and responsibilities. The parameters of the Governor's powers with reference to Articles 163, 174, 175, 179 and the Tenth Schedule, have been dealt with by us hereinabove, and need not be repeated. We are of the view, that it needs to be asserted as a constitutional determination, that it is not within the realm of the Governor to embroil himself in any political thicket. The Governor must remain aloof from any disagreement, discord, disharmony, discontent or dissension, within individual political parties. The activities within a political party, confirming turbulence, or unrest within its ranks, are beyond the concern of the Governor. The Governor must keep clear of any political horse-trading, and even unsavoury political manipulations, irrespective of the degree of their ethical repulsiveness. Who should or should not be a leader of a political party, is a political question, to be dealt with and resolved privately by the political party itself. The Governor cannot, make such issues, a matter of

his concern. The provisions of the Constitution do not enjoin upon the Governor, the authority to resolve disputes within a political party, or between rival political parties. The action of the Governor, in bringing the aforesaid factual position to the notice of the President, in his monthly communications, may well have been justified for drawing the President's attention to the political scenario of the State. But, it is clearly beyond the scope of the Governor's authority, to engage through his constitutional position, and exercise his constitutional authority, to resolve the same.

192. It is open to the Governor to take into consideration, views of a breakaway group. Under Paragraph 4 of the Tenth Schedule, legitimacy is bestowed on a breakaway group which comprises of not less than two thirds of the members of the concerned legislature party. In the present case, the breakaway group belonging to the ruling INC comprised of 21 members, whereas the INC had 47 MLAs in the prevailing 60-member Legislative Assembly. 21 MLAs belonging to the INC did not constitute a legitimate and recognizable breakaway group. The Governor could not in support of the protests and assertions of an invalid breakaway group, adopt a constitutional course, recourse whereof could be taken only in case of a constitutional crisis. As for instance, when the Government is seen to have lost the confidence of the House. It has never been the position of the Governor, that the Chief Minister – Nabam Tuki, had lost the confidence of the House. Nor, that the INC could not sustain its majority in the Assembly. Had that been the position, the Governor would have called for a floor test. Admittedly, the Governor never called for a floor test, nor did he

ever require the Chief Minister to establish his majority in the House. The Governor's actions, based on feuds and wrangles of a breakaway group, which is not recognized under the Tenth Schedule, cannot be constitutionally condoned.

193. The Governor has no role whatsoever, in the removal of the Speaker (or the Deputy Speaker) under Article 179. The question of adoption or rejection of a notice of resolution, for the removal of the Speaker, is to be determined by the legislators. If the resolution for the Speaker's removal is supported by a simple majority of the members of the House, the motion has to be adopted, and the Speaker has to be removed. Failing which, the motion has to be rejected. Any action taken by the Governor, based on disputations, with reference to activities in which he has no role to play, is liable to be considered as extraneous. It is not for the Governor to schedule the functioning of the Assembly. It is also not in the Governor's domain, to schedule the agenda of the House. The Governor has no role with reference to the ongoings in the Assembly. The Governor must keep away, from all that goes on, within the House.

194. As long as the democratic process in the Assembly functions through a Government, which has the support of the majority, there can be no interference at the behest of the Governor. A constitutional failure as contemplated under Article 356, is quite another matter. So also, a constitutional failure under Article 360. Herein, the Governor has not treaded the procedure postulated for a constitutional breakdown.

195. There is no justification for a Governor to be disturbed about proceedings in connection with the disqualification of MLAs under the Tenth Schedule. Because, the Governor has no role therein. Even the Chief Minister and his Council of Ministers, have no concern with the disqualification proceedings contemplated under the Tenth Schedule. Therefore, the legitimacy or illegitimacy thereof, is beyond consideration of the Governor. That being the constitutional position, there can be no justification in the Governor initiating action, based on proceedings commenced against MLAs, under the Tenth Schedule. Any action taken by the Governor, based on the proceedings being carried on under the Tenth Schedule, would be a constitutional impropriety. It is open to individual MLAs, against whom disqualification proceedings are taken (or who have been disqualified, and consequently have lost their membership of the House), to seek judicial review thereof. The fact that 14 MLAs who were disqualified by the Speaker – Nabam Rebia, on 15.12.2015, had approached the Gauhati High Court, which had stayed the order of their disqualification, demonstrates that there are appropriate remedies in place. The Governor need not worry about, or involve himself in, issues which are within the realm of other constitutional authorities. The Indian Constitution provides for checks and balances, and a regime of redressal, for all situations.

The decision:

196. Based on the consideration and the conclusions recorded hereinabove, it is inevitable to conclude as under:

- (i) The order of the Governor dated 9.12.2015 preponing the 6th session of the Arunachal Pradesh Legislative Assembly, from 14.1.2016, to 16.12.2015 is violative of Article 163 read with Article 174 of the Constitution of India, and as such, is liable to be quashed. The same is accordingly hereby quashed.
- (ii) The message of the Governor dated 9.12.2015, directing the manner of conducting proceedings during the 6th session of the Arunachal Pradesh Legislative Assembly, from 16.12.2015 to 18.12.2015, is violative of Article 163 read with Article 175 of the Constitution of India, and as such, is liable to be quashed. The same is accordingly hereby quashed.
- (iii) All steps and decisions taken by the Arunachal Pradesh Legislative Assembly, pursuant to the Governor's order and message dated 9.12.2015, are unsustainable in view of the decisions at (i) and (ii) above. The same are accordingly set aside.
- (iv) In view of the decisions at (i) to (iii) above, the *status quo ante* as it prevailed on 15.12.2015, is ordered to be restored.

.....**J.**
(Jagdish Singh Khehar)

.....**J.**
(Pinaki Chandra Ghose)

.....**J.**
(N.V. Ramana)

Note: Emphases supplied in all the quotations extracted above, are ours.

New Delhi;
July 13, 2016.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6203-6204 OF 2016
(@ SPECIAL LEAVE PETITION (CIVIL) NOS. 1259-1260 OF 2016)

NABAM REBIA AND BAMANG FELIX ...Appellant(s)

Versus

DEPUTY SPEAKER AND ORS. ...Respondent(s)

J U D G M E N T

Dipak Misra, J.

I respectfully concur with the views expressed on each of the aspects by my respected learned brother Khehar, J. However, I intend to add something pertaining to the interpretation of Article 179(c) of the Constitution of India especially in the context of the Tenth Schedule to the Constitution.

2. Article 179(a) postulates that a Speaker or a Deputy Speaker of the Assembly shall vacate his office if he ceases to be a member of the Assembly. Article 179(b) deals with resignation from the office. In the case at hand, neither clause (a) nor clause (b) of Article 179 is attracted. In the obtaining fact situation, the controversy pertains singularly to the understanding of clause (c).

3. Article 179 reads as follows:-

“179. A member holding office as Speaker or Deputy Speaker of an Assembly— shall vacate his office if he ceases to be a member of the Assembly;

(b) may at any 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 meeting of the Assembly after the dissolution.”

[underlining by me]

Be it immediately clarified, we are not concerned with the second proviso.

4. The thrust of the matter is what interpretation is to be placed on Article 179(c) and the first proviso, being diligently and respectfully adherent to the norms of the constitutional interpretation. I may state with quite promptitude the purpose of adherence should not convey that I am confined to any kind of static principle but the principles that flow from our organic, vibrant, flexible, inclusive and compassionate Constitution. There are precedential guides and, if I allow myself to say, constitutional precepts those serve as light posts without causing any violence even remotely, to the language employed in the Constitution.

5. In ***State of Karnataka v. Union of India and another***²¹ Beg, C.J. posed the question with regard to understanding of special rules relating to the construction of Constitution in general or of our

21

Constitution in particular. In that context, the learned Chief Justice spoke thus:-

“83. A written Constitution, like any other enactment, is embodied in a document. There are certain general rules of interpretation and construction of all documents which, no doubt, apply to the Constitution as well. Nevertheless, the nature of a Constitution of a sovereign Republic, which is meant to endure and stand the test of time, the strains and stresses of changing circumstances, to govern the exercise of all governmental powers, continuously, and to determine the destiny of a nation, could be said to require a special approach so that judicial intervention does not unduly thwart the march of the nation towards the goals it has set before itself.

x x x x
x

85. Although, a written Constitution, which is always embodied in a document, must necessarily be subject to the basic canons of construction of documents, yet, its very nature as the embodiment of the fundamental law of the land, which has to be adapted to the changing needs of a nation, makes it imperative for Courts to determine the meanings of its parts in keeping with its broad and basic purposes and objectives. This approach seems to flow from what may be called a basic principle of construction of documents of this type; that the paramount or predominant objects and purposes, evident from the contents, must prevail over lesser ones obscurely embedded here and there. The Constitutional document, in other words, must be read as a whole and construed in keeping with its declared objects and its functions. The dynamic needs of the nation, which a Consti-

tution must fulfil, leave no room for merely pedantic hairsplitting play with words or semantic quibblings. This, however, does not mean that the Courts, acting under the guise of a judicial power, which certainly extends to even making the Constitution, in the sense that they may supplement it in those parts of it where the letter of the Constitution is silent or may leave room for its development by either ordinary legislation or judicial interpretation, can actually nullify, defeat, or distort the reasonably clear meaning of any part of the Constitution in order to give expression to some theories of their own about the broad or basic scheme of the Constitution.

86. The theory behind the Constitution which can be taken into account for purposes of interpretation, by going even so far as to fill what have been called the “interstices” or spaces left unfilled, due perhaps to some deliberate vagueness or indefiniteness in the letter of the Constitution, must itself be gathered from express provisions of the Constitution. The dubiousness of expressions used may be cured by Courts by making their meanings clear and definite if necessary in the light of the broad and basic purposes set before themselves by the Constitution-makers. And, these meanings may, in keeping with the objectives or ends which the Constitution of every nation must serve, change with changing requirements of the times. The power of judicial interpretation, even if it includes what, may be termed as “interstitial” law making, cannot extend to direct conflict with express provisions of the Constitution or to ruling them out of existence.”

[emphasis added]

The aforesaid paragraphs clearly convey that judicial interpretation cannot nullify, defeat or distort a constitutional provision or the interpretative process cannot be in direct conflict with the express provision of the Constitution. However, the learned Chief Justice has observed that constitutional document has to be read as a whole and construed keeping in view the declared objects and functions. In the said judgment, a distinction has been drawn between “the constitutional law” or “the fundamental law” and other laws which may be important to constitutional matters. I think it appropriate to reproduce the said passage:-

“... The “fundamental distinction” between “the constitutional law” or “the fundamental law” and the ordinary laws, referred to there, was meant to bring out only this difference in the uses made of laws which, being “fundamental”, can test the validity of all other laws on a lower normative level and these other laws which are so tested. In that very special or restricted sense, the law not found in “the Constitution” could not be “constitutional,” or “fundamental” law... .”

6. In **S.R. Chaudhuri v. State of Punjab and others**²², a three-Judge Bench while dwelling upon the

²² (2001) 7 SCC 126

manner in which the constitutional provisions are to be interpreted had observed thus:-

“Constitutional provisions are required to be understood and interpreted with an object-oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve.”

And, again:-

“It is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a constitutional provision because it is the function of the court to find out the intention of the framers of the Constitution. We must remember that a Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit...”

7. In this regard, I think it apt to reproduce a passage from the Constitution Bench decision in ***M. Nagaraj and others v. Union of India and others***²³ :-

“The Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and consequently to be adapted to the various crises of human affairs. There-

²³ (2006) 8 SCC 212

fore, a purposive rather than a strict literal approach to the interpretation should be adopted. A constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that a constitutional provision does not get fossilised but remains flexible enough to meet the newly emerging problems and challenges.”

[emphasis supplied]

8. I have referred to the aforesaid pronouncements as they have laid down the guidelines for understanding the text, context, the words and the purpose of a constitutional provision. Emphasis is on flexibility, adaptability and durability, and also not to import or implant an interpretation which would be in conflict with the express language of the Constitution.

9. Having perceived the guidance from the precedents and keeping in view the cohesive constitutional precepts, I shall proceed to analyse the language employed in Article 179(c). Prior to that, I think it condign to dwell upon the importance of the office of the Speaker. There is no shadow of doubt in my mind that to appreciate the significance of the provision, namely, Article 179(c), in the context of constitutional supremacy and constitutional consciousness, it is necessary to understand the

position of the Speaker in the Constitution. Office of the Speaker in our history had its origin in 1921 when the Central Legislative Assembly was constituted under the Montague-Chelmsford reforms. At that time, office of the Speaker did not enjoy much importance. But, a significant one, after the Constitution came into force, as is evident from the constitutional scheme of ours, the Speaker enjoys high constitutional status and the Constitution reposes immense faith in him. For this reason alone, the Speaker is expected to have a sense of elevated independence, impeccable objectivity and irreproachable fairness, and above all absolute impartiality. This expectation is the constitutional warrant; not a fond hope and expectation of any individual or group.

10. The Speaker has the duty to see that business of the House is carried out in a decorous and disciplined manner. This functioning requires him to have unimpeachable faith in the intrinsic marrows of the Constitution, constitutionalism and, "Rule of Law". The faith, needless to emphasise, should be a visible and apparent one. That is why, possibly, former Speaker of

the House of Commons of the United Kingdom,
Baroness Boothroyd²⁴, stated:-

“When you have been committed all your adult life to the ideals and policies of one party, impartiality is a quality that you have to work at. But if you cannot put aside partisanship you have no right to even think of becoming Speaker.”

I have referred to the aforesaid only to stress upon the impartial functioning and the constitutional neutrality of the Speaker.

11. The expression can be different if one wishes to choose the metaphor of the ancients. The ancient wisdom would require the Speaker to abandon his “*purbashrama*” and get wedded to “*parashrama*”. To elucidate, a Speaker has to constantly remain in company with the cherished values of incarnation of his office and not deviate even slightly from the constitutional conscience and philosophy. His detachment has to have perceptibility.

12. For apposite appreciation, I may refer to the Constituent Assembly debates. The position of the Speaker being different, the procedure for removal is

²⁴ THE RT HON. BARONESS BOOTHROYD, The Role of the Speaker in the 20th Century, The Parliamentary History Yearbook Trust, Vol. 29, Issue 1, Feb 2010, page 136

different and, the debate in the Constituent Assembly is indicative of the same:-

To quote:-

“Mr. Mohd. Tahir: Sir, I beg to move:

“That in clause (c) of article 158, for the words ‘all the then members of the Assembly’ the words ‘the members of the Assembly present and voting’ be substituted.”

Clause (c) runs as follows:

“(c) may be removed from his office for incapacity or want of confidence by a resolution of the Assembly passed by a majority of all the then members of the Assembly”.

Sir, so far as I can understand the meaning of the wording, “all the then members of the Assembly”, it includes all the members of the Assembly. Supposing a House is composed of 300 members then, it will mean all the members of the Assembly, that is 300. Supposing fifty members of the House are not present in the House, then, those members will not have the right to give their votes so far as this question is concerned. Therefore, I think that it would be better that this matter should be considered by only those members who are present in the Assembly and who can vote in the matter. If this phrase “all the then members of the Assembly” means the members who are present in the Assembly, then, I have no objection. If it means all the members of which the House is composed, I think it is not desirable to keep the clause as it stands.

With these few words, I move my amendment”.

“Mr. President: The question is :

“That in clause (c) of article 158, for words ‘all the then members of the Assembly’ the words ‘the members of the Assembly present and voting’ be substituted.”
The amendment was negatived.”

The factum of negating the proposed amendment has to be appreciated keeping in mind the wisdom of the Founding Fathers.

13. Presently to the anatomy of Article 179(c). The said provision lays focus on two aspects, namely, (i) resolution of the Assembly, and (ii) the resolution to be passed by a majority of all the then members of the Assembly. The first proviso commands that no resolution for the purpose of clause (c) shall be moved unless fourteen days' notice has been given of the intention to move the resolution. The fourteen days' time as mandated by the constitutional provision gives protection to the Speaker. It has a salutary purpose. The Founding Fathers of the Constitution had thought it appropriate that a resolution to be moved for removal of the Speaker is a matter of grave constitutional consequence and, therefore, the “intention to move the resolution”, has to precede the act of moving of the

resolution. Be it stated that the Rules are framed under Article 208 of the Constitution for regulating the procedure of a House of the Legislature of a State and the conduct of its business and said procedures prescribe the manner of expressing the intention to move the resolution.

14. While prescribing a resolution to be passed by the majority, the framers of the Constitution have also provided for “all the then members of the Assembly”. It indicates the intention of the Founding Fathers that “all the then members of the Assembly” have to be regarded as to be the actual or real figure. A hypothetical argument may be advanced that if a member dies within the prescribed period of 14 days, it may lead to an absurd situation. Similarly, the issue of resignation may arise or some may stand convicted and thereby become disqualified. Death or resignation has to be kept in a different realm.

15. The fulcrum of the controversy is “disqualification”. Different disqualifications find mention under Article 191(1) of the Constitution. These contingencies are

quite different than the situation enshrined under Article 191(2) which has been inserted by the Constitution (Fifty-second Amendment) Act, 1985. The said sub-Article specifically refers to disqualification under the Tenth Schedule. Article 191, after the amendment, reads as follows:-

“191. Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State –

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation – For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First

Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule”.

Article 191(2) stipulates that a person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State, if he is so disqualified under the Tenth Schedule. It is absolutely different than what has been envisaged under Article 191(1). Tenth Schedule pertains to disqualification on ground of defection. Paragraph 2 of the Tenth Schedule deals with decision on questions as to disqualification on ground of defection. The said paragraph is as follows:-

“6. Decision on questions as to disqualification on ground of defection.- (1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall

be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 212.”

16. Paragraph 8 enables the Chairman or the Speaker of a House to make rules for giving effect to the provisions of the Tenth Schedule. The power conferred on the Speaker under the Tenth Schedule is enormous. It is not to be forgotten that the Constitution of India is a controlled constitution. It provides for checks and balances. Some are fundamentally inherent. Founding Fathers had desired, as the debate would reflect, that the Speaker can be removed by the resolution passed by majority of all the then members and not by the majority of the members present and voting. It is to be borne in mind that at the time of framing of the Constitution the Tenth Schedule was not in existence in the Constitution. Certain grounds were mentioned in the Constitution itself and it has also been provided that if a person is

disqualified by or under any law made by the Parliament. Therefore, it is necessary to sustain the elevated position the Speaker constitutionally enjoys and also have room for constitutional propriety. There can be myriad situations in a democracy. The Constitution, as an organic instrument, has to be interpreted to meet all exigencies. It has to have flexibility. Assuming the requisite members express their intention to move the resolution for removal of the Speaker from the office and immediately the Speaker on a complaint initiates action under the Tenth Schedule, and as the resolution against the Speaker cannot be moved unless 14 days' notice period expires, the members can be disqualified within the said period and the Speaker would gain an advantage. Thus, it can result in a situation of constitutional conflict, that is, the conflict between the status of the Speaker conferred by the Constitution and the position he has been given after the constitutional amendment. The final arbiters have trusted him regard being had to his constitutional status. It is the "constitutional trust". Therefore, there should be perceptibility of absence of conflict. That

apart, it will not be in harmony with Article 179(c) or the constitutional norm. It would also cause discord with the language employed in the said Article. The Founding Fathers had deliberately retained the words “all the then members”, by negating the proposed amendment. The purpose of not accepting the amendment is to preserve the constitutional control over the situation.

17. In this regard, I may usefully refer to Article 189 of the Constitution. It provides for voting in Houses, power of Houses to act notwithstanding vacancies and quorum. Sub-Article (1) of Article 189 stipulates that save as otherwise provided in the Constitution, all questions at any sitting of a House of the legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such. The said sub-Article also provides that Speaker or Chairman or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes. The said sub-Article, thus, clearly states about the majority of votes of the

members present and voting and secondly, it empowers the Speaker to exercise his power of voting in case of equality of votes. In contradistinction to the same, Article 181 provides that Speaker or the Deputy Speaker not to preside while resolution for his removal from office is under consideration and he is entitled to vote in the first instance on such resolution but not in the case of an equality of votes. Article 181(2) which is relevant for the present purpose reads as follows:-

“(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in Article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.”

18. The purpose of referring to the said Article is to highlight the nature of participation of the Speaker when the question of his removal arises. It is clearly different. Under the Constitution he is entitled to take part in the proceedings and speak. Therefore, he is in a position to contest. Appreciating the scheme of the Constitution and especially keeping in view the language

employed in the first proviso to Article 179(c) it is quite clear that it is the constitutional design that the Speaker should not do any act in furtherance of his interest till the resolution is moved.

19. In this regard, it is essential to understand the character of the Tenth Schedule. The Tenth Schedule to the Constitution has conferred adjudicatory powers on the Speaker. While deliberating on the constitutionality of the said Schedule, the majority in ***Kihota Hollohon v. Zachilhu and others***²⁵, has stated that:-

“[G] The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

However, having regard to the Constitutional Scheme in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no *quia timet* actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence.

[H] That paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the

²⁵ (1992) 1 SCC 309

decision of the Speakers/Chairmen is valid. But the concept of statutory finality embodied in paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, mala fides, non-compliance with rules of Natural Justice and perversity, are concerned.

[I] That the deeming provision in paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in *Keshav Singh case*²⁶ to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words “be deemed to be proceedings in Parliament” or “proceedings in the legislature of a State” confines the scope of the fiction accordingly.

[J] That contention that the investiture of adjudicatory functions in the Speakers/Chairmen would by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected. The Speakers/Chairmen hold a pivotal position in the scheme of parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far reaching decisions in the functioning of parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such constitutional functionaries should not be considered exceptionable”.

(Emphasis added)

20. The aforesaid reasoning eloquently speaks of the power, position and the status the office of the Speaker enjoys under the Constitution. It also states about the scope of the fiction. The Court has constricted the power of judicial review and restricted it to the stage carving out certain extreme exceptions. It is because the Speaker, while exercising the authority/jurisdiction, exercises the power of “constitutional adjudication”. The concept of constitutional adjudication has constitutional value in a parliamentary democracy; and constitutional values sustain the democracy in a sovereign Republic. The Speaker is expected to maintain propriety as an adjudicator. The Speaker when functions as a tribunal has the jurisdiction/authority to pass adverse orders. It is therefore, required that his conduct should not only be impartial but such impartiality should be perceptible. It should be beyond any reproach. It must reflect the trust reposed in him under the Constitution. Therefore, the power which flows from the introduction of Tenth Schedule by constitutional amendment is required to be harmoniously construed with Article 179(c). Both the

provisions of the Constitution are meant to subserve the purpose of sustenance of democracy which is a basic feature of the Constitution. The majority in ***Manoj Narula v. Union of India***²⁷ where speaking about democracy has opined that democracy in India is a product of the rule of law and it is not only a political philosophy but also an embodiment of constitutional philosophy.

21. Thus, regard being had to the language employed in Article 179 (c) of the Constitution and the role ascribed to the Speaker under the Tenth Schedule, it is necessary that the Speaker as a tribunal has to have complete detachment and perceivable impartiality. When there is an expression of intention to move the resolution to remove him, it is requisite that he should stand the test and then proceed. That is the intendment of Article 179(c) and the said interpretation serves the litmus test of sustained democracy founded on Rule of Law; and the Founding Fathers had so intended and the constitutional value, trust and morality unequivocally so suggest. It would be an anathema to the concept of

²⁷ (2014) 9 SCC 1

constitutional adjudication, if the Speaker is allowed to initiate proceeding under the Tenth Schedule of the Constitution after intention to remove him from his office is moved. The fourteen days' period being mandatory, the words "all the then members" gain more significance. The Constitution has confidence in the Speaker. I would like to call it "repose of constitutional confidence". Simultaneously, the command is to have the confidence of the majority of the "actual or real figure". This understanding is gatherable from the express provisions of the Constitution and it clearly brings in harmony between "constitutional confidence" or trust and the "constitutional control". Be it stated, the position has to remain the same even after introduction of the Tenth Schedule to sustain the robust vitality of our growing Constitution. And it embraces the seminal spirit of the "Rule of Law" that controls all powers, even the prerogative powers.

22. Before parting, I may state that constitutional restraint and discipline are revealed from the words of the Constitution and the high constitutional functionary should remain embedded to the same with humility,

because it is humility that forms the “foundation of regard”²⁸. It is the ultimate constitutional virtue.

.....J.
(Dipak Misra)

New Delhi;
July 13, 2016

SUPREME COURT OF INDIA



JUDGMENT

²⁸ Laozi, 570-490 BCE

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.6203-6204 OF 2016
(Arising out of S.L.P. (C) Nos.1259-60 of 2016)

Nabam Rebia And Etc.

.... Appellants

versus

The Deputy Speaker & Others

.... Respondents

J U D G M E N T

Madan B. Lokur, J.

1. Leave granted.
2. The draft judgment prepared by my learned Brother Justice Khehar details all the facts of the case and considers all the submissions made by learned counsel for the parties. I have had the benefit of going through the detailed draft judgment. I am in general agreement with the conclusions arrived at on the interpretation of Article 163 and Article 174 of the Constitution. However, my reasons for arriving at the same conclusions are somewhat different and partly additional or supplementary, necessitating an expression of my views. I have also gone through the draft judgment of my learned Brother Justice Dipak Misra and in the view that I have taken, it is not necessary for me to expression any opinion on his conclusions.

3. As far as the interpretation of Article 175 of the Constitution is concerned, I am of opinion that in view of the conclusions arrived at with regard to the interpretation of Article 163 and Article 174 of the Constitution, the interpretation of Article 175 of the Constitution and the actions of the Governor of Arunachal Pradesh in this regard are rendered academic. It is therefore not necessary or advisable to comment, one way or the other, on the interpretation of Article 175 of the Constitution and the actions of the Governor of Arunachal Pradesh in this regard.

4. The interpretation of Article 179 of the Constitution also does not arise in view of the conclusions arrived at on the interpretation of Article 163 and Article 174 of the Constitution and the consequence thereof.

5. With regard to the interpretation of the Tenth Schedule of the Constitution and the decision of the Speaker of the Legislative Assembly of Arunachal Pradesh, that too is unnecessary in view of the decision rendered by the Gauhati High Court in *Pema Khandu v. The Speaker, Arunachal Pradesh Legislative Assembly*²⁹ - the decision having been delivered after judgment was reserved in these appeals.

6. The questions that arise for consideration, in my opinion, are the following:

Whether, after having notified the dates of sitting of the Legislative Assembly in consultation with the Chief Minister and the Speaker of the House, the Governor of Arunachal Pradesh could cancel those dates in

²⁹ MANU/GH/0118/2016 [decided on 30th March, 2016]

the exercise of 'power' under Article 174(1) of the Constitution and in the exercise of discretion under Article 163 of the Constitution?

Whether, after having notified the dates of sitting of the Legislative Assembly in consultation with the Chief Minister and the Speaker of the House, the Governor of Arunachal Pradesh could unilaterally alter and reschedule those notified dates in the exercise of 'power' under Article 174(1) of the Constitution read with Article 163 of the Constitution by issuing a fresh notification?

Whether generally, in the exercise of discretion under Article 163(1) of the Constitution read with Article 174(1) of the Constitution and notwithstanding the relevant rules framed by the Legislative Assembly under Article 208 of the Constitution, the Governor of Arunachal Pradesh could summon the Legislative Assembly without consulting the Chief Minister and the Speaker of the House?

Whether the message sent by the Governor of Arunachal Pradesh on 9th December, 2015 under Article 175(2) of the Constitution was a constitutionally valid message that ought to have been (and was) acted upon by the Legislative Assembly?

Historical background of Article 163 of the Constitution

7. Article 163 of the Constitution traces its origins first to Section 50 of the Government of India Act, 1935 and then to Article 143 in the draft

Constitution. Section 50 of the Government of India Act, 1935 reads as follows:

“50. (1) There shall be a council of ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion :

Provided that nothing in this sub-section shall be construed as preventing the Governor from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.”

8. Two important expressions find mention in Section 50 of the Government of India Act, 1935 namely, “in his discretion” and “his individual judgment”. These expressions are noticed in several Sections of the Government of India Act, 1935 and came up for discussion when Section 9 of the Government of India Act, 1935 (relating to the Council of Ministers)³⁰ was discussed in the House of Commons on 28th February, 1935.³¹ In the debate, the view expressed by one of the Members of

³⁰ 9.(1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion :

Provided that nothing in this sub-Section shall be construed as preventing the Governor-General from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor-General in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

³¹ <http://hansard.millbanksystems.com/commons/1935/feb/28/clause-9-council-of-ministers>

Parliament was that the Governor-General acts “in his discretion” when he is not obliged to consult the Council of Ministers. On the other hand, he acts in “his individual judgment” when he consults the Council of Ministers but does not necessarily accept its advice. This was the view expressed by Mr. Herbert Williams:

“I beg to move, in page 7, line 3, to leave out Sub-section (3).

I take it, Sir Dennis, that you have selected this particular Amendment because it enables us to discuss all the major problems which arise under this Clause—the problems of the relationship of the Governor-General to his ministers. There are in the Sub-section the words “in his discretion,” and also the words “his individual judgment.” I want to be clear that I have interpreted the significance of these words accurately, and perhaps the Secretary of State will be good enough to contradict me if I am inaccurate. I gather that when the Governor-General acts in his discretion it is a case where he acts without being under the obligation of consulting his ministers at all, and that he acts perfectly freely. On the other hand, when he exercises his individual judgment, that is a case where he consults his ministers but is not obliged to take their advice, and, therefore, his final decision may or may not disagree with the advice tendered to him by his ministers. I hope that I have got the correct interpretation, because it is necessary in discussing this most important constitutional issue that we should be all quite clear as to the meaning of the words we are using. As my interpretation has not been challenged, I assume that I have correctly interpreted the significance of these words.”³²

9. This view was sought to be made more explicit by Mr. Bailey by adding sub-section (4) to Section 9 of the Government of India Act, 1935 in the following words:

“I beg to move, in page 7, line 12, at the end, to add: “(4) (i) In this Act the expression 'in his discretion' when applied to any act of the Governor-General or any exercise of his functions or powers means that such act may be done and such functions and powers may be exercised by the Governor-General without consultation with his Ministers.” “(ii) In this Act the expression 'his individual judgment,' when applied to any act of the Governor-General or any exercise of his functions or powers, means that such act may be done and such functions and powers may be exercised by the Governor-General only after consultation with his

³² HC Deb 28 February 1935 vol 298 cc1327-63

Ministers but notwithstanding any advice given to him by his Ministers.” I do not want to occupy any length of time in moving this Amendment, the point of which shortly is this: It seeks to clarify the possible distinction between “discretion” and “individual judgment.” I should be very grateful if the learned Attorney-General would say what is the view of the Government's legal advisers as to the distinction, if any, between discretion and individual judgment, and whether or not—this is most important of all—the Governor-General may use his individual judgment without consulting his Ministers.”³³

10. The discussion was responded to by the Solicitor-General (Sir Donald Somervell) confirming the distinction between “in his discretion” and “his individual judgment” as mentioned above. The opinion expressed by the Solicitor-General was accepted by Mr. Churchill as the following discussion will demonstrate:

[“The SOLICITOR- GENERAL \(Sir Donald Somervell\)](#)

In moving this Amendment, my hon. Friend has confined himself to asking two specific questions. He asks what is the distinction between individual judgment and discretion. The Bill has been drafted in this way: The words “individual judgment” are used in relation to actions by the Governor-General on his individual judgment in the ordinary sense of the word within the ambit in which normally he would be acting on the advice of his Ministers. If within that ambit it is sought to give the Governor-General special powers or responsibilities, then the words “individual judgment” are used. They are found, for example, in Clause 12. The words “in his discretion” are used where the Governor-General will be acting on his own judgment but in an area outside that field. For example, in Clause 11 the functions of the Governor-General in respect of defence are to be exercised by him in his discretion. It is a matter of drafting which, once apprehended, I think it will be agreed, is convenient and useful.

My hon. Friend asked one further point, whether when the words “individual judgment” are used the Governor-General can act without consulting his Ministers. The answer is that as quite obviously that action is in the field where normally he would be acting on the advice of his Ministers, no cleavage between them as to right actions can possibly have arisen, except of course as a result of something that has happened and has been discussed; but, of course, once he had decided that within that field action must be taken, he would take it. Take quite an impossible case. Suppose that Ministers simply do not turn up. Then, of course, he must take the action in order to carry out the obligations conferred upon him. I do not think that the sort of test of consultation or non-consultation is

³³ <http://hansard.millbanksystems.com/commons/1935/feb/28/clause-9-council-of-ministers>

really the clue to the meaning. The clue is that the words "individual judgment" are used in respect of powers within the area in which normally in ordinary times he would be acting on the advice of his Ministers. The words "in his discretion" are used in respect of powers and functions outside that area.

Mr. CHURCHILL

It is, of course, a very convenient distinction between the two functions, and, if my memory serves me right, it is fully explained in the report of the Joint Select Committee. Undoubtedly there is great difficulty in describing this action and the rights of a Governor-General under the two specific and separate methods. I am bound to say that I agree with the Solicitor-General that if there is a difference between the Governor-General and his Ministers and he exercises his individual judgment because previous consultation with them has broken down, he will not be under the need of consulting them any more. All parleys having come to an end he will take the matter into his own hands and act freely. I gather that that is so?

The SOLICITOR-GENERAL

Yes. Of course he can, if he thinks proper and if all friendly relations have broken down, proceed to act on his own responsibility. I do not mean to imply that in those circumstances he is precluded from consulting his Ministers. At any point he may think it right to consult them.³⁴

11. The view expressed was reiterated a week later when Section 12 of the Government of India Act, 1935 (relating to the special responsibilities of the Governor-General) was discussed. During the debate on 5th March, 1935

Mr. Somerville adverted to the opinion of the Solicitor-General and said:

“We are dealing here with a very weighty and special responsibility of the Governor-General. Sub-section (2) of the Clause provides that the Governor-General shall in the exercise of his powers "use his individual judgment," and according to the definition given to us by the Solicitor-General last week, exercising his individual judgment means that before he comes to a decision he must consult his Indian advisers.”³⁵

12. This makes it abundantly clear that the expression “his individual judgment” obliges the Governor to take the aid and advice of his Council of Ministers but he is not bound by that advice and may act in his judgment.

³⁴ <http://hansard.millbanksystems.com/commons/1935/feb/28/clause-9-council-of-ministers>

³⁵ HC Deb 05 March 1935 vol 298 cc1787-887 to be found at

<http://hansard.millbanksystems.com/commons/1935/mar/05/clause-12-special-responsibilities-of>

Mr. Churchill sought a clarification to the effect that if there is a break-down of communications between the Governor-General and his Ministers, then the Governor-General could “act freely” that is to say that he would be discharged of the obligation to seek the aid and advise of the Ministers. The Solicitor-General affirmed that this is so and that he could “proceed to act on his own responsibility.”³⁶

Independence and the Constituent Assembly

13. After Independence, there was no intention to permit the Governor to exercise any discretion or to take any decision in his individual judgment. This is clear from the India (Provisional Constitution) Order, 1947 issued in exercise of powers conferred by Section 9(1)(c) of the Indian Independence Act, 1947. Paragraph 3(2) of the India (Provisional Constitution) Order, 1947 explicitly deletes the expressions “in his discretion”, “acting in his discretion” and “exercising his individual judgment” wherever they occur in the Government of India Act, 1935. Paragraph 3(1) and paragraph 3(2) of the India (Provisional Constitution) Order, 1947 read as follows:

“3(1) As from the appointed day, the Government of India Act, 1935, including the provisions of that Act which have not come into force before the appointed day and the India (Central Government and Legislature) Act, 1946, shall, until other provision is made by or in accordance with a law made by the Constituent Assembly of India, apply to India with the omissions, additions, adaptations and modifications directed in the following provisions of this paragraph and in the Schedule to this Order.

(2) The following expressions shall be omitted wherever they occur, namely, “in his discretion”, “acting in his discretion” and “exercising his individual judgment”.”

³⁶ Sir Alladi Krishnaswamy Aiyar also refers to the “breakdown provisions” as brought out subsequently in this judgment.

14. Apart from this explicit expression of intent, the overall distinction between the two expressions “in his discretion” and “his individual judgment” was understood and accepted by Sir B.N. Rau³⁷ who, in his address to I.A.S. probationers in New Delhi in June, 1948 said in the context of the Government of India Act, 1935:

“There were, however, certain matters in respect of which the Governor was required to act in his discretion without having to consult his ministers at all and certain other matters in respect of which he was required to exercise his individual judgment, though bound to consult his ministers. In regard to both these classes of matters, the Governor was under the general control of the Governor-General, who, in his turn, was under the general control of the Secretary of State and, therefore, of the Parliament in England. The area of responsible government in the provinces was thus restricted to some extent, though not to the same extent as under the Government of India Act of 1919.”

Later, in his address, he added:

“The framers of the Government of India Act of 1935 presumably foresaw that the distinction, which they had attempted to draw between the matters in respect of which the Governor was required to act on the advice of his Council of Ministers and those in respect of which he was not so required, would disappear in practice, unless special provision was made to resolve any consequential deadlocks. Accordingly, the Act gave power to the Governor, acting with the concurrence of the Governor-General and subject to certain other safeguards, to proclaim – what amounted to a suspension of responsible government in the province – that government could not be carried on in accordance with the provisions of the Act.”³⁸

15. As mentioned above, Article 143 in the draft Constitution corresponds to Section 50 of the Government of India Act, 1935 and this reads as follows:

“**Article 143** (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.

³⁷ Constitutional Adviser to the Constituent Assembly

³⁸ These quotations have been taken from “India’s Constitution in the Making” by Sir Benegal Rau (Edited by B. Shiva Rao), Allied Publishers Private Limited, pages 351 and 352

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.”

16. It is significant and necessary to note that (as expected) the expression “his individual judgment” did not find mention in Article 143 in the draft Constitution. This is as clear an indication as any that the framers of our Constitution did not intend that the Governor could disregard the aid and advice of the Council of Ministers. The absence of the expression “his individual judgment” makes it apparent that the Constitution framers were clear that the Governor would always be bound by the aid and advice of the Council of Ministers. Limited elbow room was, however, given to the Governor to act “in his discretion” in matters permitted by or under the Constitution.

17. Article 143 of the draft Constitution was the subject matter of discussion in the Constituent Assembly on 1st June, 1949. In response to the ongoing debate, Mr. Krishnamachari expressed the view that the retention of discretionary powers with the Governor was necessary, subject to discussion at the appropriate stage, when other Articles of the draft Constitution would be discussed. The only issue was whether the mention of discretionary powers should be in Article 143 of the draft Constitution or in the specific Article(s). He was of opinion that it should be mentioned in Article 143 of

the draft Constitution. The view expressed by Mr. Krishnamachari is as follows:

“Sir, it is no doubt true that certain words from this article may be removed, namely, those which refer to the exercise by the Governor of his functions where he has to use his discretion irrespective of the advice tendered by his Ministers. Actually, I think this is more by way of a safeguard, because there are specific provisions in this Draft Constitution which occur subsequently where the Governor is empowered to act in his discretion irrespective of the advice tendered by his Council of Ministers. There are two ways of formulating the idea underlying it. One is to make a mention of this exception in this article 143 and enumerating the specific power of the Governor where he can exercise his discretion in the articles that occur subsequently, or to leave out any mention of this power here and only state it in the appropriate article. The former method has been followed. Here the general proposition is stated that the Governor has normally to act on the advice of his Ministers except in so far as the exercise of his discretions covered by those articles in the Constitution in which he is specifically empowered to act in his discretion. So long as there are articles occurring subsequently in the Constitution where he is asked to act in his discretion, which completely cover all cases of departure from the normal practice to which I see my honourable Friend Mr. Kamath has no objection, I may refer to article 188, I see no harm in the provision in this article being as it is. If it happens that this House decides that in all the subsequent articles, the discretionary power should not be there, as it may conceivably do, this particular provision will be of no use and will fall into desuetude..... If it is necessary for the House either to limit the discretionary power of the Governor or completely do away with it, it could be done in the articles that occur subsequently where specific mention is made without which this power that is mentioned here cannot at all be exercised. That is the point that I would like to draw the attention of the House to and I think the article had better be passed as it is.”³⁹

18. Dr. Ambedkar supported the view of Mr. Krishnamachari and in response to the debate, he stated as follows:

“**The Honourable Dr. B. R. Ambedkar:** Mr. President, Sir, I did not think that it would have been necessary for me to speak and take part in this debate after what my Friend, Mr. T. T. Krishnamachari, had said on this amendment of Mr. Kamath, but as my Friend, Pandit Kunzru, pointedly asked me the question and demanded a reply, I thought that out of courtesy I should say a few words. Sir, the main and the crucial question is, should the Governor have discretionary powers? It is that question which is the main and the principal question. After we come to some decision on this question, the other question whether the words used in the last part of clause (1) of article 143 should be retained in that article

³⁹ Constituent Assembly Debates, Vol.8, 1949, pp.490-491

or should be transferred somewhere else could be usefully considered. The first thing, therefore, that I propose to do is to devote myself to this question which, as I said, is the crucial question. It has been said in the course of the debate that the retention of discretionary power in the Governor is contrary to responsible government in the provinces. It has also been said that the retention of discretionary power in the Governor smells of the Government of India Act, 1935, which in the main was undemocratic. Now, speaking for myself, I have no doubt in my mind that the retention in on the vesting the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government. I do not wish to rake up the point because on this point I can very well satisfy the House by reference to the provisions in the Constitution of Canada and the Constitution of Australia. I do not think anybody in this House would dispute that the Canadian system of government is not a fully responsible system of government, nor will anybody in this House challenge that the Australian Government is not a responsible form of government.

Pandit Hirday Nath Kunzru: Well, Dr. Ambedkar has missed the point of the criticism altogether. The criticism is not that in article 175 some powers might not be given to the Governor, the criticism is against vesting the Governor with certain discretionary powers of a general nature in the article under discussion.

The Honourable Dr. B. R. Ambedkar: I think he has misread the article. I am sorry I do not have the Draft Constitution with me. "Except in so far as he is by or under this Constitution," those are the words. If the words were "except whenever he thinks that he should exercise this power of discretion against the wishes or against the advice of the ministers", then I think the criticism made by my honourable Friend Pandit Kunzru would have been valid. **The clause is a very limited clause; it says: "except in so far as he is by or under this Constitution". Therefore, article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard.** There, I think, lies the fallacy of the argument of my honourable Friend, Pandit Kunzru. (Emphasis is given by me).

Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government, the only question that arises is, how should we provide for the mention of this discretionary power? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable Friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143, "that except as provided in articles so and so specifically mentioned-articles 175, 188, 200 or whatever they are". But

the point I am trying to submit to the House is that the House cannot escape from mentioning in some manner that the Governor shall have discretion.

Now the matter which seems to find some kind of favour with my honourable Friend, Pandit Kunzru and those who have spoken in the same way is that the words should be omitted from here and should be transferred somewhere else or that the specific articles should be mentioned in article 143. It seems to me that this is a mere method of drafting. There is no question of substance and no question of principle. I personally myself would be quite willing to amend the last portion of clause (1) of article 143 if I knew at this stage what are the provisions that this Constituent Assembly proposes to make with regard to the vesting of the Governor with discretionary power. My difficulty is that we have not as yet come either to article 175 or 188 nor have we exhausted all the possibilities of other provisions being made, vesting the Governor with discretionary power. If I knew that, I would very readily agree to amend article 143 and to mention the specific article, but that cannot be done now. Therefore, my submission is that no wrong could be done if the words as they stand in article 143 remain as they are. They are certainly not inconsistent.

Shri H. V. Kamath: Is there no material difference between article 61(1) relating to the President vis-à-vis his ministers and this article?

The Honourable Dr. B. R. Ambedkar: Of course there is, because we do not want to vest the President with any discretionary power. Because the provincial Governments are required to work in subordination to the Central Government, and therefore, in order to see that they do act in subordination to the Central Government the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the provincial Governments are supposed to act according to the Constitution or in subordination to the Central Government are observed.⁴⁰

19. On the basis of the above discussion, Article 143 of the draft Constitution was approved as it is and is now Article 163 in the Constitution.

Conclusions on Article 163 of the Constitution

20. The sum and substance of the historical background leading to Article 163 of the Constitution, as enacted, is this: (i) The Council of Ministers will aid and advise the Governor in the exercise of his functions. This is the first part of Article 163 (1) of the Constitution. The Governor then has two

⁴⁰ Constituent Assembly Debates, Vol.8, 1949, pp.500-502

options – (a) To reject the aid and advice of the Council of Ministers and act in “his individual judgment”. This is an illusory and non-existent option since the Constitution does not permit it. (b) To act on the aid and advice of the Council of Ministers. By default this is the only real option available to him. (ii) If the exercise of function is beyond the purview of the aid and advice of the Council of Ministers but is *by* or *under* the Constitution, the Governor can act “in his discretion”. Article 163(2) of the Constitution will have reference only to the last part of Article 163(1) of the Constitution and is not all-pervasive.

21. If there is a break-down in communications between the Council of Ministers and the Governor (as imagined by Mr. Churchill), then the Governor will not have the benefit of the aid and advice of the Council of Ministers. In that event, the Governor may “take the matter into his own hands and act freely.” The break-down of communications was a possibility under the Government of India Act, 1935 since it was “in the main undemocratic” and there could be a break-down of communications between the representative of His Majesty and the Council of Ministers. However, if such a situation were to arise today in independent India, namely, a break-down of communications between the Governor of a State and the Council of Ministers, it would be most unfortunate and detrimental to our democracy. In the unlikely event of a complete break-down of

communications, the President can and must intervene to bring in constitutional order.

Historical background of Article 174 of the Constitution

22. Article 174(1) of the Constitution has its historical origin in Section 62 of the Government of India Act, 1935. This section reads as follows:

62. (1) The Chamber or Chambers of each Provincial Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session

(2) Subject to the provisions of this section, the Governor may in his discretion from time to time-

(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit ;

(b) prorogue the Chamber or Chambers;

(c) dissolve the Legislative Assembly.

(3) The Chamber or Chambers shall be summoned to meet for the first session of the Legislature on a day not later than six months after the commencement of this Part of this Act.

23. In the Government of India Act, 1935 the Governor of a Province had vast powers, including for example, the power to preside over a meeting of the Council of Ministers.⁴¹ However, for the present purposes it is not necessary to research into that issue since it is quite clear that with Independence, the executive and other powers, functions and responsibilities of the Governor earlier appointed by His Majesty needed an overhaul. This is what Article 153 of the draft Constitution sought to achieve.

⁴¹ Section 50(2) of the Government of India Act, 1935 which reads: The Governor in his discretion may preside at meetings of the council of ministers.

24. In the Constituent Assembly, Article 153 of the draft Constitution as on 21st February, 1948 substituted Section 62 of the Government of India Act, 1935 with the following:

153. (1) The House or Houses of the Legislature of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to provisions of this article, the Governor may from time to time –

(a) summon the House or either House to meet at such time and place as he thinks fit;

(b) prorogue the House or Houses;

(c) dissolve the Legislative Assembly.

(3) The functions of the Governor under sub-clauses (a) and (c) of clause (2) of this article shall be exercised by him in his discretion.

25. The expression “in his discretion” finds mention in clause (3) of Article 153 of the draft Constitution. It could be said, on a consideration of the debate on this expression in the House of Commons and in the Constituent Assembly, that the Governor’s powers under Article 153 of the draft Constitution were sought to be kept outside the purview of the Council of Ministers and exercisable “in his discretion”. In other words, it could be said that while exercising his powers under Article 153 of the draft Constitution, the Governor was not obliged to consult or take the aid and advice of his Council of Ministers.

26. This Article was very briefly debated in the Constituent Assembly on 2nd June, 1949 and Dr. Ambedkar moved for the omission of clause (3) in this Article. The amendment proposed by Dr. Ambedkar was adopted without much discussion. Thereby, the Governor was disentitled from

summoning the House or either House “in his discretion”. Article 153 as amended was then adopted and formed a part of the Constitution. What was the reason for this omission? The answer is to be found in the debate on Article 69 of the draft Constitution on 18th May, 1949 (to which a reference was made in the debates).

27. Article 69 of the draft Constitution is more or less similar to Article 153 of the draft Constitution [except as regards the omitted clause (3)] and it provides as follows:

69. (1) The Houses of Parliament shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to provisions of this article, the President may from time to time –

(a) summon the Houses or either House of Parliament to meet at such time and place as he thinks fit;

(b) prorogue the Houses;

(c) dissolve the House of the People.

28. During the course of the debate on Article 69 of the draft Constitution, Prof. K.T. Shah suggested two amendments. Dr. Ambedkar responded to the amendments proposed by stating, *inter alia*, that the business of the House has to be provided by the Executive and if the President does not summon the House, the necessary implication is that the Executive has no business to place before the House for transaction. Therefore, if anybody other than the Prime Minister required the President to summon the House, there would be no business to transact and summoning the House without any business to transact would be a futile operation. I would imagine that for the same

reason, the President cannot *suo moto* summon the House, for there would be no business to transact and *suo moto* summoning the House without any business to transact would also be a futile operation. On the other hand, if the Prime Minister proposed to the President to summon the Legislature and he did not do so, the President would be violating the Constitution and would need to be displaced. This is what Dr. Ambedkar said:

“Then I take the two other amendments of Prof. Shah (Nos. 1473 and 1478). The amendments as they are worded are rather complicated. The gist of the amendments is this. Prof. Shah seems to think that the President may fail to summon the Parliament either in ordinary times in accordance with the article or that he may not even summon the legislature when there is an emergency. Therefore he says that the power to summon the legislature where the President has failed to perform his duty must be vested either in the Speaker of the lower House or in the Chairman or the Deputy Chairman of the Upper House. That is, if I have understood it correctly, the proposition of Prof. K.T. Shah. It seems to me that here again Prof. Shah has entirely misunderstood the whole position. First of all, I do not understand why the President should fail to perform an obligation which has been imposed upon him by law. If the Prime Minister proposes to the President that the Legislature be summoned and the President, for no reason, purely out of wantonness or cussedness, refuses to summon it, I think we have already got very good remedy in our own Constitution to displace such a President. We have the right to impeach him, because such a refusal on the part of the President to perform obligations which have been imposed upon him would be undoubtedly violation of the Constitution. There is therefore ample remedy contained in that particular clause.

But, another difficulty arises if we are to accept the suggestion of Professor K.T. Shah. Suppose for instance the President for good reasons does not summon the Legislature and the Speaker and the Chairman do summon the Legislature. What is going to happen? If the President does not summon the Legislature it means that the Executive Government has no business which it can place before the House for transaction. Because, that is the only ground on which the President, on the advice of the Prime Minister, may not call the Assembly in session. Now, the Speaker cannot provide business for the Assembly, nor can the Chairman provide it. The business has to be provided by the Executive, that is to say, by the Prime Minister who is going to advise the President to summon the Legislature. Therefore, merely to give the power to the Speaker or the Chairman to summon the Legislature without making proper provisions for the placing of business to be transacted by such an Assembly called for in a session by

the Speaker or the Chairman would to my mind be a futile operation and therefore no purpose will be served by accepting that amendment.”⁴²

29. Keeping the debate on Article 69 of the draft Constitution in mind (particularly since the business of the House is to be provided by the Executive) Article 153 of the draft Constitution did not provide for any discretion to the Governor, as proposed by Dr. Ambedkar, to summon the House for a “futile operation”.

30. Article 69 of the draft Constitution was adopted as Article 85 of the Constitution and this reads as follows:

“85. Sessions of Parliament, Prorogation and dissolution - (1) The Houses of Parliament shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of clause (1), the President may from time to time -

(a) summon the Houses or either House to meet at such time and place as he thinks fit;

(b) prorogue the Houses;

(c) dissolve the House of the People.”

31. Similarly, Article 153 of the draft Constitution was adopted as Article 174 of the Constitution in the following form:

“174. Sessions of the State Legislature, Prorogation and dissolution - (1) The House or Houses of the Legislature of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of clause (1), the Governor may from time to time -

(a) summon the House or either House to meet at such time and place as he thinks fit ;

(b) prorogue the House or Houses;

(c) dissolve the Legislative Assembly.”

⁴² Constituent Assembly Debates, Vol.8, 1949, p.106

32. The absence of any discretion in the President to summon or prorogue the House or dissolve the House of the People and the deletion of clause (3) in Article 153 of the draft Constitution makes it quite clear that the President and the Governor can act under Article 85 of the Constitution and Article 174 of the Constitution respectively only on the aid and advise of the Council of Ministers. No independent authority is given either to the President or the Governor in this regard.

Need to amend Article 85 and Article 174 of the Constitution

33. As luck would have it, the then Members of Parliament took their parliamentary duties and obligations with utmost sincerity and seriousness and so the actual working of Article 85 of the Constitution posed some problems. This led to the First Amendment to the Constitution.

34. The parliamentary debate of 16th May, 1951 shows that when the Constitution (First Amendment) Bill was moved by Prime Minister Jawaharlal Nehru, he pointed out that Parliament had been in continuous session since November (1950) and the session was likely to carry on. Under these circumstances, some “acute interpreters” might hold the view that Parliament had not met in 1951 strictly in terms of the Constitution since Parliament had not been prorogued and the President had not addressed it. This would lead to a curious situation that if Parliament met continuously, then it could be interpreted that Parliament had not met at all! This is what he said:

“[O]ne of the articles - for the moment - I forget the number - lays down that this House should meet twice a year and the President should address it. Now a possible interpretation of that is that this House has not met at all this year. It is an extraordinary position considering that time this House has labored more than probably at any time in the previous history of this or the preceding Parliament in this country. We have been practically sitting with an interval round about Xmas since November and we are likely to carry on and yet it may be held by some acute interpreters that we have not met at all this year strictly in terms of the Constitution because we started meeting in November and we have not met again - it has not been prorogued - the President has not addressed Parliament this year. Put it in the extreme way, suppose this House met for the full year without break except short breaks, it worked for 12 months, then it may be said under the strict letter of the law that it has not met at all this year. Of course that article was meant not to come in the way of our work but to come in the way of our leisure. It was indeed meant and it must meet at least twice a year and there should not be more than six months' interval between the meetings. It did not want any Government of the day simply to sit tight without the House meeting. Therefore it wanted to compel it by the force of the Constitution and meet at least twice a year but without a big gap. That again by interpretation leaves the curious situation that if you continue meeting, you do not meet at all!”⁴³

35. When Prime Minister Jawaharlal Nehru replied to the debate on this aspect on 2nd June, 1951 he reiterated that according to the strict meaning of Article 85 of the Constitution, Parliament had not “met” at all in 1951 since it had been summoned in 1950. It was to overcome this difficulty that an amendment was proposed to Article 85 of the Constitution. In another context, it was pointed out that Article 85 of the Constitution raises the questions – who should summon Parliament; who can summon Parliament and who only can summon Parliament. Giving a reply, he said that under the Constitution, only the President can summon Parliament and if he does not do his duty, then other consequences may well arise. Similarly, if Parliament is not summoned within six months, it is a deliberate breach of the

⁴³ Parliamentary Debates Part II – Proceedings other than Questions and Answers. Official Report Volume XII, 1951 (15 May 1951 – 6 June 1951). Third Session (Second Part) of Parliament of India, 1951 = (First Amendment) Bill 16 May 1951 p.8819

Constitution by the President and the Government of the day. It must be presumed that some final authority will function according to the Constitution and if it does not “then you pick the axe and cut off the head, whether he is a President or anybody.” This is what was said by Prime Minister Jawaharlal Nehru:

“It was because of this actual difficulty, that it was thought that this article might be changed so that this question of being summoned twice a year need not be there, because if we are meeting all the time, then are we to break up simply to be summoned again? Of course, we may be summoned twice a year or more.....

That is to say, this article 85 actually deals, in the passive and the active, in both the voices, with who should summon, who can summon and who only can summon - there is no other authority which can summon, unless of course there is a breach of the Constitution and other things come into play. Therefore, as the Constitution is, it is only the President who can summon it, and if the President does not do his duty then other consequences may well arise.

..... [O]ur saying, “the President shall summon” is much more mandatory on the President than saying, as it is said here, “The Houses of Parliament shall be summoned” and the President shall do so. The meaning is the same but if the President does not summon within six months it is a deliberate breach of the Constitution by the President and the Government of the day. It does not require any argument - you catch him immediately he has not done a duty laid down, which is here an indirect duty. May be some minor excuse the President may advance, or not. Therefore, in a sense you bind down the President - and when I say the President I mean the Government of the day which is also bound down by the Constitution to do a certain thing. If they do not do it then other consequences follow. They have deliberately flouted the Constitution. What happens then? Well, many things may happen. Parliament then presumably comes into conflict with the usurping Government, or the Government that carries on without the goodwill of Parliament and the people. Well, a conflict occurs. That kind of a thing would, if it occurs, presumably be decided by the normal constitutional means - other means may come into play, one does not know.

..... **After all you have ultimately to have some final authority which you presume will function according to the Constitution. If it does not then you pick the axe and cut off the head, whether he is a President or anybody. That is the normal practice in Constitutions: that is the normal practice in revolutions.** I do not understand the middle practice of confusing a Constitution with a revolution and a revolution with a Constitution. I therefore, submit that the wording

suggested is the right wording. It does not endanger the Constitution; it does not give any special or additional powers to the President to come in the way. Such powers as he gets, such mischief as the future President might do, is always inherent in the nature of things and inherent also in the power of the people to put an end to the President who does that mischief.” (Emphasis is given by me).⁴⁴

36. The amendment proposed by Prime Minister Jawaharlal Nehru was then accepted and Article 85 of the Constitution was amended to read as follows:

“85. Sessions of Parliament, prorogation and dissolution - (1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time -
(a) prorogue the Houses or either House;
(b) dissolve the House of the People.”

37. The corresponding provision for the Legislative Assembly for the States (Article 174 of the Constitution) was amended to read as follows:

“174. Sessions of the State Legislature, prorogation and dissolution - (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time -
(a) prorogue the House or either House;
(b) dissolve the Legislative Assembly.”

38. Although no authority other than the President or the Governor could summon the House, no discretion was conferred on either of them to do so,

⁴⁴ Parliamentary Debates Part II – Proceedings other than Questions and Answers. Official Report Volume XII, 1951 (15 May 1951 – 6 June 1951). Third Session (Second Part) of Parliament of India, 1951 = (First Amendment) Bill 2 June 1951 p.9957 and 9959

on his own or *suo moto*. Clearly, therefore, the President or the Governor can summon the House only on the aid and advice of the Council of Ministers.

Conclusions on Article 174 of the Constitution

39. The historical background and the debates pertaining to Article 174 (and Article 85) of the Constitution lead to the conclusion that it is only the Governor who may summon the Legislative Assembly, but only on the advice of the Council of Ministers and not *suo moto*. In other words, the Governor cannot summon the Legislative Assembly “in his discretion”. If the Governor does so, there would be no business to transact and summoning the House in such a situation would be a futile operation. The Governor cannot manufacture any business for the House to transact, through a so-called message or otherwise. If the Governor disregards the advice of the Council of Ministers for summoning the House, necessary consequences would follow. In this regard, it may be mentioned that if the President disregards the advice of the Council of Ministers he can be impeached. As far as the Governor is concerned, if he disregards the advice of the Council of Ministers the pleasure of the President can be withdrawn since the Governor holds office during his pleasure. On a different note, if the Legislative Assembly does not meet once in six months, there would be a breach of the Constitution requiring severe sanction.

40. How do the decisions of this Court interpret these provisions of the Constitution and is the interpretation in harmony with the intention of the Constitution framers?

Decisions of this Court

41. The first decision that needs to be referred to is *Rai Sahib Ram Jawaya Kapur v. The State of Punjab*.⁴⁵ The Constitution Bench of this Court acknowledged the difficulty in framing an exhaustive definition of ‘executive function’ or ‘executive power’. While acknowledging that the separation of powers in our Constitution is not rigid, this Court observed that one organ of the State cannot assume the functions or powers of another organ. It was held:

“It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.”

42. Proceeding further in this regard, the functions and responsibilities of the Executive were briefly mentioned in the following words:

“Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution.”

⁴⁵ [1955] 2 SCR 225 (5 Judges)

43. With reference to the interplay between the Legislature and the Executive, this Court acknowledged the supremacy of the Legislature over the Executive and held that, under the Constitution, the Governor who exercises executive power is nevertheless a formal or constitutional head of the Executive, with the real executive power vested in the Council of Ministers. This is what was said:

“In India, as in England, the executive has to act subject to the control of the legislature; but in what way is this control exercised by the legislature? Under article 53(1) of our Constitution, the executive power of the Union is vested in the President but under article 75 there is to be a Council of Minister with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The President has thus been made a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet. The same provisions obtain in regard to the Government of States; the Governor or the Rajpramukh, as the case may be, occupies the position of the head of the executive in the State but it is virtually the Council of Ministers in each State that carries on the executive Government. In the Indian Constitution, therefore, we have the same system of parliamentary executive as in England and the Council of Ministers consisting, as it does, of the members of the legislature is, like the British Cabinet, “a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part.” The Cabinet enjoying, as it does, a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions; and as the Ministers constituting the Cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important questions of policy are all formulated by them.”

44. The significance of this view is that it recognized that the Governor is only a formal or constitutional head. His executive functions are, therefore, dependent on the aid and advice given by the Council of Ministers. Since there is no provision enabling the Governor to act in “his individual judgment” the Governor is bound by the advice of the Council of Ministers with whose aid he acts. This is completely in harmony and consonance with

the views of the Constituent Assembly. Moreover, there is a recognition and acceptance that since the Council of Ministers enjoys a majority in the Legislature, it is in virtual control of both the executive and legislative functions of the Governor. Therefore, the Governor has little or no authority over the Executive or the Legislature, except to the extent specifically provided for in the Constitution.

45. Soon after the decision rendered in *Rai Sahib Ram Jawaya Kapur*, a rather peculiar situation arose in the Calcutta High Court. In *Mahabir Prasad Sharma v. Prafulla Chandra Ghose*⁴⁶ the facts were rather complicated. However, to briefly summarize them it may be stated that in the perception of the Governor of the State, Chief Minister Ajoy Kumar Mukherjee had apparently lost the confidence of the Legislative Assembly. Accordingly, the Governor requested the Chief Minister to call the Legislative Assembly and prove his majority in the House. The Chief Minister was more than once requested to call the Legislative Assembly in the month of November, 1967 but he declined to do so, on the ground that it had been decided to call the Legislative Assembly on 18th December, 1967.

46. In view of the Chief Minister's recalcitrance, the Governor dismissed him and his Council of Ministers on 21st November, 1967 and appointed P.C. Ghose as the Chief Minister. The dismissal of the Chief Minister and the appointment of P.C. Ghose by the Governor were in apparent exercise of powers conferred by Article 164(1) of the Constitution.

⁴⁶ (1968) 72 CWN 328

47. A petition was filed in the Calcutta High Court for a writ of *quo warranto* to explain the legal basis for the appointment of P.C. Ghose as the Chief Minister. In this context, it was observed that the dismissal of Ajoy Kumar Mukherjee as the Chief Minister was beyond the scope of the writ application and that the validity of the dismissal arose only incidentally. However, it was later held in the judgment that a Minister holds office during the pleasure of the Governor and under Article 164(1) of the Constitution the withdrawal of pleasure is entirely the discretion of the Governor and in view of Article 163(2) of the Constitution that exercise of discretion cannot be questioned. As far as the appointment of P.C. Ghose is concerned, it was held that there was no restriction on the Governor in Article 164(1) of the Constitution in the matter of the appointment of the Chief Minister.

48. The High Court also took the view that if the Chief Minister and the Council of Ministers refuse to vacate office after the Legislative Assembly had expressed no confidence in them, the Governor is entitled to withdraw his pleasure under Article 164(1) of the Constitution. It was held that the power of the Governor in this regard is exclusive, absolute and unrestricted and cannot be called in question in view of Article 163(2) of the Constitution. The High Court also held that if the Council of Ministers lost its majority in the Legislative Assembly, the Governor was not bound to accept its advice. In this regard, the High Court observed: “Can it be said

that the Governor is bound to act, in appointing a Chief Minister, on the advice of the outgoing Chief Minister who has lost his majority in the Legislative Assembly as a result of the General Election? I think not.” In view of its findings, the High Court held that the appointment of P.C. Ghose as the Chief Minister was in accordance with law and the Constitution and could not be called in question.

49. It may be mentioned that a submission was made in the High Court that in the event of a deadlock between the Governor and the Chief Minister, a proclamation in terms of Article 356 of the Constitution could be issued by the President but that line of thought was not carried forward by the High Court.

50. In some respects the decision of the Calcutta High Court goes well beyond the law laid down by this Court in *Rai Sahib Ram Jawaya Kapur*. Some of the conclusions are in the nature of sweeping generalizations and in my opinion *Mahabir Prasad Sharma* does not lay down the correct law. I am in agreement with Justice Khehar in this regard. *Mahabir Prasad Sharma* confers excessive powers on the Governor, well beyond his status as a formal or constitutional head of the Executive. The decision also enables the Governor to unilaterally decide whether a Chief Minister has lost the majority of the Legislative Assembly or not, a function exclusively of the Legislative Assembly. The decision enables the Governor to take an

unchecked decision “in his discretion” that a Chief Minister has lost the majority of the Legislative Assembly and then dismiss him.

51. Reference may now be made to *State of Punjab v. Satya Pal Dang*⁴⁷ in which the facts were rather extraordinary. Briefly, the annual budget of the State was to be considered by the Legislative Assembly and the Financial Statement was discussed in the Assembly on 4th, 5th and 6th March, 1968. On the last day, following some disturbance in the House and consequent disciplinary action, a Resolution was moved expressing no confidence in the Speaker. The House granted leave for the discussion and adjourned for the next day.

52. On 7th March, 1968 the Speaker declared the motion of no confidence to be unconstitutional and deemed not to have been moved. Following some rowdy scenes, the Speaker then adjourned the Assembly for two months that is till 6th May, 1968. Since the annual budget was not adopted no expenditure could be made in the State from 1st April, 1968. This led to a political and financial crisis of sorts.

53. Under these peculiar and extraordinary circumstances, the Governor prorogued the Assembly on 11th March, 1968 in exercise of his “constitutional powers” under Article 174(2)(a) of the Constitution. On 13th March, 1968 the Governor promulgated The Punjab Legislature (Regulation of Procedure in relation to Financial Business) Ordinance, 1968. Thereafter, on 14th March, 1968 the Governor summoned the Assembly for 18th March,

⁴⁷ [1969] 1 SCR 478 (5 Judges)

1968 in exercise of his 'constitutional powers' under Article 174(1) of the Constitution and directed the Assembly, in exercise of his 'constitutional powers' under Article 175(2) of the Constitution, to consider certain items.

54. When the Assembly met, the Speaker ruled that the House was not prorogued on 11th March, 1968 but on 18th March, 1968 and ruled that the proclamation of the Governor dated 14th March, 1968 summoning the House was illegal and void and that he had no power to re-summon the House once adjourned. Therefore, in accordance with the earlier ruling dated 7th March, 1968 the House stood adjourned for two months from that date.

55. Thereafter, following some disturbance, uproar and furore in the House, the Deputy Speaker occupied the Speaker's chair and declared the adjournment by the Speaker null and void. The financial business was then transacted and completed and two Appropriation Bills and other financial demands were passed. The Governor gave his assent to the Appropriation Bills.

56. Two writ petitions were filed in the Punjab & Haryana High Court challenging, *inter alia*, the prorogation and re-summoning of the Assembly, the Ordinance issued by the Governor on 13th March, 1968 as well as the Appropriation Acts to which the Governor had given his assent. A Full Bench of the High Court unanimously held the prorogation and re-summoning of the Assembly to be regular and legal and that the two

Appropriation Acts were unconstitutional and held by majority that the Ordinance was also unconstitutional.

57. The decision of the High Court was the subject matter of appeals before this Court. It was observed that the Governor had two options before him: (a) To require the Ministers to ask the Speaker to recall the Assembly. This Court felt that this was attempting the impossible [break-down theory in play] and (b) To prorogue the Assembly and then re-summon it.

58. Referring to Article 174(2) of the Constitution it was held that it does not indicate any restrictions on the power of the Governor to prorogue the House. However, whether a Governor is justified in proroguing the Legislature when it is in session is a question that did not fall for consideration. What was more in question than the conduct of the Governor was the *bona fides* of the Speaker's ruling adjourning the Assembly for two months when the Financial Statement and the Budget were on the agenda and time was running out. No *mala fides* were attributed to the Governor and his power being untrammelled by the Constitution, an emergency having arisen, the actions taken by the Governor were perfectly understandable. It was also held that the Governor had not only acted properly but in the only constitutional way open to him and there was no abuse of power nor could his motives be described as *mala fide*.

59. This Court also held that the prorogation of the Assembly became effective on 11th March, 1968 when the Governor issued a public

notification. It was also held that the re-summoning of the Legislature immediately afterwards was also a step in the right direction and it set up once again the democratic machinery in the State which had been rudely disturbed by the Speaker. In fact, the Governor restored parliamentary Government by adopting the course that he did.

60. However, while concluding its decision, this Court observed that “The situation created in the State of Punjab was unique and was reminiscent of the happenings in the age of the Stuarts.” Undoubtedly so. The action of the Governor was drastic but constitutional and resulted from a desire to set right a “desperate situation”. This Court allowed the appeals and set aside the judgment of the High Court and ordered the dismissal of the two writ petitions filed in the Punjab & Haryana High Court.

61. The facts in *Satya Pal Dang* were unique and extraordinary, but it is important to note that this Court did not consider or even refer to Article 163 of the Constitution. Therefore, this decision really does not take this discussion much further and reference to it is really quite futile.

62. The powers of the Governor, including his discretionary powers, came up for consideration in *Samsher Singh v. State of Punjab*⁴⁸ which decision is of considerable importance. The question before a Bench of seven judges was whether the Governor exercises his power of appointment and removal of members of the Subordinate Judicial Service under Article 234 of the

⁴⁸ (1974) 2 SCC 831 (7 Judges)

Constitution⁴⁹ personally or on the aid and advice of the Council of Ministers. The appellant Samsher Singh contended that the Governor could exercise his power only personally and relied on *Sardari Lal v. Union of India*⁵⁰ as well as Article 163(3) of the Constitution.

63. Chief Justice A.N. Ray (speaking for himself and four other learned Judges) held that the expression “in his discretion” is used in those Articles of the Constitution that confer special responsibilities on the Governor. Reference was made to the deletion of the expression “in his discretion” from the draft Constitution in Articles 144(6) [totally omitted], 153(3) [now Article 174], 175 (proviso) [now Article 200], 188 [totally omitted], 285(1) and (2) [now Article 316] and paragraph 15(3) of the Sixth Schedule [totally omitted]. This was noted to be in stark contrast to Articles 371-A(1)(b), 371-A(1)(d), 371-A(2)(b) and 371-A(2)(f) as well as paragraphs 9(2) and 18(3) [since deleted on 21st January, 1971] in the Sixth Schedule to the Constitution which confer special responsibilities on the Governor and use the expression “in his discretion”. In this context, it was concluded in paragraph 28 of the Report:

“Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.”

⁴⁹ **234. Recruitment of persons other than district judges to the judicial service.**—Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

⁵⁰ (1971) 1 SCC 411 (5 Judges)

64. Explaining this, and referring to English constitutional law, which is incorporated in our Constitution, it was held in paragraph 32 of the Report:

“It is a fundamental principle of English Constitutional law that Ministers must accept responsibility for every executive act. In England the Sovereign never acts on his own responsibility. The power of the Sovereign is conditioned by the practical rule that the Crown must find advisers to bear responsibility for his action. Those advisers must have the confidence of the House of Commons. This rule of English Constitutional law is incorporated in our Constitution. The Indian Constitution envisages a Parliamentary and responsible form of Government at the Centre and in the States and not a Presidential form of Government. The powers of the Governor as the constitutional head are not different.”

A minor point of departure was noticed in paragraph 44 of the Report wherein it was held that there is no distinction between functions of the Union (or State) and the functions of the President (or Governor) except in respect of those functions that the Governor has to exercise in his discretion.

This reads as follows:

“The distinction made by this Court between the executive functions of the Union and the executive functions of the President does not lead to any conclusion that the President is not the constitutional head of Government. Article 74(1) provides for the Council of Ministers to aid and advise the President in the exercise of his functions. Article 163(1) makes similar provision for a Council of Ministers to aid and advise the Governor. Therefore, whether the functions exercised by the President are functions of the Union or the functions of the President they have equally to be exercised with the aid and advice of the Council of Ministers, and the same is true of the functions of the Governor except those which he has to exercise in his discretion.”

65. In this background and context, it was noted that when the Governor exercises his functions and powers with the aid and advice of the Council of Ministers, he does so by making rules for the more convenient transaction and allocation of business in accordance with Article 166(3) of the Constitution. Consequently, the decision rendered in *Sardari Lal* was

required to be overruled (and it was overruled) and it was held in paragraph 48 of the Report after referring to *Rai Sahib Ram Jawaya Kapur*:

“The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President or the Governor.”

66. On the issue of discretionary powers of the Governor, paragraph 54 of the Report is important and the shift in bearing responsibility is referred to in paragraph 55 of the Report in the context of Article 356 of the Constitution with the final decision on the report of the Governor being with the President acting on the aid and advice of his Council of Ministers. In this overall context, it was, in a sense, reiterated that: “The Constitution does not aim at providing a parallel administration within the State by allowing the Governor to go against the advice of the Council of Ministers.”

67. Since a reference was earlier made to Article 371-A of the Constitution in the context of the discretionary powers of the Governor, it is necessary to mention that that Article was inserted in the Constitution by the Constitution (Thirteenth Amendment) Act, 1962. What is important to notice

in the said Article is that the draftsman and Parliament maintained the distinction between “in his discretion” and “his individual judgment”. This is clear from the use of the expression “in his discretion” in some paragraphs of the Sixth Schedule as mentioned above and the use of the expression “his individual judgment” occurring in Article 371-A(1)(b) of the Constitution. Therefore, a distinction between “in his discretion” and “his individual judgment” was recognized and appreciated. Sadly, as the submissions made before us indicate, this differentiation is slowly losing ground as the framers of the Government of India Act, 1935 presumably foresaw and which was adverted to by Sir B.N. Rau.

68. In their concurring judgment, Justice P. N. Bhagwati and Justice Krishna Iyer endorsed the view (in paragraph 139 of the Report) that the discretionary powers of the Governor have been expressly spelt out in the Constitution (as noticed above) and also endorsed the extension of ‘discretion’ to Article 356 of the Constitution. The learned judges observed that “limited free-wheeling” is available to the Governor in the choice of the Chief Minister and the dismissal of the Ministry (and later in paragraph 154 of the Report to the dissolution of the House).

69. It appears that the “limited free-wheeling” concept is based on the discretion given to the Governor under Article 163(2) of the Constitution, although it is not specifically discussed in the concurring judgment.

70. Be that as it may, the learned judges observed that if the Governor was

held entitled to exercise his powers personally, then that interpretation would extend to several Articles of the Constitution, including the power to grant pardon or to remit or commute a sentence (Article 161), the power to make appointments including of the Chief Minister (Article 164), the Advocate-General (Article 165), District Judges (Article 233), Members of the Public Service Commission (Article 316), the power to prorogue either House of Legislature or to dissolve the Legislative Assembly (Article 174), the right to address or send messages to the Houses of the Legislature (Article 175 and Article 176), the power to assent to Bills or withhold such assent (Article 200), the power to make recommendations for demands of grants [Article 203(3)], and the duty to cause to be laid every year the annual budget (Article 202), the power to promulgate ordinances during recesses of the Legislature (Article 213), the obligation to make available to the Election Commission the requisite staff for discharging the functions conferred by Article 324(1) on the Commission [Article 324(6)], the power to nominate a member of the Anglo-Indian Community to the Assembly in certain situations (Article 333) and the power to authorize the use of Hindi in the proceedings in the High Court [Article 348(2)]. (One could add Article 239(2) of the Constitution to this list). It was held that if the ratio of *Sardari Lal* and *Jayantilal Amritlal Shodhan v. F.N. Rana*⁵¹ was made applicable :

“..... to every function which the various articles of the Constitution confer on the President or the Governor, Parliamentary democracy will become a dope and national elections a numerical exercise in expensive

⁵¹ (1964) 5 SCR 29 (5 Judges)

futility. We will be compelled to hold that there are two parallel authorities exercising powers of governance of the country, as in the dyarchy days, except that Whitehall is substituted by Rashtrapati Bhavan and Raj Bhavan. The Cabinet will shrink at Union and State levels in political and administrative authority and, having solemn regard to the gamut of his powers and responsibilities, the Head of State will be reincarnation of Her Majesty's Secretary of State for India, untroubled by even the British Parliament — a little taller in power than the American President. Such a distortion, by interpretation, it appears to us, would virtually amount to a subversion of the structure, substance and vitality of our Republic, particularly when we remember that Governors are but appointed functionaries and the President himself is elected on a limited indirect basis. As we have already indicated, the overwhelming catena of authorities of this Court have established over the decades that the cabinet form of Government and the Parliamentary system have been adopted in India and the contrary concept must be rejected as incredibly allergic to our political genius, constitutional creed and culture.”

71. All the seven learned judges constituting the Bench were explicit and unequivocal in their view that the principle of Cabinet responsibility is firmly entrenched in our constitutional democracy and that our Constitution does not accept any “parallel administration” or “dyarchy”. *A fortiori* the discretion available to the Governor under Article 163 of the Constitution is not all-pervasive but is circumscribed by the provisions of the Constitution, with a small ventilator available, in some given exceptional situations by or under the Constitution. In this context, it is interesting to note that this Court did not even advert to the comparatively recent decision rendered in **Satya Pal Dang** which virtually sanctified the vast exercise of power by the Governor. Therefore, it must be assumed that **Satya Pal Dang** should be confined to its unique and extraordinary facts reminiscent of the happenings in the age of the Stuarts or did not necessarily lay down the correct law

given the more than blanket powers of the Governor that that decision approved or had nothing to do with Article 163 of the Constitution.

72. *Pratapsingh Raojirao Rane v. Governor of Goa*⁵² was yet another peculiar case in which the Governor dismissed the Chief Minister and appointed another person (Dr. Wilfred Anthony D'Souza) as the Chief Minister of Goa in exercise of powers conferred by Article 164(1) of the Constitution. Both decisions were challenged by way of a writ petition in the Bombay High Court.

73. In that case the Governor was of opinion that the Chief Minister had lost the confidence of the Legislative Assembly. Accordingly, he sent a communication to the Chief Minister on 28th July, 1998 at about 2.00 p.m. requiring him to seek a vote of confidence from the Legislative Assembly before 3.30 p.m. on the same day. In response, the Chief Minister did seek a vote of confidence from the Legislative Assembly and was successful in doing so. (There was some controversy about this).

74. Notwithstanding the confidence expressed by the Legislative Assembly in the Chief Minister, the Governor prorogued the Assembly at about 8.35 p.m. on 29th July, 1998 and appointed Dr. D'Souza as the Chief Minister at about 10.00 p.m.

75. The questions before the High Court were whether the Governor had the power to prorogue the Legislative Assembly and to dismiss the Chief Minister. As regards the dismissal of the Chief Minister, it was held in

⁵² AIR 1999 Bombay 53

paragraph 37 of the Report that the Governor was entitled to exercise his individual discretion in appointing the Chief Minister and that this was not subject to judicial review. In coming to this conclusion, the High Court proceeded on the basis that the Governor could withdraw his pleasure and thereby require the Chief Minister to vacate his office. The High Court referred to *Mahabir Prasad Sharma* and concluded that if the Council of Ministers refused to vacate its office then the Governor could withdraw his pleasure and that withdrawal of pleasure by the Governor was not open to judicial review. Carrying this a little further, the Court held in paragraph 46 of the Report:

“Thus, the position in law is clear that the Governor, while taking decisions in his sole discretion, enjoys immunity under [Article 361](#) and the discretion exercised by him in the performance of such functions is final in terms of [Article 163\(2\)](#). The position insofar as the dismissal of the Chief Minister is concerned would be the same, since when the Governor acts in such a matter he acts in his sole discretion. In both the situations, namely the appointment of the Chief Minister and the dismissal of the Chief Minister, the Governor is the best judge of the situation and he alone is in possession of the relevant information and material on the basis of which he acts. The result, therefore, would be that such actions cannot be subjected to judicial scrutiny at all.”

76. The High Court did not address itself to the issue of prorogation of the Legislative Assembly since in view of the above it was held that the writ petition was not maintainable.

77. This decision too proceeds on the incorrect basis and assumption that the Governor is the best person to know whether the Chief Minister of a State has lost the confidence of the Legislative Assembly and is, therefore, entitled to exercise vast powers regarding withdrawal of his pleasure in

dismissing the Chief Minister of a State. To this extent, *Pratapsingh Raojirao Rane* does not lay down the correct law and I agree with Justice Khehar in this regard.

78. The interpretation of Article 163(2) of the Constitution again came up for consideration in *M.P. Special Police Establishment v. State of M.P.*⁵³ In that case the Lokayukta had given a report that there was sufficient ground for prosecuting two Ministers for offences under the Prevention of Corruption Act, 1988 and/or under the Indian Penal Code, 1860. The Council of Ministers of the State of Madhya Pradesh declined to grant sanction to prosecute, but the Governor disregarded the advice of the Council of Ministers and granted sanction to prosecute. The question that arose for consideration was whether a Governor could act in his discretion under Article 163(2) of the Constitution and against the aid and advice of the Council of Ministers in the matter of grant of sanction for the prosecution of two Ministers for offences under the Prevention of Corruption Act, 1988 and/or under the Indian Penal Code, 1860.

79. Adding to the exceptions already noted by this Court where the Governor could act despite the advice of the Council of Ministers, yet another exclusionary situation was carved out by the Constitution Bench - in this case, on the ground of propriety. It was held:

“Undoubtedly, in a matter of grant of sanction to prosecute, the Governor is normally required to act on aid and advice of the Council of Ministers and not in his discretion. However, an exception may arise whilst

⁵³ (2004) 8 SCC 788 (5 Judges)

considering grant of sanction to prosecute a Chief Minister or a Minister where as a matter of propriety the Governor may have to act in his own discretion.”

80. It was observed that in such a case, if the Governor cannot act in his discretion then there could be a complete breakdown of the rule of law. It was observed (with respect, in an exaggerated manner) that democracy itself would be at stake. It was said:

“If, on these facts and circumstances, the Governor cannot act in his own discretion there would be a complete breakdown of the rule of law inasmuch as it would then be open for Governments to refuse sanction in spite of overwhelming material showing that a prima facie case is made out. If, in cases where a prima facie case is clearly made out, sanction to prosecute high functionaries is refused or withheld, democracy itself will be at stake. It would then lead to a situation where people in power may break the law with impunity safe in the knowledge that they will not be prosecuted as the requisite sanction will not be granted.”

81. The decision in the case of *Pu Myllai Hlychho v. State of Mizoram*⁵⁴ is equally instructive on the subject of the Governor’s discretion under Article 163(2) of the Constitution. The issue related to the Governor’s discretion in the nomination of four members of the Mara Autonomous District Council (MADC) in terms of paragraph 2(1) read with paragraph 20-BB of the Sixth Schedule to the Constitution.⁵⁵ It was held that the

⁵⁴ (2005) 2 SCC 92 (5 Judges)

⁵⁵ **2. Constitution of District Councils and Regional Councils.**- (1) There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage:

xxx xxx xxx

20-BB. Exercise of discretionary powers by the Governor in the discharge of his functions.—

The Governor, in the discharge of his functions under sub-paragraphs (2) and (3) of paragraph 1, sub-paragraphs (1) and (7) of paragraph 2, sub-paragraph (3) of paragraph 3, sub-paragraph (4) of paragraph 4, paragraph 5, sub-paragraph (1) of paragraph 6, sub-paragraph (2) of paragraph 7, sub-paragraph (3) of paragraph 9, sub-paragraph (1) of paragraph 14, sub-paragraph (1) of paragraph 15 and sub-paragraphs (1) and (2) of paragraph 16 of this Schedule, shall, after consulting the Council of Ministers, and if he thinks it necessary, the District Council or the Regional Council concerned, take such action as he considers necessary in his discretion.

Paragraph 20-BB was inserted by The Sixth Schedule to the Constitution (Amendment) Act, 1988.

Governor is entitled to act in his discretion in the matter of nomination of four members to the MADC even though he is obliged to consult the Council of Ministers. In this case, the Governor did consult the Council of Ministers, but that advice was not binding on him. Merely because the Governor consulted the Council of Ministers and acted on the advice given does not fault the decision taken by the Governor in the exercise of his discretion. It was held:

“The counsel for the appellants contended that in the case of nomination of four members, the Governor accepted the advice of his Council of Ministers and he did not exercise the discretionary powers vested in him under para 20-BB of the Sixth Schedule. This contention was raised on the basis that the initiation for issuing the notification dated 6-12-2001 was from the Council of Ministers and the Governor acted upon the advice of the Council of Ministers. We do not find any force in this contention. Under the provisions of para 20-BB, the Governor shall consult the Council of Ministers. Merely because of the fact that the Governor made consultation with the Council of Ministers for nominating four members, it cannot be assumed that the Governor failed to exercise the discretionary powers. The Governor could have even consulted the District Council or the Regional Council in this regard. There is nothing to show that the Governor did not exercise his discretionary powers independently. Moreover, as noted above, Article 163(2) of the Constitution expressly prohibits challenging the validity of the exercise of such discretionary power.”

82. *State of Gujarat v. R.A. Mehta*⁵⁶ follows the view expressed in *Samsher Singh* and *M.P. Special Police Establishment* on the discretionary powers of the Governor and adds a few more illustrative exceptions to those mentioned in the above decisions. Primarily, the view taken is that the Governor can act in his discretion if the advice from the Council of Ministers is not available to him due to some extraordinary situation. It was held:

⁵⁶ (2013) 3 SCC 1

“Article 163(2) of the Constitution provides that it would be permissible for the Governor to act without ministerial advice in certain other situations, depending upon the circumstances therein, even though they may not specifically be mentioned in the Constitution as discretionary functions e.g. the exercise of power under Article 356(1), as no such advice will be available from the Council of Ministers, who are responsible for the breakdown of constitutional machinery, or where one Ministry has resigned, and the other alternative Ministry cannot be formed. Moreover, clause (2) of Article 163 provides that the Governor himself is the final authority to decide upon the issue of whether he is required by or under the Constitution, to act in his discretion. The Council of Ministers, therefore, would be rendered incompetent in the event of there being a difference of opinion with respect to such a question, and such a decision taken by the Governor would not be *justiciable* in any court. There may also be circumstances where there are matters with respect to which the Constitution does not specifically require the Governor to act in his discretion but the Governor, despite this, may be fully justified to act so e.g. the Council of Ministers may advise the Governor to dissolve a House, which may be detrimental to the interests of the nation. In such circumstances, the Governor would be justified in refusing to accept the advice rendered to him and act in his discretion. There may even be circumstances where ministerial advice is not available at all i.e. the decision regarding the choice of Chief Minister under Article 164(1) which involves choosing a Chief Minister after a fresh election, or in the event of the death or resignation of the Chief Minister, or dismissal of the Chief Minister who loses majority in the House and yet refuses to resign or agree to dissolution.”

83. However, it seems to me that the Bench might be incorrect in expanding the discretionary power to include the advice of the Council of Ministers “which may be detrimental to the interests of the nation.” For one, it is difficult to imagine a democratically elected Council of Ministers giving advice that “may be detrimental to the interests of the nation”. Secondly, who is to judge if the advice is “detrimental to the interests of the nation” and what are the standards for coming to this conclusion. Thirdly, our Constitution has not given the Governor arbitrary or imperial powers to decide what is or is not detrimental to the interests of the nation. The elected representatives are capable of taking that call. Fourthly, should such a

remarkable situation arise, the Governor would be obliged to report to the President, leaving it to him to decide on the next course of action. However, I leave this 'expansion' as it is and am mentioning it only by the way.

84. As the years have gone by, more and more unusual if not extraordinary situations have arisen. These situations have led, in theory, to greater discretionary powers being conferred on the Governor through decisions rendered by this Court and the High Courts. In my view, this is really a step backward and contrary to the idea of responsible government advocated in the Constituent Assembly.

Justice Sarkaria Commission

85. Be that as it may, August 1988 saw the release of what is commonly known as the Justice Sarkaria Commission Report on Union-State Relations. In Chapter IV thereof, it is noted that the role of the Governor had emerged as one of the key issues in Union-State relations. While dealing with the historical background, two extremely significant observations were made in paragraphs 4.2.03 and 4.2.04 of the Report. It was suggested quite clearly that: (i) The Congress Party which commanded a majority in six Provincial Legislatures after the Government of India Act, 1935 came into force assumed office only after it was assured by the Viceroy that the Governors "would not provoke a conflict with the elected Government." The intention was pretty clear – that the discretion or the individual judgment available to the Governor under the Government of India Act, 1935 would be sparingly

used, if at all. (ii) This intention was carried into effect when the India (Provisional Constitution) Order, 1947 was promulgated, the expressions ‘in his discretion’, ‘acting in his discretion’ and ‘exercising his individual judgement’ occurring in the Government of India Act, 1935 were deleted making it incumbent on the Governor to exercise his functions only on the aid and advice of his Council of Ministers. This is what the Justice Sarkaria Commission observed:

“4.2.03 In 1937, when the Government of India Act, 1935 came into force, the Congress Party commanded a majority in six provincial legislatures. They foresaw certain difficulties in functioning under the new system which expected Ministers to accept, without demur, the censure implied, if the Governor exercised his individual judgement for the discharge of his special responsibilities. The Congress Party agreed to assume office in these Provinces only after it received an assurance from the Viceroy that the Governors would not provoke a conflict with the elected Government.

4.2.04 Independence inevitably brought about a change in the role of the Governor. Until the Constitution came into force, the provisions of the Government of India Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947 were applicable. This Order omitted the expressions ‘in his discretion’, ‘acting in his discretion’ and ‘exercising his individual judgement’, wherever they occurred in the Act. Whereas, earlier, certain functions were to be exercised by the Governor either in his discretion or in his individual judgement, the Adaptation Order made it incumbent on the Governor to exercise these as well as all other functions only on the advice of his Council of Ministers.”

86. The Justice Sarkaria Commission looked at Article 163(1) of the Constitution in two parts, namely, the Governor exercising his discretion when required *by the Constitution* and when required *under the Constitution*. The exercise of discretion conferred *by the Constitution* would relate to an express provision of the Constitution (such as those relating to the Tribal Areas of Assam) or by necessary implication; while the latter expression would include the exercise of discretion from rules and orders made *under*

the Constitution. Given this interpretation, according to the Justice Sarkaria Commission, “The scope of discretionary powers has to be strictly construed, effectively dispelling the apprehension, if any, that the area for the exercise of discretion covers all or any of the functions to be exercised by the Governor under the Constitution. **In other words, Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers.**”⁵⁷ (Emphasis given by me).

87. The Justice Sarkaria Commission studied the Constitution and placed the functions of the Governor in four categories:

- (i) The Governor acting in his discretion;
- (ii) The Governor acting in his individual judgment;
- (iii) The Governor acting in his discretion independently of the Council of Ministers.
- (iv) The Governor acting in his discretion *under* the Constitution.

88. The first category of functions consists of the Governor acting in his discretion only in respect of the Tribal Areas of Assam as per the Sixth Schedule of the Constitution. Subsequently, as the Constitution was amended, this category expanded to include Article 371-A (1) (d) and (2)(f) [relating to Nagaland], Article 371-F (g) [relating to Sikkim], Article 371-H (a) [relating to Arunachal Pradesh]. To this may also be added paragraph 20-BB of the Sixth Schedule, as discussed in *Pu Myllai*.

89. The second category of functions consists of the Governor acting in his individual judgment. This was not provided for in the Constitution as

⁵⁷ Paragraph 4.3.08

originally enacted but was introduced by way of an amendment in Article 371-A (1)(b) [pertaining to Nagaland] and Article 371-H (a) [pertaining to Arunachal Pradesh].

90. With regard to the third category of functions, the Justice Sarkaria Commission gave five examples of areas where the Governor exercises his discretion independently of the Council of Ministers - all of them by necessary implication:

“(a) Governor has necessarily to act in his discretion where the advice of his Council of Ministers is not available, e.g. in the appointment of a Chief Minister soon after an election, or where the Council of Ministers has resigned or where it has been dismissed [Article 164(1)].

(b) A Governor may have to act against the advice of the Council of Ministers, e.g. dismissal of a Ministry following its refusal to resign on being defeated in the Legislative Assembly on a vote of no-confidence [Article 164(1) &(2)].

(c) A Governor may require that any matter decided by a Minister may be considered by the Council of Ministers (Article 167).

(d) A Governor may have to make a report to the President under Article 356 that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution.

Obviously, in such a situation he may have to act against the aid and advice of the Council of Ministers as the situation may be due to the various acts of omission or commission on the part of the Council of Ministers (Article 356).

(e) A Governor may have to exercise his discretion in reserving a Bill for the consideration of the President (Article 200).”

To the above example may be added the view of this Court expressed in

M.P. Special Police Establishment.

91. While explaining the examples given, the Justice Sarkaria Commission also added that the Governor may exercise his discretion independently of the Council of Ministers in dissolving the Legislative

Assembly, but there has been no consistent practice in this regard. It was stated as follows:

“Various Governors have adopted different approaches in similar situations in regard to dissolution of the Legislative Assembly. The advice of a Chief Minister, enjoying majority support in the Assembly, is normally binding on the Governor. However, where the Chief Minister had lost such support, some Governors refused to dissolve the Legislative Assembly on his advice, while others in similar situations, accepted his advice, and dissolved the Assembly. The Assembly was dissolved in Kerala (1970) and in Punjab (1971) on the advice of the Chief Minister whose claim to majority support was doubtful. However, in more or less similar circumstances in Punjab (1967), Uttar Pradesh (1968), Madhya Pradesh (1969) and Orissa (1971) the Legislative Assembly was not dissolved. Attempts were made to instal alternative Ministries.”⁵⁸

92. In specific regard to summoning the Legislative Assembly (an issue directly concerning us in the present case), the Justice Sarkaria Commission noted that differing views were expressed by the States for different reasons. These have been mentioned in paragraphs 4.11.16 to 4.11.20 of the Report.⁵⁹ The sum and substance of the discussion is that the unilateral power to summon the Legislative Assembly may be exercised by the Governor only in three situations:

- (i) When the Chief Minister designedly fails to advise the summoning of the Assembly within six months of its last sitting, or advises its summoning for a date falling beyond this period.
- (ii) When the Chief Minister, unless he is the leader of a party that has an absolute majority in the Legislative Assembly, does not seek a vote of confidence within 30 days of taking over.
- (iii) When it appears to the Governor that the incumbent Ministry no longer enjoys the confidence of the

⁵⁸ Paragraph 4.4.03

⁵⁹ The view expressed regarding proroguing and dissolving the Assembly is not referred to since that issue does not arise in the present case.

Assembly, he may ask the Chief Minister to test his majority support on the floor of the House within a reasonable time. The reasonable time could be within 30 days (unless there is some urgency such as passing the annual budget) but should not exceed 60 days.

It may be mentioned *en passant* that none of these situations arise in the present case.

93. With regard to the fourth category of functions, the Justice Sarkaria Commission gave the examples of Orders passed by the President under Article 371 of the Constitution. One such Order issued under Article 371(1) of the Constitution is the Punjab Regional Committees Order, 1957.⁶⁰ Paragraph 10 of this Order provided that “The Governor shall have special responsibility for securing the proper functioning of regional committees in accordance with the provisions of this Order.”

94. Similarly, paragraph 10 of the Andhra Pradesh Regional Committee Order, 1958⁶¹ issued under Article 371(1) of the Constitution provided that “The Governor shall have special responsibility for securing the proper functioning of the regional committee in accordance with the provisions of this Order”.

95. With regard to the State of Gujarat, the President issued the State of Gujarat (Special Responsibility of Governor for Kutch) Order, 1977 dated 28th February, 1977. This was in exercise of powers conferred by Article 371(2) of the Constitution. Paragraph 2 of the said Order provided as follows:

⁶⁰ SRO 3524 dated 4th November, 1957

⁶¹ SRO 446-A dated 1st February, 1958

“2. Special Responsibility of Governor- (1) The Governor of Gujarat shall have special responsibility for the establishment of a development board for Kutch and for the other matters referred to in clause (2) of article 371 of the Constitution in respect of that area.

(2) The Governor shall, in the discharge of his special responsibility under this Order, act in his discretion.”

96. For the State of Manipur, the Manipur Legislative Assembly Hill (Areas Committee) Order, 1972 was issued on 28th June, 1972 by the President in exercise of powers conferred by Article 371-C of the Constitution. Paragraph 9 of this Order provided for the special responsibility of the Governor: “The Governor shall have special responsibility for securing the proper functioning of the Hill Areas Committee in accordance with the provisions of this Order and shall, in the discharge of his special responsibility, act in his discretion.”

97. Finally, in exercise of powers conferred by Clause (2) of Article 371 of the Constitution, the President issued the State of Maharashtra (Special Responsibility of Governor for Vidarbha, Marathwada and the rest of Maharashtra) Order, 1994 which came into effect on 1st May, 1994. This Order confers large discretionary powers on the Governor in relation to the functioning of the Development Boards, including allocation of funds.

98. At all times, the Governor may exercise this discretion only to ensure that the system of responsible government in the State functions in accordance with the norms envisaged in the Constitution, and as postulated by the Constituent Assembly and Dr. Ambedkar.

99. There is absolutely no reason to take a view different from that expressed by the Justice Sarkaria Commission though coupled with the view expressed by this Court in the few decisions mentioned above.

Justice Punchhi Commission

100. In March 2000, Justice Punchhi submitted a Report on Centre-State Relations. The broad mandate of the Commission was “to review the existing arrangements between the Union and States as per the Constitution of India in regard to powers, functions and responsibilities in all spheres including legislative relations, administrative relations, role of Governors, emergency provisions, financial relations, economic and social planning, Panchayati Raj institutions, sharing of resources, including inter-state river water and recommend such changes as may be appropriate keeping in view the practical difficulties”.

101. With reference to the discretionary role of the Governor, broadly speaking, the following situations may be culled out from the Justice Punchhi Commission Report (paragraph 4.5 thereof):

4. To give assent or withhold or refer a Bill [except a Money Bill] for Presidential assent under Article 200;
5. The appointment of the Chief Minister under Article 164;
6. Dismissal of a Government that has lost the confidence of the Legislative Assembly but refuses to quit since the Chief Minister holds office during the pleasure of the Governor;
7. If the Chief Minister neglects or refuses to summon the Assembly for holding a "Floor Test", the Governor should summon the Assembly for the purpose.

8. Dissolution and prorogation of the House under Article 174;
 9. Governor's report under Article 356;
 10. Governor's responsibility for certain regions of the country under Articles 371-A, 371-C and 371-H of the Constitution.
- (viii) Where the bias is inherent and/or manifest in the advice of the Council of Ministers [as in the case of *Madhya Pradesh Special Police Establishment*].

102. The Justice Punchhi Commission did not disagree with the Justice Sarkaria Commission on any issue relating to the functions and duties of the Governor. It must therefore be taken that the functions, duties and powers of the Governor by or under the Constitution are “cabined, cribbed, confined”. However, if “discretion” is given a broad meaning as desired by the respondents and is given greater weightage than “his individual judgment” then there would be “saucy doubts and fears”⁶² of the arbitrary exercise of discretion by the Governor as has happened in the present case, and other cases.

103. From the submissions made by learned counsel for the respondents, it would seem that the functions of the Governor in his relations with the Executive are completely hedged in but in his relations with the Legislature and the elected representatives, his discretion is virtually unlimited and not subject to judicial review as well. Surely, this is not what the Constitution framers had in mind nor do the decisions of this Court lead to such an intention or interpretation.

⁶² Macbeth, Act III Scene IV

104. Rather than provide so-called untrammelled power and authority to the Governor, the Constitution makers gave him an escape route in the event the Legislature is recalcitrant. This is by way of resort to Article 356 of the Constitution through which the Governor can make a report to the President in the event there is a failure of constitutional machinery in the State. This escape route is available in a case where the Governor dismisses a Government but the Government refuses to recognize the dismissal order.

105. Additionally, to ensure that the Governor is not unaccountable in his relations with the Legislature, the Constitution provides for the Legislature to frame its rules of procedure under Article 208 of the Constitution. The Legislature in Arunachal Pradesh has framed such rules and these are considered below.

Rules of Business of the Legislative Assembly

106. First and foremost, it is important to note that the rules of procedure framed by the Legislative Assembly for regulating its procedure and the conduct of its business under Article 208 of the Constitution do not need anybody's approval, including that of the Governor of the State.⁶³

⁶³ **208. Rules of procedure** - (1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses.

107. The Rules of Procedure and Conduct of Business in Arunachal Pradesh Legislative Assembly (for short “the Rules”) framed by the Legislative Assembly of Arunachal Pradesh in exercise of powers conferred by Article 208 of the Constitution carry forward the intention of the Constituent Assembly as well as the decisions of this Court to the effect that the Governor is a constitutional or formal head not only of the Executive but, in some respects, also of the Legislature. The Rules give the Governor of Arunachal Pradesh limited discretionary powers, but more particularly so in the matter of summoning the Legislative Assembly.

108. Rule 3 of the Rules provides that for summoning the Assembly under Article 174 of the Constitution, the Chief Minister shall, in consultation with the Speaker, fix the date of commencement and duration of the session of the Assembly and advise the Governor accordingly. Rule 3A of the Rules provides that on receipt of such advice, the Assembly is summoned by the Governor and the Secretary of the Assembly then issues summons to each member of the Assembly specifying the date and place for the session at least 30 days before the commencement of the session. The Assembly may also be summoned on a short notice in terms of the proviso to Rule 3A of the Rules, but we are not concerned with that. Rule 3 and Rule 3A of the Rules read as follows:-

“3. The Chief Minister shall, in consultation with the Speaker, fix the date of commencement and the duration of the session, advise the Governor for summoning the Assembly under Article 174 of the Constitution.

3A. On issue of such summons by the Governor, the Secretary shall issue a summon to each member specifying the date and place for the session of the House at least thirty days before the date of commencement of the Session:

Provided that when a Session is called at short notice or emergently, the summons may not be issued to each member separately but an announcement of the date and place of the Session shall be published in the Gazette and made on the All-India Radio and the members shall also be informed by wireless messages or telegrams.”

109. It is clear from the above that the Governor can summon the Assembly only if the Chief Minister (in consultation with the Speaker) so advises him. There is no exception to this. However, Article 174 of the Constitution would be violated if the Chief Minister does not so advise the Governor to summon the Assembly for a period of six months, or if the Governor does not summon the Assembly despite the advice of the Chief Minister. As mentioned by Pandit Jawaharlal Nehru when the First Amendment to the Constitution was discussed in Parliament, either the Chief Minister or the Governor (as the case may be) would have to bear the consequences of violating the Constitution.

110. In matters pertaining to the Assembly, the Governor of Arunachal Pradesh has been given an additional ‘discretionary power’. This is with regard to the election of the Speaker of the Assembly. Rule 7(1) of the Rules provides that when a new Assembly is constituted or there is a vacancy in the office of the Speaker and the election of the Speaker is necessary, the Governor shall fix a date for holding the election. To this extent the Governor has a role to play in the Assembly in his capacity as a constituent

of the Legislature, as postulated by Article 168 of the Constitution. Rule 7(1) of the Rules is relevant for this purpose and it reads as follows:

“7(1) When at the beginning of the new Assembly or owing to a vacancy in the office of the Speaker, the election of a Speaker is necessary, the Governor shall fix a date for the holding of the election, and the Secretary shall send to every member notice of the date so fixed.”

111. The Governor has yet another discretionary duty to perform which is when the office of the Speaker as well as the Deputy Speaker is vacant, even when the Assembly is not a new Assembly. In that event the Governor has the discretionary duty to appoint a member of the Assembly as a Speaker. This is provided for in Article 180(1) of the Constitution as well as Rule 8B of the Rules which reads as follows:

“8B. While the Offices of both the Speaker and the Deputy Speaker are vacant, the duties of the Office of the Speaker shall be performed by such member of the Assembly as the Governor may appoint for the purpose.”

Over the years a convention has developed in most Legislatures in respect of filling up such vacancies and the ‘discretion’ of the Governor has been limited thereby.

112. This may be contrasted with Article 180(2) of the Constitution which provides that when the Speaker and the Deputy Speaker are both absent (not because of any vacancy) then the Legislative Assembly and not the Governor shall determine, by rules or otherwise, the person who shall act as the Speaker.

113. Article 200 of the Constitution postulates that the Governor may (in exercise of his discretion) withhold assent to a Bill passed by the

Legislature. This too is the subject matter of the Rules and Rule 82 thereof makes a provision in this regard which reads as follows:

“82. The orders of the President or the Governor granting or withholding the sanction or recommendation to an amendment to a Bill shall be communicated to the Secretary by the Minister concerned in writing.”

114. Of course, the Governor cannot withhold assent to a Bill indefinitely but must return it to the Assembly with a message and this could include his recommendation for amendments to the Bill. This is the subject matter of Rule 102 and Rule 103 of the Rules which read as follows:

“102 (1) When a Bill passed by the Assembly is returned to the Assembly by the Governor with a message requesting that the Assembly do reconsider the Bill or any specified provisions thereof or any such amendments as are recommended in his message, the Speaker shall read the message of the Governor in the Assembly if in session, or if the Assembly is not in session, direct that it may be circulated for the information of the members.

(2) The Bill as passed by the Assembly and returned by the Governor for reconsideration shall thereafter be laid on the Table.

103. At any time after the Bill has been so laid on the Table, any Minister in the case of a Government Bill, or, in any other case, any member may give notice of his intention to move that the amendments recommended by the Governor be taken into consideration.”

115. It will be seen from the above that the discretion given to the Governor in respect of his relations with the Legislative Assembly is not only limited and circumscribed by the Constitution but also by the Rules framed by the Legislative Assembly under Article 208 of the Constitution. So much so that even the procedure for exchange of communications between the Governor and the Assembly is regulated. The Governor shall transmit his messages to the Assembly through the Speaker in writing signed by him or if he is absent from the place of meeting of the Assembly, it shall

be conveyed to the Speaker through the leader of the House or through such person as the leader may delegate. This is provided in Rule 203 which reads as follows:

“203 (1) Communications from the Governor to the Assembly shall be made to the Speaker by written message signed by the Governor or if the Governor is absent from the place of meeting of the Assembly, his message shall be conveyed to the Speaker through the Leader of the House or through such person as the Leader may delegate.

(2) Communication from the Assembly to the Governor shall be made:-
(i) by formal address after motion made and carried in the Assembly;
(ii) through the Speaker.”

There can be no doubt that the Governor would need to respect the Rules at least in his relations with the Legislature and cannot override their terms.

Arunachal Pradesh Rules of Executive Business

116. In exercise of powers conferred by Clause (2) and Clause (3) of Article 166 of the Constitution, the Governor of Arunachal Pradesh has framed the Arunachal Pradesh Rules of Executive Business, 1987.

117. In terms of Rule 8, all cases referred to in the Schedule are mandated to be brought before the Cabinet in accordance with the provisions contained in Part II thereof. Rule 8 reads as follows:

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

118. As will be noticed from the above, Rule 8 is subject to the orders of the Chief Minister under Rule 14 which is in Part II. In this regard, as per Rule 14, the Chief Minister is entitled to refer any case mentioned in the

Schedule for consideration at a meeting of the Cabinet. Rule 14 reads as follows:

“14. All cases referred to as in the schedule shall, after consideration by the Minister be sent to the Secretary with a view to obtaining orders of the Chief Minister for circulation of the case under Rule 16 or for bringing it for consideration at a meeting of the Cabinet.”

119. Rule 33 gives a list of classes of cases required to be placed before the Governor before the issuance of orders, with the approval of the concerned Minister and the Chief Minister. This includes, in Rule 33(i) the Governor's address and message to the Legislative Assembly and in Rule 33(p) the summoning, prorogation or dissolution of the State Assembly. In other words, before summoning the Legislative Assembly, the case has to be considered by the Chief Minister and then placed before the Governor of Arunachal Pradesh for issuance of appropriate orders. This is fully in consonance with the Rules of Procedure and Conduct of Business in Arunachal Pradesh Legislative Assembly framed under Article 208 of the Constitution.

120. The Schedule to the Arunachal Pradesh Rules of Executive Business provides in item no. 4 (with reference to Rule 8 and Rule 14) for proposals to summon, prorogue or dissolve the Legislature of the State.

Conclusions on the Rules of Business

121. It is clear from the above, that though summoning the Legislative Assembly might be an executive function of the Governor, that function can be exercised by him only after such a proposal is seen by the Chief Minister

and sent to him. Reading this with the Rules of Procedure and Conduct of Business in Arunachal Pradesh Legislative Assembly, the Chief Minister can make a proposal to the Governor for summoning the Legislative Assembly only in consultation with the Speaker of the Legislative Assembly who is, in a sense, the Master of the House. In other words, the Governor has no independent discretion or authority to summon the Legislative Assembly, in terms of the Rules of Procedure and Conduct of Business in Arunachal Pradesh Legislative Assembly framed under Article 208 of the Constitution or the Arunachal Pradesh Rules of Executive Business, 1987 framed under Article 166 of the Constitution to summon the Legislative Assembly in his discretion.

122. As already mentioned above, in case the Chief Minister fails in his duty to put forward a proposal before the Governor for summoning the Legislative Assembly or if the Governor does not accept the proposal of the Chief Minister of Arunachal Pradesh for summoning the Legislative Assembly, necessary consequences will follow as mentioned in the debates in Parliament when the first amendment to the Constitution was considered.

Article 371-H of the Constitution

123. Apart from the views of the Constituent Assembly, the provisions of the Constitution, decisions of this Court and the views of eminent jurists on the functions, duties and powers of the Governor, the Constitution has a special provision with respect to Arunachal Pradesh. Article 371-H of the

Constitution provides for the Governor exercising “his individual judgment” in the discharge of his functions relating to law and order in Arunachal Pradesh. Specifically, therefore, the exercise of individual judgment by the Governor of Arunachal Pradesh is permitted by the Constitution, but is limited to issues of law and order only. Article 371-H of the Constitution reads as follows:

“371-H. Special provision with respect to the State of Arunachal Pradesh.—Notwithstanding anything in this Constitution,—

(a) the Governor of Arunachal Pradesh shall have special responsibility with respect to law and order in the State of Arunachal Pradesh and in the discharge of his functions in relation thereto, the Governor shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken:

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under this clause required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment:

Provided further that if the President on receipt of a report from the Governor or otherwise is satisfied that it is no longer necessary for the Governor to have special responsibility with respect to law and order in the State of Arunachal Pradesh, he may by order direct that the Governor shall cease to have such responsibility with effect from such date as may be specified in the order;

(b) the Legislative Assembly of the State of Arunachal Pradesh shall consist of not less than thirty members.”

124. It is quite clear from the above discussion and particularly from the provisions of the Constitution that the concept of “in his discretion” and “his individual judgment” is very much alive and the distinction continues to be real. Once this is appreciated the extent and scope of Article 163 of the Constitution becomes obvious.

Conclusions

125. Under Article 163(1) of the Constitution, the Governor is bound by the advice of his Council of Ministers. There are only three exceptions [“except in so far as”] to this: (i) The Governor may, in the exercise of his functions, act in his discretion as conferred *by the Constitution*; (ii) The Governor may, in the exercise of his functions, act in his discretion as conferred *under the Constitution*; and (iii) The Governor may, in the exercise of his functions, act in his individual judgment in instances specified by the Constitution.

126. The development of constitutional law in India and some rather peculiar and extraordinary situations have led to the evolution of a distinct category of functions, in addition to those postulated or imagined by the Constitution and identified above. These are functions in which the Governor acts by the Constitution and of constitutional necessity in view of the peculiar and extraordinary situation such as that which arose in *M.P. Special Police Establishment* and as arise in situations relating to Article 356 of the Constitution or in choosing a person to be the leader of the Legislative Assembly and the Chief Minister of the State by proving his majority in the Legislative Assembly.

127. However, these limitations do not preclude the Legislative Assembly from framing its Rules of Legislative Business under Article 208 of the Constitution with reference to the functions of the Governor, nor do they preclude the Governor from framing Rules of Executive Business under

Article 166 of the Constitution for the smooth functioning of the government, as long as the Rules are framed in consonance with the constitutional requirements and within constitutional boundaries.

Understanding the facts

128. The facts presented to us show that on 3rd November, 2015 the Governor issued an Order whereby, in exercise of powers conferred on him by Clause (1) of Article 174 of the Constitution, the Sixth Session of the Legislative Assembly was summoned to meet at 10.00 a.m. on 14th January, 2016 to 18th January, 2016 in the Legislative Assembly Chamber at Naharlagun. The Order was in accordance with the constitutional provision (Article 174) for summoning the Assembly and in accordance with the Rules of Procedure and Conduct of Business in Arunachal Pradesh Legislative Assembly framed in exercise of powers granted by Article 208 of the Constitution. In other words, the Order was in consultation with the Speaker of the Assembly and the Chief Minister of Arunachal Pradesh.

129. Thereafter, on 19th November, 2015 notice of a resolution for the removal of the Speaker was received in the Secretariat of the Legislative Assembly. This resolution was in terms of Article 179 of the Constitution. A copy of this resolution was also independently made available to the Governor by the signatories to the resolution along with a request to advance the date of the session of the Assembly to consider and vote on the resolution for the removal of the Speaker.

130. By an Order issued on 9th December, 2015 the Order of 3rd November, 2015 summoning the Assembly was modified by the Governor on the ground, *inter alia*, of his constitutional obligation “to ensure that the resolution for removal of Speaker is expeditiously placed before the Legislative Assembly.” The modification Order modified the date of 14th January, 2016 to read 16th December, 2015 and the date of 18th January, 2016 to 18th December, 2015.

131. The modification Order also recorded that expeditious consideration was necessary in view of (i) past precedents in the Lok Sabha (none of the learned counsel could enlighten us on any such precedent); (ii) paragraph 2 of Rule 151 of the Rules of Procedure and Conduct of Business in Arunachal Pradesh Legislative Assembly required expedition;⁶⁴ (iii) utmost immediacy for clearing the cloud cast on the continuance of the incumbent Speaker; (iv) the personal satisfaction of the Governor that the time gap till the next session of the Assembly was long and unreasonable and “may cause damage

⁶⁴ 151. Any resolution to remove the Speaker or the Deputy Speaker from office, of which at least fourteen days notice as required under Article 179 of the Constitution has been given shall be read to the Assembly by the person presiding who shall then request the members who are in favour of leave being granted to move the Resolution to rise in their places, and if not less than one fifth of the total numbers of member of the House rise accordingly, the person presiding shall allow the Resolution to be moved. If less than one-fifth of the total numbers of member of the House rise, the person presiding shall inform the member who may have given the notice, that he has not the leave of the Assembly to move it.

If notice of a Resolution against the Speaker or the Deputy Speaker is tabled, the House shall not be adjourned till the provisions of these Rules are complied with and the motion on no confidence is disposed of finally.

The charges in the Resolution moved by a mover against Speaker or Deputy Speaker should be substantially and precisely expressed.

The nature of the charges should be within the conduct of Speaker or Deputy Speaker in the House for the inability to conduct the business in the House or misappropriation of Assembly property or finance.

The Resolution duly signed by the mover should be handed over to Secretary, Legislative Assembly for scrutiny.

to the goals and ideals of provisions in the Constitution of India and the Rules of Procedure of the House concerning speedy disposal of such resolutions” and; (v) in advancing the date of the sixth session of the Assembly, he “may not be bound by the advice of the Council of Ministers, since the subject matter of the notice for removal of the Speaker is not a matter falling under the executive jurisdiction of the Chief Minister, Arunachal Pradesh nor such a subject matter finds a mention in the Rules of Executive Business of the Government of Arunachal Pradesh framed under Article 166 of the Constitution of India...” The relevant extract of the modification Order reads as follows:

“WHEREAS any such notice of resolution in relation to an Officer of the Legislative Assembly (Speaker or Deputy Speaker) needs to be expeditiously considered by the Legislative Assembly in view of (i) past precedents in the Lok Sabha and (ii) the seriousness and urgency accorded to such resolutions in paragraph 2 of Rule 151 of the Rules of Procedure and Conduct of Business in the Arunachal Pradesh Legislative Assembly and (iii) the utmost immediacy with which the cloud cast by the notice of resolution over the continuance of the incumbent in the office of the Speaker has to be cleared:

WHEREAS I am personally satisfied that the time gap between the date of compliance of the notice with the notice period prescribed in the first proviso to article 179 (c) of the Constitution of India and the date of the intended first sitting of the ensuing session, as computed in the aforesaid manner, is long and unreasonable and may cause damage to the goals and ideals of provisions in the Constitution of India and the Rules of Procedure of the House concerning speedy disposal of such resolutions:

WHEREAS I am further satisfied that, for any exercise of advancing the date of the sixth session under clause (1) of article 174 of the Constitution of India to a date earlier than the date mentioned in the summons dated 3rd November, 2015 for facilitating the House to expeditiously consider resolutions for removal of Speaker, I may not be bound by the advice of the Council of Ministers, since the subject matter of the notice for removal of the Speaker is not a matter falling under the executive jurisdiction of the Chief Minister, Arunachal Pradesh nor such a subject matter finds a mention in the Rules of Executive Business of the Government of Arunachal Pradesh framed under article 166 of the Constitution of India

thereby restricting the role of the Chief Minister in advising me in exercise of my powers under article 174(1) of the Constitution of India only to matters for which the Chief Minister, under the Constitution of India, is responsible.”

132. Effectively, the Governor not only modified the dates of the session of the Assembly but also cancelled or revoked the dates of the session of the Assembly earlier decided upon in consultation with the Speaker of the Assembly and the Chief Minister of Arunachal Pradesh.

133. On 14th December, 2015 that is two days before the Assembly was to meet, the Council of Ministers of Arunachal Pradesh met and considered Agenda Item No. 1 being “Discussion on the message dated 9th December, 2015 of the Governor of Arunachal Pradesh for pre-ponement of the Assembly session from 14th January, 2016 to 16th December, 2015”. The Minutes of the Cabinet record as follows:

“The Cabinet has discussed the opinion rendered by the Learned Advocate General dated 12.12.2015 on the constitutionality of the order and message of HE, the Governor. After careful examination, the Cabinet has resolved as under:

The State Cabinet at its meeting held on 14th December, 2015 at 1000 hrs in CMs conference hall again discussed in detail the Order and the Message dated 09.12.2015 of His Excellency the Governor of Arunachal Pradesh.

Cabinet has received the opinion of the Ld. Advocate General dated 12.12.2015 and other legal experts on the said Order and Message. The Cabinet has perused the said opinion and is in complete agreement with views of the Ld. Advocate General.

The said Order dated 09.12.2015 issued by His Excellency the Governor of Arunachal Pradesh is in contradiction to Article 174 read with Article 163 of the Constitution of India and Rule 3 and 3A of the Rules of Procedure and Conduct of Business of the Arunachal Pradesh Legislative Assembly. Similarly, the Message is contrary to Article 175 of the Constitution read with Rule 245 of the Rules. Moreover, the Hon’ble High

Court of Gauhati has fixed the hearing of the case of resignation of 2 MLAs from the Assembly on 16th December, 2015.

Therefore, the Cabinet resolves and advises, His Excellency, the Governor of Arunachal Pradesh to recall and cancel the Order and Message dated 9th December, 2015 and allow the Session to be convened on 14th January, 2016 as already ordered and scheduled.

The Cabinet also resolves to endorse a copy of this resolution and legal advice of the Ld. Advocate General to the Hon'ble Speaker."

134. As per the list of dates and events supplied to us, the Speaker urged the Governor by a communication of 14th December, 2015 "to uphold and preserve the sanctity of the constitutional framework and let the House function as per its original schedule without any undue interference." This communication was not acknowledged nor replied to. It has also not been placed before us.

..... and the applicable law

135. It does appear to me, on facts, that the Governor acted unilaterally in issuing the modification Order and did not consult either the Chief Minister or the Speaker. In any event, no such consultation was shown to us. Under these circumstances, the legitimate question that arises is whether the Governor could modify the notified dates of the session of the Assembly and simultaneously cancel and revoke the dates earlier fixed by an appropriate Order in exercise of his powers under Article 174 of the Constitution and (as suggested by learned counsel appearing on his behalf and the movers of the resolution) in the exercise of his discretion under Article 163 of the Constitution? What further complicates the matter is that the Governor

ignored the resolution of the Cabinet of 14th December, 2015 even assuming the communication of the Speaker did not reach him.

136. Our Constitution expects all constitutional authorities to act in harmony and there must be comity between them to further the constitutional vision of democracy in the larger interests of the nation. In other words, conflicts between them should be completely avoided but if there are any differences of opinion or perception, they should be narrowed to the maximum extent possible and ironed out through dialogue and discussion. It must be appreciated that no one is above the law and equally, no one is not answerable to the law and the debate on the First Amendment to the Constitution clearly indicates so.

137. As is evident from our constitutional history, there are three areas in which a Governor might function:

- (15) Areas in which he can act only on the aid and advice of the Council of Ministers. This is in all areas of the executive functions of the State Government [Article 166].
- (16) Areas in which he can act in his discretion by or under the Constitution and in which he does not need to take the advice of the Council of Ministers [Article 163 - “except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.”] or, areas in which he might take the advice of the Council of Ministers but is not bound by it enabling him to act in his individual judgment by or under the Constitution.
- (17) Areas that have no concern with the Constitution. For example, where he is acting *eo nomine*. We are not concerned with this area at all.

For our purposes, a distinction needs to be drawn between the relationship of the Governor vis-à-vis the Executive and the relationship of the Governor vis-à-vis the Legislature. Article 163 deals with the relationship of the first category and Article 174 (among others) deals with the relationship of the second category. We are concerned with the second category, although the submissions of learned counsel have roped in Article 163 of the Constitution by contending that summoning the Legislative Assembly is an executive act or function.

138. It is not at all necessary to enter into a debate on whether the act or function of summoning the Assembly is an executive act or function. Assuming it to be an executive function, summoning the Assembly cannot be read as a 'power' conferred by the Constitution on the Governor - it remains a function that the Governor performs in accordance with the mandate of the Rules of Procedure and Conduct of Business in Arunachal Pradesh Legislative Assembly on the advice of the Chief Minister and in consultation with the Speaker of the Assembly. The unarticulated premise is that the Governor cannot 'act' in an unregulated manner *de hors* any rules of procedure in matters concerning the Legislative Assembly. The Governor is expected to function in accordance with the provisions of the Constitution (and the history behind the enactment of its provisions), the law and the rules regulating his functions. It is easy to forget that the Governor is a constitutional or formal head - nevertheless like everybody else, he has to

play the game in accordance with the rules of the game – whether it is in relation to the Executive (aid and advise of the Council of Ministers) or the Legislature (Rules of Procedure and Conduct of Business of the Arunachal Pradesh Legislative Assembly). This is not to say that the Governor has no powers – he does, but these too are delineated by the Constitution either specifically or by necessary implication. Failure to adhere to these basic principles is an invitation to enter the highway to the danger zone.

139. Assuming however, that the Governor has the ‘constitutional power’ to summon the Assembly (and that it is not merely an executive function) the considerations at law become quite different. Undoubtedly, no power, constitutional or otherwise, can be exercised in an arbitrary manner though the exercise of power, in some situations is undoubtedly beyond judicial consideration or judicial review and at best an academic discussion, for example the legality of using the armed forces of the Union internationally. If the functions of the Governor were to be read as his power, and an untrammelled one at that (in view of Article 163 of the Constitution, as contended), then the Governor has the power to literally summon the Assembly to meet “at such time and place as he thinks fit” that is in any city and at any place other than the Legislative Assembly building and at any odd time. This is nothing but arbitrary and surely, an arbitrary exercise of power is not what our Constitution makers either contemplated in the hands of the Governor or imagined its wielding by any constitutional authority.

140. In the *Case concerning Electronica Sicula S.P.A. (ELSI)*⁶⁵ the International Court of Justice described arbitrariness in the following words:

“128. Arbitrariness is not so much something opposed to a rule of law, as something opposed to the rule of law. This idea was expressed by the Court in the Asylum case, when it spoke of "arbitrary action" being "substituted for the rule of law" (*Asylum, Judgment, I.C.J. Reports 1950, p. 284*). It is a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety.”

141. Does the rule of law in our country permit the Governor to throw constitutional principles and the Rules of Procedure and Conduct of Business of the Arunachal Pradesh Legislative Assembly to the winds and summon the Assembly to meet wherever and whenever he deems appropriate? Surely the answer to this must be in the negative and since that is so, it must follow that the ‘power’ apparently conferred on the Governor is arbitrary and must be read down to at least a ‘reasonable power’ to be exercised in accord and consonance with constitutional principles, law and the rules.

142. On merits, it is not possible or even advisable to look into the pros and cons of the decision taken by the Governor. All that need be said is that the events as they occurred with great rapidity over the days and weeks preceding the modified Order appear to be nothing more or less than a political circus. However, what is disquieting in constitutional terms (and that has nothing to do with the reasons given by the Governor or the merits or otherwise of the decision unilaterally taken by him) is the short shrift that the Governor gave to a possible resolution of the Cabinet of Arunachal

⁶⁵ United States of America v. Italy, I.C.J. Reports 1989, p.15

Pradesh. While issuing the modified Order, the Governor concluded that that he “may not be bound by the advice the Council of Ministers” for whatever reason. From where did the Governor derive this principle and how did he dream that he could invoke the concept of “individual judgment” should a resolution of the Council of Ministers be placed before him – the very concept that our constitution framers were not in favour of?

143. To make matters worse and, in a sense, humiliate the elected government of the day, the Governor did ignore the resolution of the Council of Ministers taken on 14th December, 2015 when it was placed before him. By this time there was a complete break-down of communications between the Governor and the elected Government and that, among other things, led to an unsavory confrontation between the Governor and some Cabinet Ministers. That interpersonal relationships of constitutional functionaries are carried out with such a complete lack of cordiality and gay abandon is indeed unfortunate. The result is a thrashing given to the Constitution and a spanking to governance. It is precisely to avoid this that the Constituent Assembly invoked the “principle of responsible government”. Sir Alladi Krishnaswamy Aiyar, while supporting Dr. Ambedkar’s motion for adopting the Constitution spoke of responsible government and the “breakdown provisions” of the Constitution (not necessarily Article 356) on 23rd November, 1949 (virtually echoing Churchill) as follows:

“After weighing the pros and cons of the Presidential System as obtaining in America and the Cabinet system of Government obtaining in England

and the Dominions, taking into account also the working of responsible Government in the Indian Provinces for some years and the difficulty of providing for a purely presidential type of Government in the States in Part II, (now part IB) this Assembly has deliberately adopted the principle of responsible Government both in the States and in the Centre. At the same time the Assembly was quite alive to the fact that a good number of States in Part IB were unaccustomed to any democratic or responsible Government and with a view of ensure its success and efficient working the early states of the Union Government is entrusted with the power of intervention while there is a failure or deadlock in the working of democratic machinery.

My honourable Friend Prof. K.T. Shah in expatiating upon the merits of the Constitutional system based upon the principle of separation, did not fully realize the inevitable conflict and deadlock which such a system might result in a country circumstanced as India is. The breakdown provisions in the Constitution are not intended in any way to hamper the free working of democratic institutions or responsible Government in the different units, but only to ensure the smooth working of the Government when actual difficulties arise in the working of the Constitution. There is no analogy between the authority exercised by the Governor or the Governor-General under the authority of the British Parliament in the Constitution of 1935 and the power vested in the Central Government under the new Constitution. The Central Government in India in future will be responsible to the Indian Parliament in which are represented the people of the different units elected on adult franchise and are responsible to Parliament for any act of theirs. In one sense the breakdown provision is merely the assumption of responsibility by the Parliament at Delhi when there is an impasse or breakdown in the administration in the Units.”⁶⁶

144. A further word may be said on “responsible government” in addition to the views of the Constituent Assembly. The idea of a responsible government was mentioned in *U.N.R. Rao v. Indira Gandhi*.⁶⁷ However, there was no discussion on what constitutes or is expected of a responsible government other than an expression of a view that the Council of Ministers must enjoy the confidence of the House of the People.

145. In *S.R. Chaudhuri v. State of Punjab*⁶⁸ it was observed that parliamentary democracy generally envisages (i) Representation of the

⁶⁶ <http://parliamentofindia.nic.in/ls/debates/v11p9m.htm>

⁶⁷ (1971) 2 SCC 63 (5 Judges)

⁶⁸ (2001) 7 SCC 126

People, (ii) Responsible government, and (iii) Accountability of the Council of Ministers to the Legislature. With regard to the characteristics of a responsible government, this Court referred to the *Constitutional Law of Canada*⁶⁹ and the limited discretion available to the Governor-General in the following words:

“The narrative must start with an exercise by the Governor-General of one of his exceptional reserve powers or personal prerogatives. In the formation of a Government it is the Governor-General’s duty to select the Prime Minister. He must select a person who can form a Government which will enjoy the confidence of the House of Commons. For reasons which will be explained later, the Governor-General rarely has any real choice as to whom to appoint: he must appoint the parliamentary leader of the political party which has a majority of seats in the House of Commons. But it is still accurate to describe the Governor-General’s discretion as his own, because unlike nearly all of his other decisions it is not made upon ministerial advice.

When the Prime Minister has been appointed, he selects the other Ministers, and advises the Governor-General to appoint them. With respect to these appointments, the Governor-General reverts to his normal non-discretionary role and is obliged by convention to make the appointments advised by the Prime Minister. If the Prime Minister later wishes to make changes in the Ministry, as by moving a Minister from one portfolio to another, or by appointing a new Minister, or by removing a Minister, then the Governor-General will take whatever action is advised by the Prime Minister, including if necessary the dismissal of a Minister who has refused his Prime Minister’s request to resign.”

146. In dealing with the situation in Arunachal Pradesh, the Governor was obliged to adhere to and follow the constitutional principle, that is, to be bound by the advice of the Council of Ministers. In the event that advice was not available and responsible government was not possible, the Governor could have resorted to the “breakdown provisions” and left it to the President to break the impasse. The Governor had the advice of the Council

⁶⁹ (4th Edn., p. 243), Peter W. Hogg, Professor of Law, Osgoode Hall Law School, York University

of Ministers but chose to ignore it; he assumed (well before the advice was tendered) that the advice would be such that he might not be bound by it; the Governor, despite being the ‘first citizen’ of the State, chose to take no steps to break the impasse caused by a collapse of communications between him and the Chief Minister; finally, the Governor took no steps to resort to the breakdown provisions and obtain impartial advice from the President. Instead, the Governor acted in a manner not only opposed to a rule of law but also opposed to the rule of law and, therefore, arbitrarily and in a manner that certainly surprises “a sense of juridical propriety”.

147. The Governor had yet another option available to him – to invoke what is referred in Canada as the “confidence convention” in which “the Prime Minister and the Cabinet are responsible to, or must answer to, the House of Commons for their actions and must enjoy the support and the confidence of a majority of the Members of that Chamber to remain in office.”⁷⁰ If the Governor had any doubt about the continuance of a responsible government as a result of the shenanigans that were going on in Arunachal Pradesh at the relevant time, he could very well have required the Chief Minister to prove that he had the confidence of the Assembly, but he chose not to exercise this option also. In other words, all possible constitutional options were unilaterally discarded and disregarded by the Governor in summoning the Assembly to meet on 16th December, 2015 and

⁷⁰ The House of Commons Procedure and Practice, Second Edition, 2009
[http://www.parl.gc.ca/procedure-book-livre/document.aspx?
sbdid=a24e8688-cc45-4245-8f5c-dd32f4aa9b01&sbpid=3](http://www.parl.gc.ca/procedure-book-livre/document.aspx?sbdid=a24e8688-cc45-4245-8f5c-dd32f4aa9b01&sbpid=3)

cancelling the session fixed for 14th January, 2016. The actions of the Governor were certainly not in the language of the law or the spirit of parliamentary democracy and responsible government. In these circumstances, it must be held that the Governor's unilateral act of summoning the Assembly is unconstitutional.

Relations between the Governor, the Executive and the Legislature

148. The issue may also be looked at from an entirely different perspective based on the provisions of the Constitution. Part VI of the Constitution concerns the States and it consists of six chapters. Chapter I is general and consists of one definition. Chapter II relates to the Executive, that is, the Governor, the Council of Ministers, the Advocate General for the State and conduct of government business. Amongst other things, the 'eligibility' of a person to be appointed a Governor is provided for in this chapter. Article 158 of the Constitution provides that the Governor shall not be a Member of Parliament or of a State Legislature and if such a Member is appointed as a Governor, he shall be deemed to have vacated his seat in the House when he enters upon his office as Governor. This is significant since it insulates the Legislature from the Governor.

149. Article 163 of the Constitution and the discretionary exercise of functions of the Governor comes under the heading of Council of Ministers and is suggestive of executive governance or executive issues concerning the Council of Ministers. In this context, reference may also be made to Article

164 of the Constitution which provides for the appointment of the Chief Minister of the State by the Governor and the appointment of other Ministers on the advice of the Chief Minister. The appointment of the Chief Minister is based on the postulate that he commands or is expected to command the support of a majority of Members of the Legislative Assembly. Therefore, it is not as if the Governor has untrammelled discretion to nominate anyone to be the Chief Minister of a State. Similarly, if the Governor chooses to 'withdraw his pleasure' in respect of a Minister he must exercise his discretion with the knowledge of the Chief Minister and not by keeping him in the dark or unilaterally. In this context, reference may be also be made to Article 165 of the Constitution which deals with the appointment of the Advocate General for the State. He is appointed by the Governor and holds office during the pleasure of the Governor and receives such remuneration as the Governor may determine. It cannot be anybody's case that the Governor, in exercise of his discretion, may appoint any eligible person as the Advocate General without any reference to the Council of Ministers and also 'withdraw his pleasure' at any time in respect of the Advocate General thereby removing him from his office. The purpose of all these provisions is to indicate that the discretion given to the Governor is not all-pervasive or all-encompassing as is suggested by learned counsel for the respondents.

150. That the functions of the Governor are limited to matters of executive governance or executive issues and the Council of Ministers is made explicit

through Article 166 of the Constitution which provides that all executive action of the Government shall be expressed to be taken in the name of the Governor,⁷¹ orders and instruments shall be executed in the name of the Governor⁷² and the Governor shall make rules for the more convenient transaction of business of the Government and allocation of business among the Ministers “in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.” This clearly has reference to Article 163 of the Constitution and must be understood as meaning that framing the rules under Article 166(3) of the Constitution is not the discretion of the Governor but an executive exercise undertaken by the Council of Ministers. Article 167 of the Constitution relates to the duty of the Chief Minister of a State to communicate the decisions of the Council of Ministers to the Governor and furnish information to the Governor. Chapter II of Part VI of the Constitution is, therefore, quite compact and delineates the relations between the Executive and governance of the State.

151. Chapter III concerns itself with the State Legislature and several aspects concerning the State Legislature. As far as the Governor is concerned, Article 168 in this chapter of the Constitution provides that the State Legislature shall consist of the Governor and its House(s). [However, in view of Article 158 of the Constitution the Governor is not a member of

⁷¹ Article 166(1) of the Constitution

⁷² Article 166(2) of the Constitution

the State Legislature.] His status, therefore, for lack of a better word, is that of a constituent of the Legislature. What are his functions in this capacity? In *Rai Sahib Ram Jawaya Kapur* the Constitution Bench observed that: “It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away.” In so far as this chapter is concerned, his functions are certainly not legislative (those are dealt with in Chapter IV of Part VI of the Constitution); his powers in this chapter are also certainly not judicial, and therefore clearly executive in character. What are these executive functions?

152. Amongst others, Article 174 of the Constitution provides that the Governor shall summon the Legislative Assembly from time to time and may prorogue and dissolve the Legislative Assembly. Summoning the House was described by Pandit Jawaharlal Nehru in the debate on 16th May, 1951 on the First Amendment to the Constitution as “an indirect duty” of the President. He went on to say that by the President, he meant the government of the day. Applying this to Article 174 of the Constitution, the Governor is obliged to perform this indirect duty. Since this indirect duty is executive in character, it cannot be performed except on the aid and advice of the Council of Ministers so as to avoid a “futile operation” and subject to the procedure mentioned in the Rules referred to above. Proroguing and dissolving the

House must also follow a similar procedure as summoning the House. It would be doing violence to all canons of interpretation if the discretion of the Governor in Chapter III is incorporated in Chapter IV and given a wider and greater interpretation than intended in Chapter III.

153. Addressing the House under Article 175(1) of the Constitution or making a special address under Article 176 of the Constitution would also be executive functions performed by the Governor on the aid and advice of the Council of Ministers. There can hardly be any dispute on this. Sending a message to the House under Article 175(2) of the Constitution might not strictly be an executive function but would fall in a separate category altogether which might be described as having a quasi-executive or quasi-legislative flavour. This entitlement specifically provided for in the Constitution is exercised by the Governor as a constituent of the Legislature and therefore not traceable to the aid and advice of the Council of Ministers.

154. There are other executive functions that a Governor is required to perform with respect to the Legislature. Some of these are provided for in Article 180 of the Constitution (referred to above), Article 184 of the Constitution (which pertains to the Legislative Council and is in *pari materia* with Article 180 of the Constitution) and recruitment and conditions of service of secretarial staff of the Legislative Assembly or the Legislative Council as the case may be (Article 187 of the Constitution). If the provisions of Article 163 of the Constitution are read into all these executive

functions relatable to the Legislature and the exercise of discretion of the Governor cannot be questioned (as contended by learned counsel for the respondents) then the Legislature could and would be dominated by the Governor – something completely unthinkable in a parliamentary democracy, where the Governor cannot dominate the Executive but could dominate the Legislature!

155. It is not necessary for the present purposes to delve into the Governor's role in legislative or quasi-legislative issues, such as assent to Bills (Article 200 and 201 of the Constitution), procedure in financial matters and legislative powers of the Governor (Chapter IV). Nor is it necessary to deal with the relations between the Governor and the Judiciary (Chapter V and Chapter VI of Part VI of the Constitution). All that need be said is that except in specified matters, executive functions of the Governor whether relating to governance issues or issues pertaining to the Legislature are required to be performed by him on the aid and advise of the Council of Ministers and the Rules framed by the House. No discretion is available to him in these matters since he is bound by the advice given to him by the Council of Ministers and Article 163 of the Constitution cannot be imported into these matters. The only discretion available to the Governor under Article 163 of the Constitution is in respect of matters provided for by or under the Constitution not relatable to the Council of Ministers and the Judiciary.

156. In the view that I have taken, the question relating to the interpretation of Article 175 of the Constitution and the validity of the message of the Governor becomes academic or does not arise and it is not necessary or even advisable to answer it. This Court has held on several occasions that it is inexpedient to delve into problems that do not arise and express an opinion thereon.⁷³

157. Therefore, I answer the first three questions in the negative and hold that the fourth question does not arise in the circumstances of the case.

158. The fifth and final question in these appeals is: Whether the Deputy Speaker of the Legislative Assembly of Arunachal Pradesh was entitled at law to set aside the order of the Speaker of the Legislative Assembly of Arunachal Pradesh by which the Speaker had disqualified fourteen Members of the Legislative Assembly of Arunachal Pradesh (including the Deputy Speaker) under the Tenth Schedule of the Constitution?

159. The question here is not whether the disqualification of fourteen members of the Legislative Assembly is valid or not. That was a matter pending consideration in the Gauhati High Court when judgment in these appeals was reserved, but has since been decided. We are not concerned with the decision of the Gauhati High Court or the power or propriety of the decision of the Speaker. The narrow question is whether the Deputy Speaker could, by his order dated 15th December, 2015 set aside the order of the

⁷³ Sanjeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd., (1983) 1 SCC 147

Speaker also dated 15th December, 2015 disqualifying fourteen members of the Legislative Assembly including the Deputy Speaker himself.

160. The Speaker gave a notice to fourteen members of the Legislative Assembly on 7th December, 2015 requiring them to show cause why they should not be disqualified under the Tenth Schedule of the Constitution. Thereafter, by an order dated 15th December, 2015 the Speaker disqualified them from their membership in the Legislative Assembly. As mentioned above, the correctness of this order and the procedure followed has now been decided by the Gauhati High Court and the correctness of that decision is not before us.

161. The Deputy Speaker passed an order on 15th December, 2015 *inter alia*, on the ground that the Speaker lacked the competence to pass the disqualification order and that he had not followed the constitutional and legal procedures. He had had lost his competence to pass the disqualification order since a notice of his removal dated 19th November, 2015 was pending and was to come up before the Legislative Assembly on 16th December, 2015. In passing his order of 15th December, 2015 the Deputy Speaker purported to derive his power from the message given by the Governor to the Legislative Assembly on 9th December, 2015 requiring the Deputy Speaker to conduct the proceedings of the House on the resolution for removal of the Speaker. What is important to note is that the Deputy Speaker was to preside over the House on 16th December, 2015. He

certainly had no derivative power from the message of the Governor dated 9th December, 2015 to take over the functions of the Speaker or to sit in judgment over the decision of the Speaker of 15th December, 2015.

162. That apart, it is now well settled by the decision of this Court in *Kihoto Hollohan v. Zachillhu*⁷⁴ that the Speaker while acting under the Tenth Schedule of the Constitution acts as a Tribunal and his decision can be challenged only in a court exercising constitutional jurisdiction. It was held in *Kashinath Jalmi v. Speaker*⁷⁵ that even the Speaker does not have the power to review the decision taken by him under the Tenth Schedule of the Constitution. Under these circumstances, there is absolutely no question of the Deputy Speaker setting aside the order of the Speaker passed under the Tenth Schedule of the Constitution.

163. It is also important to note that the Deputy Speaker was himself disqualified from the membership of the Legislative Assembly by the Speaker and he could certainly not have set aside the order passed against him and in respect of which he would be the beneficiary. There is no doubt that the Deputy Speaker had no authority at all to set aside the decision of the Speaker passed under the Tenth Schedule of the Constitution. The fifth question is answered in the negative.

164. In the view that I have taken, I am of opinion that the view expressed by my learned Brothers relating to the power or propriety of the Speaker

⁷⁴ 1992 Supp.(2) SCC 651

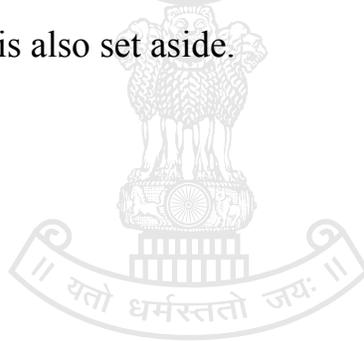
⁷⁵ (1993) 2 SCC 703

taking a decision under the Tenth Schedule of the Constitution with regard to the fourteen members of the Legislative Assembly does not at all arise in these appeals.

Final order

165. The appeals are allowed. The impugned judgment and order of 13th January, 2016 passed by the Gauhati High Court is set aside. The modification Order of 9th December, 2015 passed by the Governor of Arunachal Pradesh is unconstitutional and is set aside and the order of the Deputy Speaker dated 15th December, 2015 setting aside the order of the Speaker of the same date is also set aside.

**New Delhi;
July 13, 2016**



.....J
(Madan B. Lokur)

JUDGMENT