IN THE GAUHATI HIGH COURT

(**THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH**)

(1) I. A. No.2838 of 2015

In WP(C) No.7745 of 2015

1. **SHRI PEMA KHANDU**,
PO & PS- Itanagar, District – Papum Pare.

2. **SHRI KUMAR WAII**,
PO & PS- Itanagar, District – Papum Pare,

PIN – 791111.

3. **SHRI JARKAR GAMLIN**,
MLA Cottage No.5, E-Sector, PO & PS- Itanagar, District – Papum Pare, PIN – 791111.

4. **SHRI P.D. SONA**,
MLA Cottage No.5, E-Sector, PO & PS- Itanagar, District – Papum Pare, PIN – 791111.

5. **SHRI MUTCHU MITHI**,
Private Residence, Opposite SBI Bank, Tadar Tang Marg, Bank Tinali, PO & PS- Itanagar, District – Papum Pare, PIN – 791111.

6. **SHRI KAMLUNG MOSSANG**,
Bungalow No.4, Niti Vihar, PO & PS- Itanagar, District – Papum Pare, PIN – 791111.

7. **SHRI PHOSUM KHIMHUN**,

Bungalow No.14, Niti Vihar, PO & PS- Itanagar, District – Papum Pare, PIN – 791111.

8. **SHRI W. LOWANGDONG**,

Bungalow No.5, Niti Vihar, PO & PS- Itanagar, District – Papum Pare, PIN – 791111.

9. SHRI T. WANGHAM,

Bungalow No.7, Doordarsan Colony, PO & PS- Itanagar, District – Papum Pare, PIN – 791111.

10. SHRI WANGKI LOWANG,

Bungalow No.9, Vovek Vihar, PO & PS- Itanagar, District – Papum Pare, PIN – 791111.

11. SHRI KALIKHO PUL,

Quarter No.8, Type V, ESS Sector, PO & PS- Itanagar, District – Papum Pare, PIN – 791111.

.....Applicants

- VERSUS -

SHRI NABAM REBIA, Speaker of the Arunachal Pradesh Legislative Assembly, Naharlagun, Arunachal Pradesh.

.....Respondent

(2) I. A. No.2839 of 2015

In WP(C) No.7745 of 2015

1. THE DEPUTY SPEAKER,
Arunachal Pradesh Legislative Assembly, Naharlagun, Arunachal Pradesh.

2. SHRI T.N. THONGDOK,

Quarter No.5, Type V, Mowb-II, PO & PS- Itanagar, District – Papum Pare, PIN – 791111.

.....Applicant

- VERSUS -

SHRI NABAM REBIA,

Speaker of the Arunachal Pradesh Legislative Assembly, Naharlagun, Arunachal Pradesh.

.....Respondent

(3) I. A. No.2843 of 2015

In WP(C) No.7745 of 2015

1. DR. MOHESH CHAI,
Member of Arunachal Pradesh Legislative Assembly, Tezu (ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin – 791111

2. SRI JAPU DERU,
Member of Arunachal Pradesh Legislative Assembly, Bomdila (ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

3. SRI TAGE TAKI,
Member of Arunachal Pradesh Legislative Assembly, Ziro-Hapoli (ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

4. SRI TAMAR MURTEM,
Member of Arunachal Pradesh Legislative Assembly, Raga (ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

5. SRI TUMKE BAGRA,
Member of Arunachal Pradesh Legislative Assembly, Aalo West(ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

6. SRI TAMIYO TAGA,
Member of Arunachal Pradesh Legislative Assembly, Rumgong(ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

7. SRI KENTO RINA,
Member of Arunachal Pradesh Legislative Assembly, Nari-Koyu(ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

8. SRI KALING MOYONG,
Member of Arunachal Pradesh Legislative Assembly, Pasighat East (ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

9. SRI OLOM PANYANG,
Member of Arunachal Pradesh Legislative Assembly, Mariang-Geku(ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

10. SRI LAISAM SIMAI,
Member of Arunachal Pradesh Legislative Assembly, Nampong(ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

11. SRI TESAM PONGTE,
Member of Arunachal Pradesh Legislative Assembly, Changlang North (ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

12. SRI TSERING TASHI,
Member of Arunachal Pradesh Legislative Assembly, Tawang(ST) Legislative Assembly Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

13. SRI PAKNGA BAGE,
Member of Arunachal Pradesh Legislative Assembly, Dumporijo(ST) Legislative Assembly

Constituency, Itanagar, Arunachal Pradesh, Pin - 791111

.....Applicants

-Versus-

1. SHRI NABAM REBIA,
Speaker of the Arunachal Pradesh Legislative Assembly, Naharlagun, Arunachal Pradesh.

(Writ Petitioner)
.....Opposite Party

(4) I. A. No.30 of 2016

In WP(C) No. 7745 of 2015

The Governor of Arunachal Pradesh,
Represented by the Deputy Secretary to the Governor of Arunachal Pradesh,
Raj Bhawan, Itanagar,
Dist.- Papumpare, Arunachal Pradesh.

.....Applicant

-Versus-

1. Shri Nabam Rebia, Speaker of the Arunachal Pradesh Legislative Assembly, Naharlagun, Arunachal Pradesh.

.....Respondent.

2. The Deputy Speaker, Arunachal Pradesh Legislative Assembly, Naharlagun, Arunachal Pradesh & 14 others.

.....Proforma respondents.

(5) I. A. No.2899 of 2015

In WP(C) No. 7998 of 2015

1. The Deputy Speaker, Arunachal Pradesh Legislative Assembly, Naharlagun, Arunachal Pradesh and another.

.....Applicants

-Vs-

1. Bamang Felix, Member of Legislative Assembly, State of Arunachal Pradesh, son of Late Bamang Tasung, Resident of village- Langro, PO & PS- Sangram, District- Kurung Kumey, Arunachal Pradesh, PIN-791110 & another.

.....Respondents.

BEFORE

THE HON'BLE MR. JUSTICE B.K. SHARMA.

For the writ petitioners :	1.	Mr. S. Bansal, Sr. Adv.
	2.	Mr. V. Tankha, Sr. Adv.
	3.	Mrs. I.J. Singh, Sr. Adv,
	4.	Mr. Balbir Singh, Sr. Adv.
	5.	Mr. K.N. Choudhury, Sr. Adv.
	6.	Mr. Aswini Kumar, Sr. Adv.
	7.	Mr. J. Patowary, Adv.
For the applicant/respondents :	1.	Mr. L.N.Rao, Sr. Adv.

		2. Mr. D.K. Mishra, Sr. Adv.
		3. Mr. S.S. Dey, Sr. Adv.
		4. Mr. P.K. Tiwari, Sr. Adv.
		5. Mr. G. Shivshankar, Adv.
		6. Mr. M. Nath, Adv.
		7. Mr. K. Sexana, Adv.
For the Governor of A.P.	:	Mr. Jain, Sr. Adv.
		Mr. B.D. Goswami, Adv.
For the State of A.P.	:	Mr. M.L. Verma, Sr. Adv.
		Mr. K. Ete, AG, A.P.
		Mr. Nabam, Sr. Govt. Adv, A.P.
Date of hearing	:	04/01/2016, 05/01/2016, 06/01/2016,
		07/01/2016 and 08/01/2016.
Dates of judgement	:	13/01/2016

JUDGEMENT AND ORDER (CAV)

[1] The basic issue involved in these two writ petitions is as to whether the Governor of a State is to act only with the aid and advice of the council of Ministers in all circumstances or the Governor is empowered being the custodian of an executive and other powers under various Articles of the Constitution of India is entitled to exercise independent/discretionary powers. The other issues including the right of the Governor to address and send messages to the Legislative Assembly was legally permissible in the fact situation involved in this case. The concerned Articles of the

Constitution of India in this regard are Article 174 and Article 175. The other issues involved are incidental to the above issues.

[2] The background facts involved in this proceeding have seen set out in the interim order passed on 17.12.2015, which reads as follows:

> *"BACKDROP*
>
> *3. The party wise composition of the Arunachal Pradesh State legislature in the 60 member House is Congress-47, BJP-11 and Independent-2.*
>
> *4. The sitting of the Sixth Sessions of the State Assembly was notified for 14.1.2016 by the Governor on 3.11.2015 and at that stage, the 16 Congress MLAs gave notice for removal of the Deputy Speaker. Next the 11 BJP MLAs issued notice for removal of the Speaker and this move against the petitioner was supported by 2 Independent MLAs.*
>
> *5. The 13 MLAs in the opposition requested the Governor for pre-poning the assembly session for considering the Speaker's removal.*
>
> *6. The request of the opposition MLAs was acted upon by the Governor and on 9.12.2015, the Governor issued the notification for pre-scheduling the assembly session to 16th December, 2015 from 14th January, 2016, to facilitate the House to consider removal of the speaker. Simultaneously a second notification was issued on the same day whereby the Governor issued a message fixing the resolution of the Speaker's removal, as the first agenda item in the pre-poned assembly session.*
>
> *7. At that stage the Congress party whip applied for disqualification of respondent Nos. 2 to 15 under the anti-defection Rules and the State Cabinet passed a resolution on 14.12.2015 to the effect that the Governor's decision to prepone the assembly session is contrary to constitutional provisions and the Rules of Procedure. On the same day, the Speaker also wrote to the Governor for allowing the House to function as per its originally notified schedule.*
>
> *8. On 15th December, 2015, the respondent Nos. 2-15 were declared to be disqualified and consequently those 16 seats were notified to be vacant. But the Deputy Speaker issued an order quashing the Speaker's order, on disqualification of the 16 MLAs.*
>
> *9. the preponed session of the assembly was held at a community hall (not in the assembly house) where Deputy Speaker conducted the proceeding and as per the first agenda item notified by the Governor, a resolution for removal of the Speaker was adopted and the Speaker's office was declared to be vacant.*
>
> *10. The opposition group then proposed for a test of strength on the floor of the House and the Deputy Speaker scheduled the motion for consideration of the House for today ie. 17th December, 2015 and the assembly is scheduled to consider whether the Chief Minister Nabam Tuki was enjoying the majority support or*

whether the vote of confidence of the House is in favour of the respondent Nos. 3 Kalikho Pul."

[3] **The basic thrust of the petitioners' arguments** set out in both the writ petitions filed by the Speaker of the Arunachal Pradesh Legislative Assembly [WP(C) No. 7745/2015) and two Members of the Legislative Assembly [WP(C) No. 7998/2015) respectively is that the Governor exceeded in his jurisdiction and power to prepone the State Assembly session taking recourse to the provisions of Article 174 of the Constitution of India and so also in issuing the messages under Article 175(2) of the Constitution of India, on the following grounds:

(i) There is no provision in the Constitution of India conferring exclusive and independent power on the Governor to prepone State Assembly's session

(ii) Article 174 (1) of the Constitution of India though confers power to summon the State Assembly from time to time, the same is required to be exercised with aid and advice of the Chief Minister (and his council of Minister). This position of law is evident from Rule 3 of the Conduct of Business Rules, which in no uncertain terms envisage that the Chief Minister in consultation with the Speaker, fix date of commencement and the duration of the State Assembly's session, advice the Governor to issue summons under Article 174 (1)of the Constitution of India.

(iii) Governor summons a house not of his own accord but only when advised to do so by the Council of Ministers. It is the Council of Ministers, which provides business for a session of the legislature. Thus, it follows that for the Governor to act otherwise than such advice in the matter of summoning a house would be without purpose.

(iv) Article 163(1) of the Constitution expressly requires the Governor to act on aid and advice of the Chief Minister and the Council of Minister except where the Governor is required by or under the Constitution to act in his discretion. As stated above, there is no provision under the Constitution of India that exclusively and

independently empowers the Governor to summon the State Assembly. Further, summoning of the State Assembly (particularly to prepone the State Assembly) under Article 174 (1) of the Constitution of India also does not fall within the discretion of the Governor.

(v) In PU Myllai Hlychho and Ors v. State of Mizoram, (2005) 2 SCC 92, the five judges constitutional Bench of the Apex Court having categorically laid down that 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 the Council of Ministers. Whenever the Constitution requires the satisfaction of the Governor for the exercise of any power or function, the satisfaction required by the Constitution is not personal satisfaction of the Governor but the satisfaction in the constitutional sense under the Cabinet system of Government. The Governor exercises functions conferred on him by or under the Constitution with the aid and advice of the Council of Ministers.

(vi) In Shamsher Singh v. State of Punjab and Anr., (1974) 2 SCC 831, a seven judges constitutional bench held that our Constitution embodies generally the Parliamentary or Cabinet system of Government of the British model both for the Union and the States. Under this system, the President is the constitutional or formal head of the Union and he exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers

(vii) The impugned order dated 9.12.2015 having been issued by the Governor at the request of 13 MLAs without consulting the Chief Minister and the Council of Ministers as required under Article 174(1) read with Article 163(1) of the Constitution and Rule 3 of the Conduct of Business Rules, the same is unconstitutional and bad in law.

(viii) Although Article 175 (2) of the Constitution of India empowers the Governor to send messages to the State Assembly, but he was debarred from doing so in respect of a resolution pending before the house. In this connection, the petitioners have placed reliance on the decision of the Apex Court in Union of India & Ors. V. Valluri Basavaiah Chowdhary and Ors reported in (1979) 3 SCC 324.

(ix) The Business Advisory Committee of the State Assembly ("Business Advisory Committee") has been constituted under Article Rule 244 of the Conduct of Business Rules. This Business Advisory Committee under Rule 245 of the Conduct of Business Rules is entrusted with the responsibility to fix the business and agenda(s) of the State Assembly. The resolution for removal of Speaker was moved on 19.11.2015 i.e. after conclusion of the State Assembly. Thus, no occasion for Business Advisory Committee arose at that time to fix schedule/time for taking up the resolution in State Assembly. The Governor before about a month from the originally scheduled date of State Assembly's session summoned the State Assembly. There is nothing in the Governor's Message or Order dated 9.12.2015 that indicates that the Business Advisory Committee or the Speaker has refused to take up the said resolution.

(x) Messages under Article 175 (2) of the Constitution of India cannot be issued with respect to a resolution, issuance of the Message directly impinged upon the functions of the Business Advisory Committee. This become all the more important when there is no recordial in the Order or the Message that there was any reluctance on part of the Business Advisory Committee or the Speaker to take up the resolution in State Assembly sixth session, as originally scheduled.

(xi) Resolution for removal of Deputy Speaker was moved before the resolution of the Speaker was moved. However, the Governor by issuing the Message has given priority to the resolution for removal of the

Speaker without making any reference to the other notice of resolution. This puts a serious question mark on proprietary and bonafide of the governor's Message.

(xii) The respondent Nos. 2 to 15 have been acting against the interest of INC with support (both financially and logistically) of and at the behest of BJP leadership in New Delhi and Arunachal Pradesh. These respondents along with other members of BJP had planned to unconstitutionally topple the present INC government in Arunachal Pradesh. An FIR was lodged against the respondent No. 13 and others making certain serious allegations including the allegation of illegal gratification.

(xiii) The respondent Nos. 2 top 15, to obviate the effect of Article 191 (2) read with Schedule 10 of the Constitution of India (i.e. disqualification from membership of the State Assembly) were wanting to remove the petitioner from office of the Speaker of the State Assembly in conspiracy with BJP and RSS leaders. This nefarious design of the respondent Nos. 2 to 15 is now evident from the Notification issued by the Deputy Speaker.

(xiv) It was in pursuance of their aforesaid conspiracy, the respondent Nos. 2 to 15 managed to secure an the order and Message dated 9.12.2015 from the Governor preponing the State Assembly's session from 14.1.2016 to 16.12.2015. and inter alia fixing 'resolution for removal of speaker' as the first item on the agenda of the house.

(xv) The Deputy Speaker himself having stood disqualified,, he along with other disqualified MLAs could not have participated in any proceedings of the Assembly. The Deputy Speaker by passing the order dated 15.12.2015 became the judge of his own cause. He also could not have held the session of the State Assembly outside Vidhan Sabha unauthoisedly.

(xvi) Under the scheme of the Constitution of India, the Deputy Speaker does not have any jurisdiction or power to sit over in appeal and quash decisions of the Speaker. The aforesaid 14 Congress MLAs were disqualified since they have voluntarily given up their membership as interpreted by the Supreme Court in several judgments. This disqualification was strictly in terms of Article 191 (2) read with Schedule 10 of the Constitution of India, para 2 (1) (a), 6(1) & (2) and Rule 3(7) and 6 of the Members of Arunachal Pradesh Legislative Assembly (Disqualification on ground of defection) Rules, 1987.

(xvii) Constitution of India does not vest any power on the Deputy Speaker to hold session of the State Assembly at such place as he deems fit. The place for holding session of the State Assembly can only be the house. In terms of Article 174 (1) read with Article 163 (1) of the Constitution of India and Rule 3 of the Conduct of Business Rules, the place of holding State Assembly session can only be changed on the advice of the Chief Minister (and the Council of Ministers) and not at whims and fancies of the Deputy Speaker.

(xviii) In the present case holding of State Assembly at Tetchi Takar Community Hall, G Sector instead of the House, as provided in notification dated 9.12.2015 (even if we assume Governor's order to be a valid order for the sake of argument) is unconstitutional and illegal. This is contrary to Article 174 (1) read with Article 163 (1) of the Constitution of India and Rule 3 of the Conduct of Business Rules since as in the present case neither the Chief Minister was consulted for varying the venue nor Governor has passed any Order in this regard.

(xix) In view of the aforesaid the Notification dated 15.12.2015 issued by the Deputy Speaker on the basis of purported resolution passed in sessions of the State Assembly held outside the precincts of the House is illegal and non-est in the eyes of law.

(xx) The Notification and Resolution dated 16.12.2015 for removal of the petitioner from the office of the Speaker is bad in law and non-est. It is submitted that the sitting in which the said resolution was passed as state above was unconstitutionally called. This, all proceedings and consequences thereof are also unconstitutional. No resolution passed in such sitting and no notification issued on the basis of such resolution have any force of law.

(xxi) The Deputy Speaker himself stood disqualified by the Disqualification Order. Thus, the Deputy Speaker along with other disqualified MLAs of INC could not have participated in any proceedings of the State Assembly. It is submitted that upon disqualification any resolution passed in the purported session of the State Assembly is not a resolution passed in the purported session of the State Assembly is not a resolution, having any legal sanctity.

(xxii) The vote in the instant case has been procured by using unfair means including use of money power and as a result entire voting process allegedly undertaken by the Deputy Speaker becomes vitiated and untenable in law.

[4] With the above grounds, the writ petition being WP(C) No. 7745/2015 was moved on 17.2.2015 and the submission made on behalf of the petitioners and so also the respondents No. 4 and 5 were recorded thus.

"PETITIONER'S CASE

> ***11. The petitioner refers to the contour of the power of the Governor under Article 174 of the Constitution of India to project that this power as a Constitutional head must be exercised for permitted purpose and in the manner indicated and the same can't be misutilized to undermine the position of the other constitutional functionaries of the State.***
>
> ***12. Mr. Sibal submits that the power conferred on the Governor to send Message to the House under Article 175(2) of the Constitution of India can't be invoked to set out the Assembly Agenda and the learned Senior Counsel contends that the Governor has acted beyond his permitted jurisdiction.***

13. Referring to the constitutional position of the Governor, who is expected to act on the aid and advice of the Council of Ministers, Mr. K. Sibal points out that the Governor acted on the basis of the notice given by the leader of Opposition and this under the constitutional parameters, is legally impermissible.

14. The Senior Counsel points out that the notice for removal of the Deputy Speaker was issued by 16 Congress MLAs on 6.11.2015 and this was followed by the opposition group's notice of 19.11.2015 for removal of the Speaker by 13 MLAs and yet the Governor by stipulating the Agenda in the House, prioritised the discussion on the second notice against the Speaker, to undermine the business procedure of the House.

15. Placing reliance on the Rules of procedure and conduct of business adopted by the Arunachal Pradesh Legislative Assembly, Mr. Sibal submits that the Assembly is to be summoned by the Governor on the advice of the Chief Minister and in the present case, the Assembly was scheduled for 14.1.2016 and yet, without the requisite advice of the Chief Minister, the Governor pre-poned the Assembly Session, by acting on the request of the Members of the Opposition.

RESPONDENTS' SUBMISSION

16. Representing the respondents 4 & 5, who were disqualified by the Speaker but restored to their position by the Deputy Speaker, Mr. A.M. Buzarbaruah, the learned Senior Counsel submits that it is not obligatory for the Governor in all situation to act on the aid and advice of the Council of Ministers and exceptions have been curved out in the constitutional scheme and the judgment of the Apex Court, to allow the Governor to act at his discretion in certain exigencies to meet emergent constitutional situation.

17. The respondents contend that since the Speaker has been removed from his office through the Notification dated 16.12.2015, this Court should not pass any interim order which will amount to turning the clock back for the already concluded events."

[5] On the basis of the above, this Court recorded the following prima facie observation towards issuance of notice to the other respondents and passing an interim order keeping in abeyance all the impugned decisions.

"COURT'S PRIMA FACIE OBSERVATION

18. The submissions made by the learned counsel have received my earnest consideration.

19. The Governor while summoning the House of the State Legislature, is required to perform his duty with the aid and advice of the Council of Minister and the Chief Minister in consultation with the Speaker is made competent to advice the Governor, for summoning the Assembly, under the Rules of Procedure and Conduct of Business of the Arunachal Pradesh Legislative Assembly. In discharging this function, the Governor acts as a constitutional head and therefore his decision to pre-pone the assembly session without advice of the Chief Minister and primarily

on requisition made by the opposition MLAs, taints the Governor's order and renders it unworthy of the State's constitutional head.

20. The power of the Governor to send message to the House is with respect to a pending bill in the House and this power under Article 175(2), can't be utilized to send message on a pending resolution for removal of the speaker and hence this appears to be an act of exceeding the jurisdiction.

21. Moreover the resolution for removal of the Deputy Speaker was moved prior to the similar resolution for the Speaker and yet the Governor has fixed the later resolution as the first agenda. This suggest a non bonafide intervention by the constitutional head in the context of his decision to advance by a month the assembly session only in order to take up as a first agenda, the resolution for removal of the speaker in a session to be presided by the Deputy Speaker, who himself is facing a resolution for removal, from an earlier date.

22. In the constitutional scheme of democratic India, the President or the Governor has a well-defined role and when the Governor acts on his own discretion in certain exceptional situation, his action must be for furtherance of the constitutional goals. In our legal framework the defacto authority of the State vest on the elected Government and not on the constitutional head.

23. The disturbing developments in the State of Arunachal Pradesh noticed from the various steps taken since November 2015 indicates the tussle for power by opposing group and it is clear that the Speaker and the Deputy Speaker of the Assembly are heading the opposite camps. Understandably the action of the MLAs are motivated by political exigencies and a manifestation of this can be seen from the FIR dated 20.12.2015. In such situation, the Governor as the constitutional head, is expected to discharge his role with dispassion and within the constitutional framework. But the impugned steps taken by the State's Governor which facilitated the political battle to move in certain direction in the tussle for power, reflects the non neutral role of the constitutional head and this is undermining the democratic process.

24. Therefore let Notice returnable on 1.2.2016 be issued. Steps be taken by the petitioner to serve notice on the respondents, who are unrepresented today. The petitioner is permitted to implead additional party as may be advised and in that event, notice may be issued to them as well.

25. Taking all the above factors into account, meanwhile, the impugned decision(s) are ordered to be kept in abeyance until the case is considered next. List on 1.2.2016."

[6] It will be appropriate at this stage to refer to the final prayers made in the writ petition and so also the interim prayer.

"FINAL PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

(a) Pass a writ of Certiorari or any other such other or further writ(s) quashing:-

i. Governor's Order dated 09.12.2015 preponing Session of sixth Arunachal Pradesh Legislative Assembly from 14th January 2016 to 16th December 2015.

ii. Governor's message dated 09.12.2015 fixing 'Resolution for removal of Speaker's as first item of the business at the purported first sitting of sixth session of the Arunachal Pradesh Legislative Assembly.

iii. Deputy Speaker's order dated 15.12.2015 quashing disqualification of respondent Nos. 3 to 15 made by the Speaker under Article 191 (2) read with Para 2 (1) (a) and 6 (1) & (2) and Rule 3 (7) and Rule 6 of the Members of Arunachal Pradesh Legislative Assembly (Disqualification) on ground of defection) Rules, 1987.

iv. Notification and resolution dated 16.12.2015 removing the petitioner from the office of the Speaker of the Legislative Assembly of the Arunachal Pradesh.

(b) Declare holing sitting(s) of the purported sixth session of the Arunachal Pradesh Legislative Assembly outside the House to be illegal and unconstitutional; and
Pass any other of further order(s) as this Hon'ble Court in the facts and circumstances of the present case deems fit and proper in the interest of justice.

INTERIM PRAYERS

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

(a) Pass an ad-interim/interim order restraining the respondent No. 1 from holding any sitting of the Arunachal Pradesh Legislative Assembly pursuant to the Governor's Order and Message dated 09.12.2015; and

(b) Pass any other of further order9s) as this Hon'ble Court in the facts and circumstances of the present case deems fit and proper."

[7] The original writ petition being WP(C) No. 7745/2015 as it stood at the time of filing of the writ petition was against 14 MLAs including the Deputy Speaker, who was included as party respondent both in his official capacity and personal capacity. However, later on, on the basis of the orders passed on 21.12.2015 in I.A. No. 2823/2015 and I.A. No. 2822/2015, the respondents No. 16 to 25 numbering 20 were added as party respondents. They are all members of Legislative Assembly in 60 members' house. They were so impleaded on the basis of their application referred to

above. Further, the Governor of Arunachal Pradesh was also added as party respondent NO. 36 on the basis of the application being I.A. No. 29/2016 filed on his behalf. As will be evident from the application in I.A. No. 29/2016, the Governor got himself impleaded as party respondent primarily because of the purported adverse comments recorded against him in the interim order. It has also been contended in the said application that the petitioners having attributed biasness in the action of the Governor in preponing the session of the Arunachal Pradesh Legislative Assembly and there being deliberate concealment of fact in the writ petition, for the efficacious adjudication of the matter, the applicant, i.e. Governor was a necessary party.

[8] So far as the second writ petition being WP(C) No. 7998/2015 is concerned, the same has been filed by two MLAs challenging the orders referred to above on the said ground. In the said writ petition, apart from 14 MLAs who were initially party respondents in the first writ petition including the Deputy Speaker, both in his official and individual capacity, the petitioners have also added the Governor and the State of Arunachal Pradesh as party respondents. The writ petition was entertained on 21.12.2015 and while issuing notice, no interim order was passed. However, the writ petition was directed to be placed along with the first writ petition being WP(C) No. 7745/2015.

[9] The I.A. No. 2838/2015 has been filed by 11 MLAs, who are respondents No. 1, 2, 3 and 6 to 15 in WP(C) No. 7745/2015 and who were not heard when the interim order was passed. As noted above, the interim order was passed upon hearing the learned counsel for the petitioner and the learned counsel representing the respondents No. 4 and 5. The I.A. No. 2839/2015 has been filed by the Deputy Speaker, who is party respondent No. 1/15 in WP(C) No. 7745/2015. The I.A. No. 2843/2015 has been filed by 13 MLAs who got themselves impleaded by filing I.A. No. 2823/2015 (vide order dated 21.12.2015). They have been impleaded as respondents No. 23 to 35.

[10] In all the above IAs, the respondents have prayed for dismissal of the writ petition being WP(C) No. 7745/2015 alleging want of maintainability and also for recalling/modification/alteration/vacation of the interim order dated 17.12.2015.

[11] In I.A. No, 30/2016 has been filed on behalf of the Governor so as to bring on record his version of the entire episode with the prayer to expunge the purported adverse comments appearing in the interim order dated 17.12.2015. I.A. No. 2899/2015 has been filed in other writ petition being WP(C) No. 7998/2015 challenging the very maintainability of the writ petition. The I.A. has been filed by the Deputy Speaker in his official as well as personal capacity.

Pleas of the respondents in IA No. 2838/2015, IA No. 2839/2015 and 2843/2015 in WP(C) No. 7745/2015 and so also in I.A. No. 2998/2015 filed in WP(C) No. 7998/2015.

[12] In all the above I.As., the respondents, both original and newly impleaded, which comprised of 34 MLAs, they have pleaded and urged the following facts and grounds :-

i. In the State of Arunachal Pradesh, the election was held in April, 2014 and the current Party wise composition of the State Legislature is - Indian National Congress- 47; Bharatiya Janata Party-11 and Independent-2, (total 60).

ii. On 31.10.2015, 5th Session of the State Assembly got concluded. Consequently, in terms of the mandate of Article 174(1) of the Constitution, the Governor on 03.11.2015 issued an order summoning the 6th Legislative Assembly of Arunachal Pradesh to meet for its 6th Session at 10:00 A.M. on 14th January, 2016 in the Legislative Assembly Chamber at Naharlagun.

iii. Subsequent to the issue of the aforementioned order by the Governor, a notice of resolution for removal of Shri Nabam Rebia from the Office of the Speaker of the Arunachal Pradesh Legislative Assembly was given to the Secretary, Legislative Assembly on 19.11.2015 with a copy endorsed to the Governor. The aforementioned notice was given by Shri Tamiyo Taga (BJP), the leader of opposition in the Assembly along with 10(ten) other members of the BJP and supported by 2(two) other independents (total 13 MLAs].

iv. Subsequent to the tabling of the resolution dated 19.11.2015 for removal of Shri Nabam Rebia from the Office of Speaker, some of the MLAs of the Congress Party including the Speaker, Shri Nabam Rebia, started talking about issue of notice by certain MLAs of Congress Party for removal of the Deputy Speaker. On hearing reports about a resolution for removal of the Deputy Speaker having been received by the Secretary/Speaker of the Legislative Assembly, the Governor's Secretariat addressed a letter to the Secretary of the Assembly and also to the Speaker with a request to send the Governor a copy of such notice, if any. However, the Governor Secretariat's communication was not responded to.

v. Since the Governor had only received the notice of resolution for removal of Shri Nabam Rebia from the Office of the Speaker dated 19.11.2015, in terms of the mandate of first proviso to Article 179 of the Constitution of India, the Governor complying with the notice period of 14(fourteen) days, issued an order dated 09.12.2015 modifying the summons already issued and instead summoning the 6th Arunachal Pradesh Legislative Assembly on 16.12.2015 in exercise of the powers under Article

174(1) of the Constitution of India. Thus, in terms of the modified order of the Governor, the Arunachal Pradesh Legislative Assembly was summoned to meet on 16.12.2015 at 10:00 AM at the Legislative Assembly Chamber at Naharlagun.

vi. On the same date, i.e. on 09.12.2015, the Governor issued a message under Article 175(2) of the Constitution of India, fixing the resolution for removal of the Speaker as first item on agenda of the State Assembly at its first sitting of its 6th Session. It was clarified in the message that as the resolution for removal of the Speaker shall be the first item of business at the first sitting of the 6th Session of the 6th 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 the provisions of Article 181(1) of the Constitution of India.

vii. Curiously on 09/10.12.2015, a politically motivated FIR was also filed against the applicant No.11 making various allegations against him to the effect that he is trying to topple the Government of Shri Nabam Tuki through various illegal means. A case was also registered against the aforementioned applicants under Section 120(B) of the Indian penal Code read with Section 7 of the Prevention of Corruption Act. From the contents of the FIR, it is evident that the same was manufactured or extraneous political considerations. Be that as it may, the applicant No.11 is taking recourse to appropriate legal remedy against the same.

viii. On 14.12.2015, the State Cabinet passed a resolution to the effect that the Governor's decision to prepone the Assembly Session is contrary to the Constitutional provisions and the rules of procedures and conduct of business of the Arunachal Pradesh Legislative Assembly. On the same day, the Speaker also wrote

to the Governor for allowing the House to function as per its originally notified schedule.

ix. At this stage, the Congress Party Whip applied for disqualification of the applicants under Article 191(2) read with Paragraph 2(1)(a) and (6)(1) & (2), Rule 3(7) and Rule 6 of the Members of Arunachal Pradesh Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987. On 15.12.2015, i.e. less than twenty-four hours before holding of the Assembly Session on 16.12.2015, the applicants were declared disqualified and their seats were notified to be vacant. Evidently this was done to protect the speaker from imminent removal. The disqualification of the applicants was ex facie illegal as no procedure under the Rules of 1987 was followed for disqualifying them and no opportunity of hearing was afforded to them. The disqualification of the applicants was an act of extreme hurry with an oblique motive.

x. Though the Speaker was constitutionally obliged to issue the necessary Bulletin Part-II notifying the resolution and also the list of business for the 16.12.2015 including the resolution for transaction of the House but the same was not done in total defiance of the order of the Governor and the message. This was obviously done by the Speaker to save himself from facing the resolution for his removal. Since the Deputy Speaker was asked by the Governor to conduct the proceeding 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 or procedure of the House, he prepared the Bulletin Part-II and list of business for 16.12.2015, thereby conforming to the

Constitution and the mandate issued by the Governor of Arunachal Pradesh.

xi. In view of the fact that the Speaker had disqualified the 14(fourteen) applicants, including the Deputy Speaker, by 2(two) notifications of even number, viz. No.LA/LEG-37/2015 dated 15.12.2015, only a day before the first sitting of the 6th Session, admittedly to escape the consequences of the resolution for his removal slated for transaction on 16.12.2015, the Deputy Speaker had no alternative but to take note of such actions of the Speaker. It was noted that the Speaker had disqualified the applicants without following basic procedure of law in regard to – ***(i)*** receipt of petition for disqualification; ***(ii)*** forwarding the petition for comments of the respondents; and ***(iii)*** hearing the respondents and that there was flagrant violations of the provisions of Arunachal Pradesh Legislative Assembly (Disqualification on Point of Defection), and also in view of the fact that the Speaker by his such action had tried to obstruct the order of the Governor to hold the Session of the Assembly to consider the resolution for removal of the Speaker, the Deputy Speaker passed an order holding that all the applicants including the Deputy Speaker would continue to be Members of the 6th Arunachal Pradesh Legislative Assembly treating the order of the Speaker disqualifying the 14(fourteen) applicants as *ab-intio void*.

xii. On 16.12.2015, total 33(thirty-three) MLAs including the Deputy Speaker, which included 11(eleven) BJP MLAs and 2(two) independents, went to the State Legislative Assembly at Naharlagun to attend the Session of the Assembly as per the order of the Governor, however, they found the gates of the

Assembly locked. It was learnt that an Executive Magistrate on an order from the State Administration had locked the Assembly Secretariat, thereby preventing Members entry into the Assembly premises. There were chaotic scene outside the Assembly Secretariat and all the efforts were made by the State Administration to ensure that the 33(thirty-three) MLAs who were willing to attend the Session are not allowed to enter the Legislative Assembly. After waiting for two hours outside the Assembly Secretariat, these 33(thirty-three) MLAs including the present applicants, decided to contact the Raj Bhawan so that the Governor's mandate could be honoured in terms of the order dated 09.12.2015. The chaotic scenes in the areas adjacent to the Assembly Secretariat at Naharlagun were widely covered by the Media and all the dailies of this region.

Applicants also craved leave of the Court to produce the copies of the newspapers about the disturbances in the areas adjacent to the Assembly Secretariat at Naharlagun, Arunachal Pradesh and other related events.

xiii. The Deputy Speaker in his letters dated 16.12.2015 wrote to the Governor about the locking of the Assembly Premises and the act of defiance of the Civil and Police Administration and urged His Excellency to intervene by invoking his special powers so that the Assembly premises could be open and safe passage of all MLAs can be ensured to carry out Governor's order of 09.12.2015. The aforementioned letter was accompanied by joint memorandum of 34(thirty-four) MLAs who were facing hostile situation in the areas around the Assembly premises and it was suggested that the Assembly Session may be held at Techi Takar Memorial Community Hall, G-Sector, Naharlagun.

xiv. Under these extra-ordinary circumstances, the Governor gave the go ahead for conducting the Sessions at 2:00 PM at the Naharlagun G-Sectors Techi Takar Community Hall, which is about a kilometer from the Assembly Secretariat. This was done to protect democracy and the Constitution. Accordingly, by letter No.APLA/DS/6S/2015 dated 16.12.2015, the Deputy Speaker informed the Director, Department of Information & Public Relations, Government of Arunachal Pradesh that the first sitting of the 6th Arunachal Pradesh Legislative Assembly shall be held from 2:00 PM onwards at Techi Takar Community Hall, G-Sector, Naharlagun. This information was also communicated to all the members of electronic, print and other media. The Deputy Speaker also issued an order dated 16.12.2015 about the holding of the Session in accordance with the order of the Governor dated 09.12.2015 and conduct of the proceedings as per the message of the Governor dated 09.12.2015.

xv. On 16.12.2015 at the Techi Takar Community Hall at G-Sector, Naharlagun, the Session of the House was held and the motion for removal of the Speaker was passed with 33(thirty-three) of the 60(sixty) Member House voting in favour of the resolution for removal of the Speaker. Consequently, the notification dated 16.12.2015 was issued by the Deputy Speaker functioning as Speaker, removing Shri Nabam Rebia from the Office of the Speaker and declaring that the Office of the Speaker of the Arunachal Pradesh Legislative Assembly has fallen vacant with effect from the said time and date.

xvi. On 16.12.2015, a notice of composite floor test was also admitted. This motion was included in the list of business of the sitting of the State of Assembly on 17.12.2015. As per the list of

business issued by the Deputy Speaker (functioning as Speaker), the following motions were to be considered on 17.12.2015:-

(a) Want of confidence in the Council of Minister headed by Shri Nabam Tuki; and

(b) Confidence on Shri Kalikho Pul (applicant No.11) to lead a new Council of Ministers.

xvii. The Deputy Speaker, Shri T.N. Thongdok, by his letter dated 16.12.2015 to the Chief Minister, Arunachal Pradesh informed him about the particulars of business for the Session on 17.12.2015. For the said purpose, necessary Bulletin Part-II and list of business for 17.12.2015 was enclosed. It was observed that since nearly 26(twenty-six) MLAs including the Chief Minister were absent from the proceedings of the House, it was deemed prudent to specifically inform the Chief Minister so that he could be present for the Session on 17.12.2015.

xviii. On 17.12.2015, 33(thirty-three) MLAs of the 60(sixty) Members of the Arunachal Pradesh Legislative Assembly, cutting across party affiliation, adopted a motion on composite floor test, showing their no confidence in the Nabam Tuki led Congress Government in the State. The composite floor test motion was moved by 11(eleven) BJP MLAs and 2(two) independents and was passed by all 33(thirty-three) Members including 20(twenty) from Congress (excluding the Deputy Speaker). The Deputy Speaker, who was in the Chair did not participate in the voting as per the tradition. Even though, the Deputy Speaker had invited the Chief Minister and other Ministers to speak against the motion, the 26(twenty-six) Congress Legislators, including the Chief Minister Nabam Tuki and his Council of Ministers abstained

from attending the House Session summoned by the Governor. After completion of the exercise, the Deputy Speaker declared the result after counting the signatures put in favour of the motion and announced that Kalikho Pul has been chosen as a new leader of the House.

xix. That on successful completion of the Session, the Deputy Speaker by letter dated 17.12.2015, forwarded the records of the Session to the Governor, which included-

(a) Bulletin Part-I (17.12.2015);

(b) Report by Deputy Speaker;

© Vote of records with signatures of MLAs on a composite floor test on motion;

(d) Video record of proceedings of 2nd sitting of the 6th Session; and

(e) Certificate of veracity from the Videographer (N.K. Works, Itanagar).

xx. On 17.12.2015, the petitioner filed WP(C) No.7745/2015. The petition was moved unlisted after permission was accorded for the same on the order of Hon'ble the Chief Justice (Acting) of the Hon'ble Court. The respondent Nos.4 & 5 in the writ petition were represented by their counsel. The rest of the respondents in the writ petition were not represented. There was a caveat

filed by a BJP MLA, Shri Tage Taki but he was not a party in the writ petition.

xxi. The *interim* order passed by the Hon'ble Court without hearing the applicants, has seriously prejudiced them. The *interim* order has the affect of rewarding the wrong doers including the petitioner who subverted the democracy and crippled the voice of the majority of Members of the House in order to save the Government of Shri Nabam Tuki, which as the events have clearly shown, has been reduced to a minority.

xxii. The writ petition ought to have been dismissed without issuing notice, **first**, because the averments made in the petition raised the question as to whether the Governor acted *malafide* or *bonafide*. This cannot be decided without requiring the Governor personally to account to the Court for his actions, because he alone can deal with the allegation, for *malafides* or bad faith is a state of mind, and the Governor and no one else, can depose to his state of mind. In such a situation, Governor's action is not justiciable for Article 361(1) bars the jurisdiction of the Court

Secondly, the petition raises an issue as to whether the Governor has a discretion to prepone a Legislative Assembly Session. In view of Article 163(2), the Governor and not the Court, is the sole Judge of that question.

Thirdly, the petition raises a question on the role of Governor in the proceedings of the Legislature, which again cannot be examined by the Court in view of Article 212 of the Constitution. Since all the three questions raised in the petition are outside the jurisdiction of the Court, the petition should not have been entertained, not to speak of passing an *interim* order.

xxiii. The language of Article 174(1) of the Constitution of India is directory in the matter of summoning of the House. Article 174(2) clearly says that the Governor may from time to time prorogue the House or dissolve the Legislative Assembly. It is evident that the power under Article 174 is to be exercised by the Governor in his discretion. If that were not so, it would lead to piquant situation to the detriment of proper and effective working of democratic principles of Government. For instance, if there is a motion of No Confidence pending discussion in the Assembly, the Chief Minister in order to steer clear of the situation, may ask the Governor to prorogue the House. Similarly, where the Government is in a minority in the Legislative Assembly, the Chief Minister by the instrument of aid and advise to the Governor, can so manipulate the machinery of proroguing the House as to perpetuate his Council of Ministers and power, avoiding from time to time, facing the Assembly. Likewise, the Speaker being faced with the situation of removal (as in the instant case) may refuse to cooperate with the Governor in holding of the Assembly Session. Therefore, the Governor is under a duty to exercise his power under Article 174 only in his discretion, after considering all facts and relevant matters in summoning or preponing the summoning of the House. It is not for the Court to examine as to whether the exercise of discretionary power of the Governor is in accordance with and will promote democratic principles inasmuch as any such exercise by the Court would take it to the political arena.

xxiv. The law is well settled that even an erroneous decision or interpretation of the rules or procedure by the Speaker cannot be the subject matter of scrutiny in a Court of law. The Court

cannot act as a Court of revision against the Legislature or the rulings of the Speaker or Deputy Speaker acting as a Speaker, as the case may be, with respect to the proceedings in the House in question. Further, no writ can lie in a matter pertaining to holding of a Session of the Assembly and/or the resolutions passed in such Session and the nature of proceedings conducted therein. Article 212 of the Constitution clearly prohibits any such judicial interference.

xxv. Under Article 159 of the Constitution, the Governor is to preserve, protect and defend the Constitution and the law of the country. He is the only person on the spot who can take stock of the situation and take appropriate action including the preponing the Session of the Assembly for consideration of the resolution for removal of the Speaker. He can exercise such powers in his discretion if he has reasons to believe that the Speaker and the Chief Minister are trying to prevent such a situation because they do not have the support of majority to defeat such a resolution in the House. It is submitted that in the circumstances when No Confidence Motion has been passed against the Government and the Ministry refuses to resign or when the Governor has a reasonable ground to believe that the Chief Minister no longer enjoys the Confidence of the Legislative Assembly and he is no longer prepared to face the Assembly immediately on one pretext or other or when the Governor believes that the Ministry is trying to maintain its majority in the Legislative Assembly by unfair means or when the Governor believes that the Speaker in order to prevent or delay his removal is not willing to hold Session of the House without any further delay, the Governor can always exercise his discretion and take appropriate action,

which is not subject to judicial review in view of Article 163 of the Constitution.

xxvi. The Governor's constitutional role cannot be viewed as a frozen one. Neither the basic constitutional provisions nor the empirical situation at any point of time can adequately explain the reality of the Gubernatorial position. This role is essentially to be viewed as an evolving one. One crucial variable that determines the Governor's role is the state of domestic politics of a particular State. Viewed in this light, the Governor's role, in reality, is shaped and reshaped by the dynamics and the dominant forces and factors in State politics. Hence, it is futile to look for a standard role of the Governor that is of universal validity. It is not for the Court exercising its writ jurisdiction under Article 226 of the Constitution to sit over the action of the Governor to decide as to whether the Governor in a particular situation fairly exercise his discretion or that whether his exercise of discretion was in furtherance of democratic principles and fair democratic practices.

xxvii. The *prima facie* observation of the Hon'ble Court at Paragraph 19 of its order that the Governor acts as a Constitutional head and, therefore, his decision to prepone the Assembly Session without advise of the Chief Minister and primarily on requisition made by the opposition MLAs, **taints the Governor's order and renders it unworthy of the State Constitutional head**, is erroneous and beyond the jurisdiction of the Hon'ble Court. Similarly yet another observation of the Hon'ble Court at Paragraph 20 of the order that the power of the Governor to send message to the House is with respect to a pending Bill in

the house and this power under Article 175(2) cannot be utilized to send message on a pending resolution for removal of the Speaker and hence this appears to be an act of exceeding the jurisdiction, is equally erroneous and is based on incorrect understanding of not only the scope of Art 175 but also the scope of discretionary powers of the Governor under the provisions of the Constitution either expressly or by necessary implication.

xxviii. At the motion stage, when the Hon'ble Court did not have the advantage of learning the facts from all the contesting parties, it ought to have restrained itself from observing in Paragraph 21 of the order that *"the resolution for removal of the Deputy Speaker was moved prior to the similar resolution for the Speaker and yet the Governor has fixed the later resolution as the first agenda"*. This observation of the Hon'ble Court is based on factually incorrect pleading. The Hon'ble Court ought to have verified the facts and it ought not to have made such *prima facie* observation.

xxix. The observations of the Hon'ble Court in Paragraph 23 of its order make it evident that the Hon'ble Court stepped into political thicket which it ought not to have done exercising its jurisdiction under Article 226 of the Constitution. On the one sided presentation of facts, the Hon'ble Court could not have come to a *prima facie* conclusion that the action of the MLAs are motivated by political exigencies and a manifestation of this can be seen from an FIR dated 20.12.2015 (sic 09/10.12.2015). It is not uncommon in India that the FIRs are registered on false complaints and manufactured stories on account of political exigencies. The aforementioned FIR was registered against one

of the applicants, Shri Kalikho Pul (applicant No.11). Without hearing the applicants, the Hon'ble Court ought not to have made such an observation. Shri Kalikho Pul, who is one of the applicants in the instant application are taking appropriate legal measures against this politically motivated FIR against him. Such observations of the Hon'ble Court in its *interim* order without hearing the applicants have seriously prejudiced them.

xxx. Further observations of the Hon'ble Court in Paragraph 23 of the order that *"the Governor as the Constitutional Head, is expected to discharge his role with dispassion and within the Constitutional framework but the impugned steps taken by the State's Governor which facilitated the political battle to move in certain direction in the tussle for power, reflects the non-neutral role of the Constitutional Head and this is undermining the democratic process"*, are clearly erroneous. Such observations, based as they are, on one sided presentation of facts by the petitioner, ought not to have formed part of an *interim* order. To say that the Governor did not act dispassionately and that he facilitated the political battle to move in certain direction clearly amounts to doubting *bonafide* of the Governor, which the writ Court could not have done exercising its powers under Article 226 of the Constitution.

xxxi. The *interim* order of the Hon'ble Court, rewarded those who have been trying to subvert the democratic process. It is a common knowledge as to how the Assembly was locked in defiance of the order of the Governor. The role of the petitioner in trying to delay the holding of Session to prevent his imminent removal, is highly reprehensible. Likewise, the role of the State Administration under Shri Nabam Tuki as the Chief Minister on

16.12.2015 and 17.12.2015 was against all democratic norms and values and was also contrary to the law of the land. Ignoring all these significant aspects, the Hon'ble Court at the motion stage made *prima facie* observations on the role of the Governor and the applicants, on the one sided presentation of facts by the petitioner thereby committing serious jurisdictional errors.

xxxii. The *interim* order has crippled the will of the majority of the Members of the House and derailed the democratic process. The *prima facie* observations of the Hon'ble Court are based on incorrect facts and on incorrect understanding of the sequence of events as it did not have the advantage of knowing facts from all the contesting parties. Moreover, by the *interim* order, the Hon'ble Court has kept in abeyance the order of the Governor dated 09.12.2015 and all other consequential actions arising from legislative proceedings while at the same time it has ignored the *prima-facie* unconstitutional action of the Speaker of disqualifying the applicants. Not only the Hon'ble Court ignored the aforementioned aspect but by way of its *interim* order it has revived the aforementioned unconstitutional action of the petitioner. The revival of the order of the Speaker of disqualifying the applicants by the *interim* order of this Hon'ble Court has seriously prejudiced them. Hence, the present case is a fit case wherein the Hon'ble Court may be pleased to recall its *interim* order.

[13] <u>Pleas and grounds urged in I.A. No. 30/2016</u> :-

a) The political turmoil in Arunachal Pradesh has been going on since more then 8-9 months and it further worsened in the last around 3 months when a group of 21 Members of Legislative Assembly (MLAs belong to the ruling Indian National Congress (I) Party clamored for charge of guard in Arunachal through removal of the present Chief Minister, Shri Nabam Tuki. It is stated that these group of 21 MLAs of Arunachal Pradesh Legislative Assembly camped in Delhi for last 3 months to press for their demand.

b) The Governor of Arunachal Pradesh issued an order under Article 174(1) of the Constitution of India summoning the 6th session of the Arunachal Pradesh Legislative Assembly from 14/01/2016 to 18/01/2016.

c) On 19/11/2015 a group of 13 MLAs submitted a letter to the Governor of Arunachal Pradesh seeking preponing of the Session of Arunachal Pradesh Legislative Assembly which was scheduled to be held on from 14/01/2016 to 18/01/2016 to consider and vote for the resolution for removal of the Speaker brought by them. It is stated that the notice of resolution for removal of the speaker was submitted on 19/11/2015 to the office of the Speaker which the said office duly received. Be it stated that as per provisions of proviso of Article 179 at least 14 days notice has to be given for moving a resolution for the removal of Speaker or Deputy Speaker.

d) Thereafter on 27/11/2015 the Commissioner to the Governor of Arunachal Pradesh vide his letter No. GS/I-115/00(Vol-II)/6594 dated 27/11/2015 requested the Secretary, Arunachal Pradesh Legislative Assembly to furnish information with regard to (i) date of receipt of notice for removal of Speaker (ii) action being taken by the Legislative Assembly on the notice and (iii) highlights of precedents. However, the Secretary of Arunachal Pradesh Legislative Assembly did not answer to the said queries.

e) Having not received any response from the end of the Secretary, Arunachal Pradesh Legislative Assembly, the Deputy Secretary to the Governor wrote another letter No. GS/I-115/00 (Vol.II)/6717 dated 07/12/2015 requesting him to furnish the information sought for by the Governor vide letter dated 27/11/2015.

f) In the mean time a rumour was out in the air that some members of the Arunachal Pradesh legislative Assembly have submitted a notice for removal of Deputy Speaker. Under such circumstances, the Governor of Arunachal Pradesh directed his officials to make enquiries regarding the matter. Pursuant to the direction issued by the Governor, the Deputy Secretary to the Governor vide his letter No. GS/I-115/00(Vol-II)/6742 dated 07/12/2015 requested the Secretary, Arunachal Pradesh Legislative Assembly to furnish information relating to the notice for removal of Deputy Speaker. By the said letter he had specifically made the following queries :

(i) Date of receipt of the notice of the resolution in the Legislative Assembly,

(ii) Action taken by the Legislative Assembly on the notice.

(iii) Highlight of the precedents, if any.

Neither the office of the Speaker nor any other authority has informed the office of the Governor about the Notice for resolution of removal of Deputy Speaker at any point of time. It would not be out of place of mention herein that even in the writ petition they have not annexed any copy of such Notice, which clearly reveal an attempt on the part of the writ petitioner to mislead this Hon'ble Court.

g) In the meantime the Deputy Secretary to the Governor vide his letter No. GS/I-115/00(Vol.II)/6743 dated 07/12/2015, while referring to his earlier communication dated 27/11/2015 and 03/12/2015 again

requested the Secretary, Arunachal Pradesh Legislative Assembly to furnish information sought for with regard to notice of resolution for removal of the Speaker. The Deputy Secretary to the Governor requested the Secretary, Arunachal Pradesh Legislative Assembly to send his reply latest by 08/12/2015.

h) The Secretary, Arunachal Pradesh Legislative Assembly vide his letter No. LA/Leg/-26/2015 dated 08/12/2015 submitted his reply to the queries made by the office of the Governor. In the said letter the Secretary, Arunachal Pradesh Legislative Assembly informed that they had received the notice of the resolution for removal of the Speaker on 09/11/2015.

i) In the mean time as per the direction of the Governor, Aid De Camp to the Governor (ADC), Tage Habung went to the Legislative Assembly Secretariat, Naharlagun and met the Secretary, Additional Secretary, Officer on Special Duty to Speaker, Under Secretary as well as the Senior Officer and made enquiries about the notice of resolution for removal of Speaker and Deputy Speaker. But these authorities did not provide any information. In this regard the ADC to Governor put up a written note on the same day i.e. 08/12/2015.

j) Having not received any communication from the office of the Speaker of Arunachal Pradesh Legislative Assembly and also finding that no action has been initiated from his end, the Governor of Arunachal Pradesh obtained opinion from legal luminaries. Since there was an attempt on the part of the office of the Speaker to subvert the mandate of the Constitution, it became imperative for the Governor to interfere in the matter by exercising powers conferred by the Article 174(1) of the Constitution of India. Accordingly the Governor passed a Speaking Order dated 09/12/2015 modifying the summons already issued and instead summoning the 6th Arunachal Pradesh Legislative Assembly on 14/12/2015 in exercise of the power under Article 174(1) of the

Constitution of India. The assembly was summoned to meet on 16/12/2015 at 10 A.M.

k) On the same date the Governor of Arunachal Pradesh issued a Message under Article 175(2) of the Constitution of India fixing the resolution for removal of the Speaker as first item on agenda of the State Assembly at its first sitting of its 6th session. It was clarified in the message that as the resolution for removal of the Speaker shall be the first item of business at the first sitting of the 6th Session of the 6th 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 the provision of Article **181 (1)** of the Constitution of India.

l) On 13/12/2015 the Deputy Speaker, Arunachal Pradesh Legislative Assembly submitted a representation before the Governor, Arunachal Pradesh informing him about the action of the Speaker in not taking any action pursuant to the order and summon issued by the Governor. No official communication was issued to the Governor by any person objecting the Order as well as the Summons.

m) On 14/12/2015, the State Cabinet passed a resolution to the effect that the Governor's decision to prepone the Assembly Session is contrary to the Constitutional provisions and the rules of procedures and conduct of business of the Arunachal Pradesh Legislative Assembly. On the same day, i.e. 14/12/2015, the Speaker also wrote to the Governor for allowing the House to function as per its originally notified schedule.

n) Again on the said date the Chief Minister of Arunachal Pradesh by his letter No. Cab/M-18/2015 dated 14/12/2015 informed the Governor about the advice of the Cabinet by annexing a copy of the Cabinet's decision.

o) In the mean time the office of the Governor also received a letter dated 14/12/2015 from the Speaker of the Assembly whereby he has objected to the Order and Message by the Governor dated 09/12/2015.

p) On 14/12/2015 itself a letter was issued by the Officer on Special Duty to the Chief Minister to the Commissioner to the Governor seeking for audience with the Governor by the Council of Ministers and Members of Legislative Assembly on 15/12/2015. The letter was received by the Commissioner to the Governor at 10.15 P.M. on 14/12/2015 which he endorsed to the ADC on 15/12/2015 at 7:45 AM. The ADC brought it to the notice of the Governor in the office chamber at 10.00 AM on 15/12/2015. The Governor granted audience to Council of Ministers at 6 P.M. of 15/12/2015. 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 Sri 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.

q) On 16/12/2015 the Governor received a letter from the Deputy Speaker, Arunachal Pradesh Legislative Assembly whereby he was informed that 34 MLAs including him went to the Assembly premises to attend the session but they found the assembly premises locked. All roads to the Legislative Assembly was also blocked by the police. And inspite of repeated requests the same was not opened and they have suggested an alternative venue for holding the assembly session. Along with the said letter a Memorandum signed by 33 MLAs was also annexed. The file was put up but since there was no time to issue

formal order the Governor by approving the same directed his staff to communicate his approval verbally.

[14] In the said I.A., the applicant has also referred to the observations made against him in the interim order of this Court which according to the applicant amount to casting aspersions on the Governor. It has also been contended that the writ petitioner having not made the Governor a party respondent, although has alleged malafide exercise of power by him and also not having impleaded the concerned MLAs, who had served notice or resolution for removal of the Speaker, the writ petition was not maintainable and thus ought to have been dismissed. It has further been contended that the resolution for removal of Speaker passed in course of the proceeding dated 16/12/2015 of the Arunachal Pradesh Legislative Assembly cannot be called in question on any ground of irregularities or procedure under the mandate of Article 212 of the Constitution of India.

[15] According to the applicant, the Governor had acted with due diligence and after consulting with experts and taking opinion from the experts in the field towards exercising his powers conferred by Article 174 (1) of the Constitution to prepone the 6th session of the Arunachal Pradesh Legislative Assembly to deal with the extra-ordinary situation. It has also been stated that to deal with the extra-ordinary situation, the Governor exercised his discretion to uphold the democratic values as enunciated by the Constitution and to stop the step from plunging into a constitutional crisis.

[16] In the application, the applicant has further contended that the circumstances leading to preponing of the 6th session of Arunachal Pradesh Legislative Assembly from 14/01/2016 to 16/12/2015 requiring the Governor to act in his discretion, the decision of the Governor in his discretion is final and the validity of advancing of the Assembly session cannot be called in question on the ground that he ought or ought not to have acted in his discretion. The applicant has urged that under the mandate of law particularly under Article 175 of the Constitution of India, the Governor of a State

having been bestowed with the rights to send messages to the House of the Legislature of the State and the House being required to consider any matter required by the message to be taken into consideration the message dated 09/12/2015 issued from the office of the Governor of the State cannot be assailed before the court of law and that being the fact the action of the learned single Judge in coming to the conclusion that the said power cannot be utilized to send message on a pending resolution for removal of the Speaker being without jurisdiction is not tenable in law and facts of the case and as such the impugned order dated 17/12/2015 is liable to be interfered with.

[17] It has further been contended that the decision of the Governor of the State of Arunachal Pradesh in passing the order dated 09/12/2015 preponing the State's Assembly Session, the message of the Governor dated 09/12/2015 fixing resolution of removal of Speaker as the first item of business in the agenda of the preponed assembly session, the approval of the proceeding of the session held outside the assembly hall and the resolution of the order for removal of the Speaker and the disqualification of respondent Nos. 2 to 15 made by the Speaker under the Anti Defection Law are all following the exercise of due discretion by the Governor in the backdrop of proven majority of the MLAs opposing the Speaker of tdhe House and the fact that the Speaker himself failed to act on the notice for his removal from office and as such the impugned order is liable to be adequately modified forthwith.

[18] I have heard the learned counsel representing the parties who extensively argued in reference to the pleadings, constitutional provisions and also certain case laws. While the learned counsel representing the petitioners emphasized on the role of the Governor under the constitutional scheme alleging biasness in respect of the impugned decisions, the learned counsel for the respondents argued that the Governor having exercised his discretionary power in the given facts and circumstances and there being apparent show of strength in favour of the respondents, so as to command majority in the Assembly, the petitioners cannot call in

question the sound discretion applied by the Governor towards exercising his power and jurisdiction under Article 174 and 175(2) of the Constitution. As regards the plea of the petitioners that the Assembly session could not have been held outside the house, the learned counsel for the respondents referring to the pleadings argued that an extra-ordinary situation was created by the writ petitioner involved in **WP(C) No. 7745/2015**, in which the elected MLAs could not even enter the Assembly premises and consequently the Assembly session had to be held outside the Assembly premises.

[19] While the tenor of the argument advanced by the learned counsel for the petitioners is towards questioning the legality and / or validity of the action of the Governor, firstly, towards preponing the Assembly session and secondly fixing the agenda items to be tabled on 16/12/2015 in such preponed assembly session, the tenor of argument advanced by the learned counsel representing the respondents is towards questioning the very maintainability of the writ petitions on the ground that the Governor having acted with his domain, competence and jurisdiction towards passing the impugned orders, the same cannot be called in question invoking the jurisdiction of this Court under Article 226 of the Constitution of India. They further contended that the Governor having acted within the exception provided under the constitutional scheme and recognized by judicial pronuncement, coupled with the fact that it is not a case of the impugned decision being taken by the Governor, based on wholly extraneous and irrelevant ground, no judicial review which is very limited in such matters is called for.

[20] Mr. L.N. Rao, learned senior counsel, Mr. S.S. Dey, learned senior counsel and Mr. P.K. Tiwari, learned senior counsel assisted by Mr. M. Nath, learned counsel for the respondents in support of their above contentions placed reliance on the following decisions :-

i. ***(1974) 2 SCC 831 (Samsher Singh Vs. State of Punjab)***
ii. ***(2004) 8 SCC 788 (M.P. Special Police Establishment Vs. State of M.P.***

iii. *(2006) 2 SCC 1 (Rameshwar Prasad Vs. Union of India),*

iv. *(2013) 3 SCC 1 (State of Gujarat Vs. Justice R.A. Mehta,*

v. *(1995) (3) ALT 929 [MANU/AP/0708/1995 (NT Rama Rao Vs. Governor of A.P.)*

vi. *AIR 1999 Bom 53 (Pratapsingh Rajirao Rane Vs. Governor of Goa,*

vii. *86 L.W. 365 (Mad HC- Full Bench) (K.A. Mathialagan Vs. Srinivasan, Dy. Speaker,*

viii. *MANU/GH/0412/2001 (Nipmacha Singh Vs. Secretary, Manipur Legislative Assembly,*

ix. *(1969) 1 SCR 478 (State of Punjab Vs. Styapal Dang).*

[21] Mr. Jain, learned senior counsel assisted by Mr. B.D. Goswami, learned counsel representing the Governor argued on the propriety of the purported adverse comments made in the interim order and urged for expunction of the same. He also submitted that the Governor having applied his discretion towards arriving at the impugned decisions, the said discretion cannot be called in question in absence of anything to show that he had acted in any manner which could be termed as being violative of any constitutional provisions.

[22] Mr. K.N. Choudhury, learned senior counsel assisted by Mr. J. Patowary, learned counsel representing the petitioners elaborately arguing the case projected in **WP(C) No. 7745/2015** in reference to certain case laws, referred to below, questioned the very conduct of the Governor in taking recourse to the impugned decisions and actions. According to him the Governor acted beyond his scope and jurisdiction but acted as per the dictate of a particular political party as its representative. The decisions referred to by him are as follows :-

i. *(1974) 2 SCC 831 (Samsher Singh Vs. State of Punjab)*

ii. *(2005) 2 SCC 92 (Pu. Myllaihlychho and others Vs. State of Mizoram and others)*

iii. *(2004) 8 SCC 788 (M.P. Special Police Establishment Vs. State of M.P. and others)*

iv. *1992 Supp(2) SCC 651 (Kihoto Hollohan Vs. Zachillhu and others)*

v. *AIR 1952 SC 242 (The State of Bihar Vs. Sir Kameshwar Singh)*

vi. *(1979) 3SCC 324 (Union of India and others Vs. Valluri Basavaiah Chowdhary and others)*

vii. *(2007) 3 SCC 184 (Raja Ram Pal Vs. Hon'ble Speaker, Lok Sabha and others)*

viii. *(1993) 2 SCC 703 (Dr. Kashinath G. Jalmi and another Vs. The Speaker and others)*

ix. *(1998) 7 SCC 517 (Mayawati Vs. Markandeya Chand and others)*

[23] Mr. Ashwini Kumar, learned senior counsel representing the petitioner in the other writ petition being **WP(C) No. 7998/2015**, supporting the arguments advanced by Mr. K.N. Choudhury, learned senior counsel, referred to above, also referred to the decision in ***Samsher Singh (Supra)***, so as to contend that the Governor acted beyond his jurisdiction towards taking the impugned decisions. According to him, the action of the Governor is beyond the exception curved out from the mandatory requirements envisaged in the constitution requiring him to act only on the advice of the council of Ministers.

[24] I have given my anxious consideration to the submissions made by the learned counsel for the parties and have also perused the case laws on which both sides placed reliance in support of their respective arguments. My appreciations, findings and conclusions are as follows :-

[25] As noted above and contended by the respondents, 33(thirty-three) MLAs out of 60(sixty) including the Deputy Speaker, adopted a motion on composite floor test, showing their no confidence against the Leader of the present Government. Although were invited to speak against the motion, but 26(twenty-six) Legislators including the Chief Minister and his Council of Ministers abstained from the House Session summoned by the Governor. On completion of the Session, the Deputy Speaker by letter dated 17.12.2015 forwarded the records of the Sessions to the Governor, which included – (i) Bulletin Part-I (17.12.2015); (ii) Report by Deputy Speaker; (iii) Vote of records with signatures of MLAs on a composite floor test on motion; (iv) Video record of proceedings of 2nd sitting of the 6th Session; and (v) Certificate of veracity from the Videographer (N.K. Works, Itanagar). On the same day, the writ petition being WP(C) No.7745/2015 was filed and moved. Although the respondent Nos.4 & 5 in the writ petition were represented by their counsel, but the rest of the respondents including the newly impleaded respondents were not represented. Although a Caveat was filed by one of the MLAs, namely, Shri Tage Taki, but he was not made party to the writ petition. For a ready reference, the Bulletin Part-I (17.12.2015) (Brief record of proceedings) (Annexure-16 to the I.A. No.2838/2015) is reproduced below:-

"ARUNACHAL PRADESH LEGISLATIVE ASSEMBLY
NAHARALAGUN : ARUNACHAL PRADESH

BULLETIN PART I
17th December, 2015
(Brief record of proceedings)

10 18 AM

In the chair

1. *As the office of Speaker had fallen vacant with the adoption of resolution for removal of Shri Naam Rebia from the Office of the Speaker w.e.f 3 05 PM on 16.12.2015, Shri T.N. Thongdok, the Deputy Speaker took the Chair.*

Change of Place of sitting :

2. *Deputy Speaker informed that since the Assembly premises at Naharlagun was still locked and as the Civil and Police Administration of the State failed to facilitate the functioning of the Legislative Assembly, the venue of the*

second sitting was shifted to Shoto-Kan Karate Training Hall, Naharlagun, located near the Assembly premises under intimation to the Governor.

10 19 AM

<u>Obituary reference</u>

3. *The House made obituary reference to the passing away of Dr. APJ Abdul Kalam, former President of India. The following made the obituary reference:*

    (1) Shri T.N. Thongdok, the Deputy Speaker
    (2) Shri Tamiyo Taga, Hon'ble Leader of Opposition
    (3) Shri Wanglin Lowangdon

    House stood in silence for a minute as a mark of respect to late Dr. APJ Abdul Kalam.

<u>Panel of Chairmen</u>

4. *The following Panel of Chairmen, as nominated by the Deputy Speaker, was already published in the Bulletin Part II dated 16.12.2015:*

10 44 AM

<u>Composite floor test Motion</u>

5. *(i) SHRI TAMIYO TAGA moved the following motion:*

    'This House expresses, -

    (1) its want of confidence in the Council of Ministers headed by Shri Nabam Tuki; and

    (2) its confidence in Shri Kalikho Pul, a member of the House, to head a new Council of Ministers and urges upon the Governor to swear in the Council of Ministers headed by Shri Kalikho Pul at the earliest.'

10 48 AM

4. *(ii) The Motion was put to leave the House. The following Members stood in support of leave being granted to the Motion.*

    (1) Shri Tamiyo Taga
    (2) Shri Japu Deru
    (3) Shri Tage Taki
    (4) Shri Tamar Murtem
    (5) Shri Tumke Bagra
    (6) Shri Kento Rina
    (7) Shri Kaling Moyong
    (8) Shri Olom Panyang
    (9) Dr. Mohesh Chai
    (10) Shri Laisam Simai
    (11) Shri Tesam Pongte
    (12) Shri Tsering Tashi
    (13) Shri Paknga Bage

    Deputy Speaker declared that leave has been granted to the Motion by the House.

10 50 AM

4. *(iii) Discussion and voting on the Motion was taken up by the House. The following Members spoke on the Motion:*

    (1) Shri Tamiyo Taga
    (2) Shri Japu Deru

(3) Shri Paknga Bage
(4) Shri Laisam Simai

11 51 AM

The Motion was put to vote of the House. Deputy Speaker declared that the Motion was adopted by voice vote.

11 53 AM

The Deputy Speaker requested those who said "Ayes" to stand up. 33 MLAs stood up in support of the Motion. Deputy Speaker declared that the Motion was adopted.

11 56 AM

The Deputy Speaker called all the Members present to vote on the Roll of Members by affixing the signatures against the relevant columns namely "Ayes", "Noes" and "abstentions". 33 Members voted on the Roll of Members by affixing their signatures.

The following Members voted for the Motion through voice vote, standing up and by recording their signatures on Roll of Members:

(1) Tsering Tashi
(2) Pema Khandu
(3) Japu Deru
(4) Kumar Waii
(5) Kameng Dolo
(6) Tage Taki
(7) Markio Tado
(8) Tamar Murtem
(9) Paknga Bage
(10) Tumke Bagra
(11) Jarkar Gamlin
(12) Tamiyo Taga
(13) Pasang Dorjee Sona
(14) Kento Rina
(15) Kaling Moyong
(16) Lombo Tayeng
(17) Olom Panyang
(18) Mutchu Mithi
(19) Dr. Mohesh Chai
(20) Kalikho Pul
(21) Chow Tewa Mein
(22) Zingnu Namchoom
(23) Chowna Mein
(24) Kamlung Mossang
(25) Laisam Simai
(26) Phosum Khimhum
(27) Tesam Pongte
(28) Wangki Lowang
(29) Wanglam Sawin
(30) Wanglin Lowangdong
(31) Gabriel D. Wangsu
(32) Thangwang Wangham
(33) Honchum Ngandam

The following Members voted against the Motion:

NIL

The following Members abstained from voting on the Motion:

NIL

12 10 PM

4 (iv) The Hon'ble Deputy Speaker performing the functions of the Speaker declared that the composite floor test Motion moved by Shri Tamiyo Taga, the Hon'ble Leader of Opposition, was adopted by the House.

4 (v) The Deputy Speaker further declared that the Government headed by Shri Nabam Tuki has lost confidence of the House and Shri Kalikho Pul, MLA has been chosen as the new leader of the House.

Announcement re : illegal and unconstitutional acts of Shri Nabam Rebia, MLA

5. The Deputy Speaker, by way of abundant caution, declared that all parallel sittings presided over by Shri Nabam Rebia, MLA at any place including the Assembly Hall, Naharlagun, is illegal and unconstitutional.

12 13 PM

As there was no business before the House for the entire session, it was adjourned sine die.

Sd/- Illegible
T.N. THONGDOK
DEPUTY SPEAKER
PERFORMING FUNCTIONS OF SPEAKER'

NAHARLAGUN
17 DECEMBER 2015

[26] With the aforesaid I.A., report dated 17.12.2015 (Annexure-17) has also been enclosed. The report was prepared by the respondent No.1, i.e. the Deputy Speaker, highlighting the circumstances leading to holding of the Assembly Session at the particular Hall (Shoto-Kan Karate Training Hall, Naharlagun). For a ready reference, the said report is also reproduced below:-

"Report
on
the collapse of civil and police administration in Naharlagun on the 17th December, 2015 which led the SIXTH ARUNACHAL PRADESH LEGISLATIVE ASSEMBLY to meet for its second sitting of the Sixth Session at the SHOTO-KAN KARATE TRAINING HALL, Naharalagun

Naharlagun
17.12.2015

1. I, T.N. Thongdok, the Deputy Speaker of the Arunachal Pradesh Legislative Assembly, on the basis of the ground reality at and around the Assembly premises,

Naharlagun and on the basis of hearsay inputs, sent an emergency report to the Governor today (17.12.2015) well before the commencement of the second sitting of the sixth session of the Arunachal Pradesh Legislative Assembly at the alternative venue i.e. Shoto-Kan Karate Training Hall, Naharlagun.

2. While reiterating the apprehensions expressed in the emergency report as aforesaid, the following serious developments deserve attention of the Hon'ble Governor:

(1) Reports have come that the Techi Takar Community Hall, G-Sector, Naharlagun, where the fist sitting of the sixth session, under intimation to the Governor, was held yesterday (16.12.2015) had been ransacked by hooligans causing heavy damage to property.

(2) Reports have also come that the Police have so deployed their forces so as to ensure that the MLAs do not gain access to the Assembly premises.

(3) Reports have further come that huge number of volunteers loyal to Shri Nabam Tuki and Shri Nabam Rebia have taken control of roads and streets around the Assembly premises to launch physical attacks on MLAs trying to gain access to the Assembly Hall and also to create massive law and order problem so that the smooth conduct of the Assembly is gravely affected and today's agenda of the Assembly which is the composite floor test motion which also contains a no-confidence component against the Tuki Government, is stalled.

3. Accordingly, under intimation to the Hon'ble Governor, I had taken a decision to hold the second sitting of the Sixth Session at an alternative site very near to Assembly premises. The second sitting was accordingly held at Shoto-Kan Karate Training Hall, Naharlagun. The proceedings commenced at 10 18 AM, with 33 MLAs being present in the House. The House completed the agenda slated for today (17.12.2015) and adopted a composite floor test motion expressing no-confidence in the Council of Ministers headed by Shri Nabam Tuki and confidence in Shri Kalikho Pul as the new leader of the House.

4. As there was no business before the House for the entire session, I adjourned the House sine die though the Hon'ble Governor fixed the last sitting on 18.12.2015.

5. Now I have unconfirmed reports that all the roads have been blocked by hooligans and miscreants so that the Presiding Office and the new Leader of the House do not have access to Raj Bhavan for production of documents, claims etcl, to the Hon'ble Governor.

6. Without adverting to much, tersely I would like to state that unlawful and authoritarian attitudes of those who have so far been in power cannot be allowed to prevail but only the democratic decisions of the House that must stand concretized through Constitutionally chosen methods.

Sd/- Illegible
(T.N. THONGDOK)
DEPUTY SPEAKER
FUNCTIONING AS SPEAKER'

HIS EXCELLENCY THE GOVERNOR

RAJ BHAVAN
ITANAGAR
Copy to : 1. The chief Secretary
Government of Arunachal Pradesh
Itanagar

2. The Director General of Police
Government of Arunachal Pradesh
Itanagar"

[27] Referring to the aforesaid documents and the fact that by the time the writ petition was moved, the Annexure-16 proceeding was held over with passing of the resolution expressing want of confidence in the Council of Ministers headed by Shri Nabam Tuki and its confidence to Shri Kalikho Pul, a Member of the House, to head a new Council of Ministers and urging upon the Governor to swear the Council of Ministers headed by him at the earliest. It was also argued that having regard to the *interim* prayer made in the writ petition, referred to above, no *interim* order could have been granted in terms of the final prayers. As noted above, while the final prayers made in the writ petition is to set aside and quash the Governor's order dated 09.12.2015 preponing the Session of the Arunachal Pradesh Legislative Assembly from 14.01.2016 to 16.12.2015; Governor's message dated 09.12.2015 fixing the resolution for removal of the Speaker as 1st Item of the business; Deputy Speaker's order dated 15.12.2015 quashing disqualification of the respondent Nos.3 to 15 and the notification and resolution dated 16.12.2015 removing the petitioner from the Office of the Speaker of the Legislative Assembly, the *interim* prayer made is to restrain the respondent No.1, i.e. the Deputy Speaker, from holding any sitting of the Legislative Assembly pursuant to the Governor's order and message dated 09.12.2015.

[28] In the writ petition, the petitioner has called in question holding of the preponed Session of the State Assembly outside the House, responding to which what the respondents have contended has been noted above. In response to Paragraphs 3.12 & 3.13, the petitioner in his counter affidavit has stated thus:-

"(i) (Para 3.12 and 3.13) The contents of the paras under reply, except those that are matters of record are denied. It is reiterated that the Governor's Order

and Message dated 09.12.2015 are unconstitutional and illegal. They are part of the larger conspiracy hatched inter alia between the 14 disqualified MLAs, BJP and the Central Government to overthrow the present government using unconstitutional means. It is noteworthy that the Petitioner on several occasions had urged the Governor not to engage in said unconstitutional conduct and let the session commence as originally scheduled. The disqualified MLAs and BJP MLAs using the aforesaid illegal and unconstitutional Order and Message disturbed the law and order situation around the state assembly. In these circumstances, the concerned authorities in their wisdom took a decision that state assembly premises cannot be opened. It is noteworthy that if the Applicants and other MLAs were aggrieved of the such a decision of the concerned authorities, they ought to have appropriately challenged the same before a court of law. However, the Deputy Speaker chose to take law in their own hands and hurriedly decided to hold the session outside the State Assembly. Further, in response the contents of the preliminary submissions as well as the Writ Petition are reiterated and the same are not repeated herein for the sake of brevity and to avoid prolixity."

[29] As will be evident from Annexure-B to I.A. No.2843/2015, the writ petitioner, i.e. the Speaker, vide his note dated 14.12.2015, reproduced below, and addressed to the Home Minister requested not to allow any individual including the Legislators to enter the Assembly Building premises on 15.12.2015; 16.12.2015; 17.12.2015 and 18.12.2015.

"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 Sixth 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
SP/City
Deploy sufficient force with monitoring system with the administration of IRBN + CPMF

Sd/- Illegible
14.12.15
(NABAM REBIA)
Speaker

Sd/- Illegible
14/12/15

Hon'ble Minister (Home), Govt. of Arunachal Pradesh
No.SLA/Per-01/2015-16 *Dtd. Itanagar, the 14th Dec'15*

DGP

Immediate action may be taken to deploy sufficient IRBN Personnel on the top most priority basis.

Sd/- Illegible
14/12/15
Minister (Home, Power & NCRE)
Arunachal Pradesh
Itanagar"

[30] Responding to the said command, the Superintendent of Police, Capital, Itanagar by his letter dated 15.12.2015 addressed to the Secretary, Arunachal Pradesh State Legislative Assembly sought for a clarification in respect of the Speaker's aforesaid note. By the said letter, a request was made as to under what provisions of Law/Rules, the request so made should be enforced. It was also apprised that full proof security arrangement had already been put in place. For a ready reference, the said letter is reproduced below:-

"GOVT OF ARUNACHAL PRADESH
OFFICE OF THE SUPERINTENDENT OF POLICE
CAPITAL, ITANAGAR
No.SPC/ITA/OPS-15/2015 *Dated, 15.12.15*

To,

The Secretary,
A.P. State Legislative Assembly,
Naharlagun.

Sub: *Clarification on Hon'ble Speaker's Note No.SLA/Per-01/2015-16 dated 14.12.15.*

Sir,

I am in receipt of a Note from the Hon'ble Speaker, A.P. State Legislative Assembly, regarding foolproof security to be provided in and around the Assembly Building. The note also further 'says that. no individual including the Hon'ble Legislators, be allowed to enter the Assembly Building premises w.e.f. 15.12.15 till 18..12.15.

You Are therefore requested to clarify, on the above stated request made in the Note, as to under what Provisions of Law/Rules this request should be enforced.

It is to further apprise you that fool-proof security arrangement has already put in place. If there is anything additional required in this regard, it should be communicated to us well in time.

Yours faithfully
Sd/- Illegible
Devender Arya, IPS
S.P. Capital, Itanagar

Memo No.SPC/ITA/OPS-15/2015 *Dated, 15.12.15*

Copy to :

1. *The Hon'ble Speaker, A.P. State Legislative Assembly, Naharlagun for kind information please.*
2. *The SO to DGP, PHQ, Itanaqar for kind information of DGP please.*
3. *The SP(OPS), PHQ Itanagar for information please.*
4. *Office copy.*

Sd/- Illegible
S.P. Capital, Itanagar"

[31] From the above narration of fact, what has emerged is that although the Governor was apprised of the resolution for removal of the Speaker but as regards the resolution for removal of the Deputy Speaker, he was not apprised of although was asked for the information. As regards the holding of the Session outside the Assembly premises, the Legislators were debarred from entering into the said premises and it was in such circumstances, the Assembly Session was convened outside the premises. There is also no denial on the part of the writ petitioner that the Assembly premises were locked and consequently the respondents could not enter the

said premises. However, the petitioner has contended that the respondents using the illegal and unconstitutional order and message impugned in the writ petition disturbed the law & order situation around the State Assembly and in such circumstances, the **concerned authorities** in their wisdom took a decision that the State Assembly premises cannot be opened.

[32] In the writ petition, the petitioner has questioned the wisdom of the Governor and has contended that the resolution for removal of the Deputy Speaker having been moved, the Governor could not have given the priority to the resolution for removal of the Speaker in his impugned message dated 09.12.2015. In the I.A., the respondents have dealt with the same referring to the documents annexed to the same. In Paragraphs 3.4 & 3.5 of the I.A., the respondents have contended that on hearing reports about a resolution for removal of the Deputy Speaker having been received by the Secretary/Speaker of the Legislative Assembly, the Governor's Secretariat addressed a letter to the Secretary of the Assembly and also to the Speaker with a request to send the Governor a copy of such notice, if any. According to the respondents, the Governor Secretariat's communication was not responded to. It has further been stated that since the Governor has only received the notice of resolution for removal of the Speaker dated 19.11.2015, in terms of the mandate of first proviso to Article 179 of the Constitution of India, the Governor complying with the notice period of 14(fourteen) days, issued the impugned order dated 09.12.2015 modifying the summons already issued and instead summoning the 6th Arunachal Pradesh Legislative Assembly on 16.12.2015 in exercise of the powers under Article 174(1) of the Constitution of India.

[33] Responding to the above Paragraphs, the petitioner in his counter affidavit has stated that the notice of resolution for removal of the Deputy Speaker was issued on 16.11.2015 and that the Secretary to the Governor issued a letter dated 07.12.2015 requesting for information/details about the notice of resolution for removal of the Deputy Speaker and that the same was replied to on 08.12.2015. On

perusal of the relevant documents annexed to the I.A. No.30/2016, filed on behalf of the Governor, it is found that vide Annexure-III letter dated 27.11.2015, the Commissioner to the Governor inquired from the Secretary, Arunachal Pradesh Legislative Assembly about the copies of resolution for removal of the Speaker with the request to forward the copy of the resolution for information and perusal of the Governor. By the said letter, following information were also sought for:

> **"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."**

[34] This letter was followed by the letter dated 03.12.2015 addressed to the Secretary, Arunachal Pradesh Legislative Assembly with the request to expedite submission of the required information preferably within 3(three) days. Similar letter was also issued on 07.12.2015 on the notice of resolution for removal of the Deputy Speaker asking for similar information. By another letter dated 07.12.2015 addressed to the Secretary, Arunachal Pradesh Legislative Assembly, the Deputy Secretary to the Governor once again requested to furnish the required information on the notice of resolution for removal of the Speaker. Responding to the said letter, the Secretary, Arunachal Pradesh Legislative Assembly vide his letter dated 08.12.2015 informed the Secretary to the Governor about the date of receipt of the notice of the resolution of the Legislative Assembly on 19.11.2015 and that the file was processed and/or was under consideration of the Speaker. By Annexure-VIII note dated 08.12.2015, the ADC to the Governor endorsed the following to the Governor:-

> ***"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.

Sd/- Illegible
8/12/15
(Tage Habung) SP
ADC to Governor"

[35] In reference to the above, it is the specific case of the Governor that neither the Office of the Speaker nor any other authority had informed the Office of the Governor about the notice for resolution of removal of the Deputy Speaker at any point of time. Referring to the documents annexed to the writ petition, it has also been contended that even in the writ petition no copy of such notice has been annexed. Having not received any communication from the Office of the Speaker of Arunachal Pradesh Legislative Assembly and also finding that no action has been initiated from his end, the Governor of Arunachal Pradesh obtained the opinion from legal remunerates. According to the Governor, there was an attempt on the part of the Office of the Speaker to subvert the mandate of the Constitution and it became imperative for the Governor to interfere in the matter by exercising powers conferred by Article 174(1) of the Constitution of India. Accordingly, the impugned speaking order dated 09.12.2015 modifying the summons already issued and summoning (preponing) the 6th Arunachal Pradesh Legislative Assembly was passed exercising the power under Article 174(1) of the Constitution of India. For a ready reference, the said impugned order dated 09.12.2015 is reproduced below:-

"ORDER MODIFYING THE SUMMONS ALREADY ISSUED

Memo No.NO.GS/I-115/00 (Vol-II)
Itanagar, the 9th December, 2015

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 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:

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.

Sd/- Illegible
(Jyoti Prasad Rajkhowa)
Governor"

1. The impugned message dated 09.12.2015 is also reproduced below:-

"MESSAGE UNDER ARTICLE 175(2) OF THE CONSTITUTION OF INDIA

Memo No.GS/I-115/00(Vol-II)
Itanagar, the 9th December, 2015

'In exercise of powers conferred upon me by clause (2) of article 175 of the Constitution of India, I Jyoti Prasad Rajkhowa, the Governor of Arunachal Pradesh, hereby send the following message to the sixth Arunachal Pradesh Legislative Assembly meeting for its sixth session commencing from the 16th December, 2015:

1. *The resolution for removal of the 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 videographed 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.'*

Sd/- Illegible
(JYOTI PRASAD RAJKHOWA)
GOVERNOR"

[36] Above are all factual aspects of the matter. The crux of the matter is as to whether the Governor's decision to prepone the Assembly Session exercising the power under Article 174(1) of the Constitution of India and also to issue message under Article 175(2) of the Constitution of India fixing the resolution for removal of the Speaker as the 1st Item of Agenda are vitiated being opposed to the Constitutional provisions. While according to the petitioners, the Governor is not empowered to prepone the Assembly Session without the aid and advice of the Council of Ministers and also not entitled to issue such message, according to the respondents, the Governor exercised his power under Articles 174(1) and 175(2) of the Constitution of India in the peculiar fact situation and the same was within his competence and jurisdiction falling within the exception in which he is required to apply his discretion.

[37] To appreciate the above background facts and the argument advanced by the rival parties, let us now refer to the relevant constitutional provisions enumerated below, which will speak for themselves:-

> *"153. Governors of States - There shall be a Governor for each State:*
>
> *[Provided that nothing in this article shall prevent the appointment of the same person as Governor for two or more States.]*
>
> *154. Executive power of State - (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.*
>
> *(2) Nothing in this article shall—*
>
> *(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or*
>
> *(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.*
>
> *160. Discharge of the functions of the Governor in certain contingencies – The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.*
>
> *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.*
>
> *166. Conduct of business of the Government of a State - (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.*

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business 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.

168. Constitution of Legislatures in States - (1) For every State there shall be a Legislature which shall consist of the Governor, and—

(a) in the States of [Andhra Pradesh,] Bihar, [Maharashtra], [Karnataka], [Tamil Nade] [and Uttar Pradesh], two Houses;

(b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

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.

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 to 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.

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

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.

180. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker - (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.

181. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration - (1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker, from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 180 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(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.

189. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum - (1) Save as otherwise provided in this 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 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.

(2) A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

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 acknowledgment 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.]

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.

212. Courts not to inquire into proceedings of the Legislature - (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.

361. Protection of President and Governors and Rajpramukhs - (1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any Court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any Court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any Court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any Court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims."

[38] The learned counsel for the parties have referred to the decisions referred to above in reference to the constitutional provisions. It is in the backdrop of the aforesaid fact situation, which has emerged from the pleadings, the basic issue in reference to and the other issues involved are required to be answered. Let me now discuss the decisions. Needless to say that ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (*See Lord Halsburry in Quinn -Vs- Leathem, 1901 AC 495*).

[39] As has been held by the Apex Court in ***CIT -Vs- Sun Engg. Works (P) Ltd.*** reported in ***1992 (4) SCC 363***, it is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this

Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings (**see para 39**)."

[40] In ***Samsher Singh*** (supra) to which the learned counsel for the parties have extensively referred to, the Apex Court was concerned with the functions of the President or Governor based on his satisfaction whether to be discharged by him personally applying his mind to facts of the situation. That was a case relating to termination of services of the 2(two) appellants, who were members of the Punjab Civil Services (Judicial Branch) and were appointed on probation. Dismissal order was issued under Article 234 and was met by the Chief Minister of the State in the name of the Governor but without seeking or obtaining his personal satisfaction. It was held that there was no infirmity in the impugned orders on the score that the Governor had not himself perused the papers or passed the orders. While the learned counsel for the respondents referred to Paragraphs 11, 54, 55 & 154 of the judgment, the learned counsel representing the writ petitioner referred to Paragraphs 18; 27; 54; 55; 56; 57; 142 & 154 of the said judgment. For a ready reference, the said paragraphs are reproduced below:

> ***"11. Third, the aid and advice of the Council of Ministers under Article 163 is different from the allocation of business of the government of the State by the Governor to the Council of Ministers under Article 166(3) of the Constitution. The allocation of business of government under Article 166(3) is an instance of exercise of executive power by the Governor through his Council by allocating or delegating his functions. The aid and advice is a constitutional restriction on the exercise of executive powers of the State by the Governor. The Governor will not be constitutionally competent to exercise these executive powers of the State without the aid and advice of the Council of Ministers.***
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> ***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(l) 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 re1ation 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.

27. Our Constitution embodies generally the Parliamentary or Cabinet system of Government of the British model both for the Union and the States. Under this system the President is the constitutional or formal head of the Union and he exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers. Article 103 is an exception to the aid and advice of the Council of Ministers because it specifically provides that the President acts only according to the opinion of the Election Commission. This is when any question arises as to whether a Member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article 102.

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 Artic1e 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.

57. For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of the Union and the Chief Minister at the head in the case of State in all matters which vests in the Executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally. The present appeals concern the appointment of persons other than District Judges to the Judicial Services of the State which is to be made by the Governor as contemplated in Article 234 of Constitution after consultation with the State Punjab Service Commission and the High Court. Appointment or dismissal or removal of persons belonging to the Judicial Service of the State is not a personal function but is an executive function of the Governor exercised in accordance with the rules in that behalf under the Constitution.

142. Similarly, the President is entrusted with powers and duties covering a wide range by the articles of the Constitution. Indeed, he is the Supreme Commander of the Armed Forces [Article 53(2)], appoints Judges of the Supreme Court and the High Courts and determines the latter's age when dispute arises, has power to refer questions for the advisory opinion of the Supreme Court, (Article 143) and has power to hold that government of a State cannot be carried

in accordance with the Constitution (Article 356). The Auditor-General, the Attorney-General, the Governors and the entire army of public servants hold office during the pleasure of the President. Bills cannot become law, even if passed by Parliament, without the assent of the President. Recognising and derecognising Rulers of former native States of India is a power vested in the President. The extraordinary powers of legislation by ordinances, dispensing with enquiries against public servants before dismissal, declaration of emergency and imposition of President's rule by proclamation upon States, are vast powers of profound significance. Indeed, even the power of summoning and proroguing and dissolving the House of the People and returning Bills passed by the Parliament belongs to him. If only we expand the ratio of Sardari Lal (supra) and Jayantilal (supra) 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 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.

154. We declare the law of this branch of our Constitution to be at 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 possible if it was notorious that a Bill had been passed in disregard to mandatory procedural requirements; but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measures once it had been assented to, prudence would suggest the giving of assent."*

[41] While Mr. Choudhury, learned counsel for the writ petitioner emphasized on the need for the Governor to act as per the aid and advice of the Council of Ministers, the learned counsel representing the respondents emphasized on the exceptional circumstances in which the Governor of a State is entitled to exercise his discretion as per the demand of the situation. As enumerated in Paragraph 154 of the aforesaid judgment, although the President and the Governor, custodians of all executive and other powers under various Articles shall, by virtue of those provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers but there can be exceptional situations. As spelt out in the said paragraph itself, situations referred to are not exhaustive but illustrative.

[42] This aspect of the matter was reiterated in ***M.P. Special Police Establishment*** (supra) when it was held that though normal rule is that Governor acts on aid and advice of Council of Ministers and not independently or contrary to it but there are exceptions under which the Governor can act in his own discretion. It was held that exceptions referred to in ***Samsher Singh*** (supra) are not exhaustive.

[43] In this case referring to the decisions in ***State of Maharashtra Vs. Ramdas Shrinivas Nayak*** reported in ***(1982) 2 SCC 463*** and ***Bhuri Nath Vs. State*** **of Jammu & Kashmir** reported in **(*1997*) *2 SCC 745***, the Apex Court recorded the exceptions, which were accepted to be within the domain of the discretion of the Governor. In this case, the question for consideration was whether a

Governor can act in his discretion and against the aid and advice of the Council of Ministers in matter of grant of sanction for prosecution of Ministers for offence under the Prevention of Corruption Act and/or under the Indian Penal Code. Referring to the provisions of Article 163, extracted above, the Apex Court held that 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 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.**

[44] In this case, the Council of Ministers had declined to grant sanction for prosecution of Ministers but the Governor in his discretion granted the prosecution sanction, the Apex Court upholding the action of the Governor observed and held thus:

> "*30. It is well settled that the exercise of administrative power will stand vitiated if there is a manifest error of record or the exercise of power is arbitrary. Similarly, if the power has been exercised on the non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous.*
> *31. We have, on the premises aforementioned, no hesitation to hold the decision of the Council of Ministers was ex facie irrational whereas the decision of the Governor was not. In a situation of this nature, the writ court while exercising its jurisdiction under Art6icle 226 of the Constitution as also this Court under Articles 136 and 142 of the Constitution can pass an appropriate order which would do complete justice to the parties. The High Court unfortunately failed to consider this aspect of the matter.*
> *32. 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."*

[45] Again in *Rameshwar Prasad* (supra) dealing with the subjective satisfaction of the President under Article 356 for issue of proclamation and the

conditions precedent *vis-à-vis* the scope of judicial review, it **was held that the Court will not lightly presume abuse or misuse of power and will make allowance for fact that the decision making authority is best judge of the situation. Unless the satisfaction derived in arriving at a particular decision is based on wholly extraneous and irrelevant grounds invocation of the power of judicial review under Article 226 of the Constitution will not be available**.

[46] It will also have to be borne in mind that the common thread running through various decisions of the Apex Court is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case *[Associated Provincial Picture House Limited -Vs- Wednesbury Corpn. – (1948) 1 KB 223: 1947 (2) All ER 680 (CA)],* the Court would not go into the correctness of the choice made by the Administrator open to him and the Court should not substitute its decision to that of the Administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision.

[47] In paragraph 249 of the aforesaid judgment, dealing with the allegation of malafide in reference to the sufficiency or the correctness of the factual position indicated in the particular report, it was observed thus:-

> *"249. Allegation of mala fides without any supportable basis is the last feeble attempt of a losing litigant, otherwise it will create a smokescreen on the scope of judicial review. This is a pivotal issue around which the fate of this case revolves. As was noted in A.K. Kaul case the satisfaction of the President is justiciable. It would be open to challenge on the ground of mala fides or being based wholly on extraneous or irrelevant grounds. The sufficiency or the correctness of the factual position indicated in the report is not open to judicial review. The truth or correctness of the materials cannot be questioned by the Court nor would it go into the adequacy of the material and it would also not substitute its opinion for that of the President. Interference is called for only when there is clear case of abuse of power or what is sometimes called fraud on power. The Court will not lightly, presume abuse or misuse of power and will make allowance for the fact that the*

decision-making authority is the best judge of the situation. If the Governor would have formed his opinion for dissolution with the sole objective of preventing somebody from staking a claim, it would clearly be extraneous and irrational. The question whether such person would be in a position to form a stable Government is essentially the subjective opinion of the Governor; of course to be based on objective materials. The basic issue therefore is, did the Governor act on extraneous and irrelevant materials for coming to the conclusion that there was no possibility of a stable Government."

[48] The well recognized position in law is that purity in the electoral process and the conduct of the elected representatives cannot be isolated from the constitutional requirements. "Democracy" and "free and fair election" are irreparable twins. The constitutional duty of the Governor is to safeguard the course of fairness and purity and not to throw up his hands in abject helplessness.

[49] In ***Justice R.A. Mehta (Retd.) & Ors.*** (supra), the Apex Court dealing with the independent/discretionary power of the Governor in reference to Article 163 of the Constitution of India referring to the decision in ***M.P. Special Police Establishment*** (supra) held that in exceptional circumstances, the Governor may be justified in acting upon his/her own discretion. The manner in which the Governor is to act has been discussed in Paragraphs 33 to 57 of the said judgment, which are quoted below:-

"33. In Samsher Singh v. State of Punjab, this Court expounded the universal rule that the Governor is bound to act only in accordance with the aid and advice of the Council of Ministers headed by the Chief Minister. The Rules of Business and allocation of business among the Ministers related to the provisions of Article 53 in the case of the President and Article 154 in the case of the Governor state that executive power in connection with the same shall be exercised by the President or the Governor either directly or through subordinate officers. The President is the formal or Constitutional head of the Executive. The real executive powers, however, are vested in the Ministers of the Cabinet. Wherever the Constitution requires the satisfaction of the President or the Governor, for the purpose of exercise by the President or the Governor any power or function, such satisfaction is not the personal satisfaction of the President or of the Governor in their personal capacity but the satisfaction of the President or Governor in the constitutional sense as contemplated in a Cabinet system of government, that is, the satisfaction of the

Council of Ministers, on whose aid and advice the President or the Governor generally exercise all their powers and functions. The President of India is not a glorified cipher. He represents the majesty of the State, and is at its apex, though only symbolically, and has a different rapport with the people and parties alike, being above politics. His vigilant presence makes for good governance if only he uses, what Bagehot described as, 'the right to be consulted, to warn and to encourage".

34. Whenever the Constitution intends to confer discretionary powers upon the Governor or to permit him to exercise his individual judgment, it has done so expressly. For this purpose, the provisions of 'Articles 200, 239(2), 371-A(1)(b), 371-A(1)(a), 371-A(2)(b) and 371-A(2)(f), Schedule VI, Para 9(2) [and Schedule VI Para 18(3), until omitted with effect from January 21-1-1972], may be referred to. Thus, discretionary powers exist only where they are expressly spelt out.

35. However, the power to grant pardon or to remit sentence (Article 161), the power to make appointments including that of the Chief Minister (Article 164), the Advocate-General (Article 165), the District Judges (Article 233), the Members of the Public Service Commission (Article 316) are in the category where the Governor is bound to act on the aid and advice of the Council of Ministers. Likewise, 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 recess of the Legislature (Article 213) also belongs to this species of power. Again, the obligation to make available to the Election Commission, requisite staff for discharging functions conferred upon it by Article 324(1) and Article 324(6), the power to nominate a member of the Anglo-Indian Community to the Assembly in certain situations (Article 333), the power to authorise the use of Hindi in proceedings in the High Court [Article 348(2)], are illustrative of the functions of the Governor, qua the Governor.

36. The Governor shall act with aid and advice of the Council of Ministers, save in a few well-known exceptional situations. Without being dogmatic or exhaustive, this situation relates to the choice of the Chief Minister, dismissal of the Government, and dissolution of the House.

37. In M.P. Special Police Establishment v. State of M.P., 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 Indian 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 and State of Maharashtra v. Ramdas Shrinivas Nayak 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 breakdown 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.

39. In Brundaban Nayak v. Election Commission of India reported in AIR 1965 SC 1892, this Court held that while dealing with a case under Article 192 of the Constitution, the Governor must act in accordance with advice of the Election Commission, and that he does not require any aid or advice from the Council of Ministers. (See also: Election Commission of India v. Dr. Subramanian Swamy reported in AIR 1996 SC 1810).

40. The issue of primacy of the Chief Justice in such cases, has also been considered and approved by this Court in Ashish Handa V. Chief Justice of High Court of P&H reported in (1996) 3 SCC 145 and Supreme Court Advocates-on-Record Assn. v. Union of India reported in AIR 1994 SC 268.

41. Thus, where the Governor acts as the Head of the State, except in relation to areas which are earmarked under the Constitution as giving discretion to the Governor, the exercise of power by him must only be upon the aid and advice of the Council of Ministers, for the reason that the Governor being the custodian of all executive and other powers under various provisions of the Constitution is required to exercise his formal Constitutional powers only upon and in accordance with the aid and advice of his Council of Ministers. He is, therefore, bound to actunder the Rules of Business framed under Article 166(3) of the Constitution. (Vide: Pu Myllai Hlychho v. State of Mizoram reported in AIR 2005 SC 1537).

42. In Ram Nagina Singh v. S.V. Sohni reported in AIR 1976 Pat 36, the Patna High Court considered the issue involved herein i.e. the appointment of the Lokayukta, under the Bihar Lokayukta Act, 1973 and held that ordinarily when a power is vested even by virtue of a statute in the Governor he must act in accordance with the aid and advice tendered to him by the Council of Ministers for the simple reason that he does not cease to be an Executive Head as mentioned under the Constitution merely because such authority is conferred upon him by a statute. It would in fact be violative of the scheme of the Constitution if it was held that the mere use of the word 'Governor' in any statute is sufficient to impute to the legislature, an intention by it to confer a power, 'eo nomine'. Any interpretation other than the one mentioned above, would, therefore, be against the concept of parliamentary democracy which is one of the basic postulates of the Constitution. In view of the Rules of Executive Business, the topic involving appointment of the Lokayukta must be brought before the Council of Ministers. Even if the appointment in question is not governed by any specific rule in the Rules of Executive Business such appointment must still be made following the said procedure for the reason that the Rules of Executive Business cannot be such so as to override any bar imposed by Article 163(3) of the Constitution.

43. However, a different situation altogether may arise where the Governor ex officio, becomes a statutory authority under some statute.

44. In Hardwari Lal v. G.D. Tapase reported in AIR 1982 P&H 439, the powers of the Governor, with respect to the appointment/removal of the Vice-Chancellor of Maharshi Dayanand University, Rohtak under the Maharshi Dayanand University (Amendment) Act, 1980 were considered wherein a direction was sought with regard to the renewal of the term of the Vice-Chancellor of the said University. Certain promises had been made in connection with the same while making such appointment. The Court held that, as the Governor was the ex officio Chancellor of the University, therefore, by virtue of his office, he was not bound to act under the aid and advice of the Council of Ministers. Under Article 154 of the Constitution, the executive powers of the State are vested in the Governor which may be exercised by him either directly, or through officers subordinate to him, in accordance with the provisions of the Constitution. Article 161 confers upon the Governor, a large number of powers including the grant of pardon, reprieves, respites or remissions of punishment, etc. Such executive power can be exercised by him only in accordance with the aid and advice of the Council of Ministers. Article 162 states that the executive power of the State shall extend to all such matters with respect to which the Legislature of the State has the power to make laws. Therefore the said provision widens the powers of the Governor. Article 166(3) of the Constitution further bestows upon the Governor the power to make rules for more convenient transactions of business of the Government of the State and also for the purpose of allocating among the Ministers of State such business. There are several ways by which, a power may be conferred upon the Governor, or qua the Governor, which will enable him to exercise the said power by virtue of his office as Governor. Therefore, there can be no gainsaying that all the powers that are exercisable by the Governor by virtue of his office can be exercised only in accordance with the aid and advice of the Council of Ministers except insofar as the Constitution expressly, or perhaps by necessary implication, provides otherwise.

45. Thus, in such a situation, the statute makes a clear-cut distinction between two distinct authorities, namely, the Chancellor and the State Government. When the legislature intentionally makes such a distinction, the same must also be interpreted distinctly, and while dealing with the case of the Vice-Chancellor, the Governor, being the Chancellor of the University, acts only in his personal capacity, and therefore, the powers and duties exercised and performed by him under a statute related to the University, as its Chancellor, have absolutely no relation to the exercise and performance of the powers and duties by him while he holds office as the Governor of the State.

46. *In University of Allahabad v. Anand Prakash Mishra reported in (1997) 10 SCC 264, this Court dealt with the power of the Governor of the State of U.P. ex officio, with respect to all the Universities established under the provisions of the U.P. State Universities Act, 1973 (hereinafter referred to as `the Act 1973'). Section 68 of the Act, 1973 empowers the Chancellor to entertain any question, related to the appointment, selection, promotion or termination of any employee in the University. In the meanwhile, the Legislature of the State of U.P., enacted the U.P. Public Services (Reservation of Scheduled Castes, Scheduled Tribes and Backward Classes) Act, 1994 (hereinafter referred*

to as `the Act 1994), providing for a particular reservation. This Court held that Section 6 of the 1994 Act enables the State Government to call for records and direct enforcement of the provisions of the said Act. This Court also held that when the Governor ex officio acts as the Chancellor of a University he acts under Section 68 of the 1973 Act and discharges statutory duties as mentioned under the 1973 Act, but when the Government calls for the record of appointment of any employee to examine whether the reservation policy envisaged under the 1994 Act has been given effect to or not and takes action in such respect then he acts in his capacity as Governor under Article 163 of the Constitution of India and is therefore, bound to act upon the aid and advice of the Council of Ministers.

47. The constitutional provisions hence, dearly provide that the Governor does not exercise any power by virtue of his office in his individual discretion. The Governor is aided and advised by the Council of Ministers in the exercise of such powers that have been assigned to him under Article 163 of the Constitution. The executive power of the State is coextensive with the legislative power of the State and the Governor in the constitutional sense discharges the functions assigned to him under the Constitution with the aid and advice of the Council of Ministers except insofar as he is by or under the Constitution required to exercise such functions in his own discretion. The satisfaction of the Governor for the purpose of exercise of his other powers or functions as required by the Constitution does not mean the personal satisfaction of the Governor, but refers to satisfaction in the constitutional sense, under a cabinet system of government. The executive must act subject to the control of the legislature. The executive power of the State is vested in the Governor as he is the head of the executive. Such executive power is generally described as residual power, which does not fall within the ambit of either legislative or judicial power. However, executive power may also partake legislative or judicial actions. All powers and functions of the President, except his legislative powers as have been mentioned, for example, in Article 123 viz. the Ordinance-making power, and all powers and functions of the Governor, except his legislative power, as also for example, under Article 213, which state that Ordinance-making powers are executive powers of the Union, vested in the President under Article 53(1) in one case, and are executive powers of the State vested in the Governor under Article 154(1) in the other case. Clause (2) or clause (3) of Article 77 are not limited in their operation only with respect to the executive actions of the Government of India under clause (1) of Article 77. Similarly, clause (2) or clause (3) of Article 166 are also not limited in their operation only with respect to the executive actions of the Government of the State under clause (1) of Article 166. The expression, 'Business of the Government of India' in clause (3) of Article 77, and the expression 'Business of the Government of the State' in clause (3) of Article 166, include all executive business. (Vide: Samsher Singh, Ramdas Shrinivas Nayak, Bhuri Nath v. State of J&K and Narmada Bachao Andolan v. State of Madhya Pradesh reported in (2011) 12 SCC 333).

48. In Maru Ram V. Union of India reported in AIR 1980 SC 2147 a Constitution Bench of this Court held that (SCC pp. 146-47, para 61)

> *'61.... the Governor is but a shorthand expression for the State Government and the President is an abbreviation for the Central Government.'*

49. The exceptions carved out in the main clause of Article 163(1), permit the legislature to entrust certain functions to the Governor to be performed by him, either in his discretion, or in consultation with other authorities, independent of the Council of Ministers. The meaning of the words 'by or under' is well-settled. The expression, `by an Act', would mean by virtue of a provision directly enacted in the statute in question and that which is conceivable from its express language or by necessary implication therefrom. The words 'under the Act', would in such context, signify that which may not directly be found in the statute itself, but which is conferred by virtue of powers enabling such action(s) e.g. by way of laws framed by a subordinate law making authority competent to do so under the Parent Act. (Vide: Indramani Pyarelal Gupta v. W.R. Natu reported in AIR 1963 SC 274).

50. This Court in Rameshwar Prasad (6) v. Union of India reported in (2006) 2 SCC 1 held: (SCC p.82, para 57)

> *'57. The expression 'required' found in Article 163(1) is stated to signify that the Governor can exercise his discretionary powers only if there is a compelling necessity to do so. It has been reasoned 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. The Sarkaria Commission Report further adds that such necessity may arise even from rules and orders made 'under' the Constitution.'*

51. However, there is a marked distinction between the provisions of Articles 74 and 163 of the Constitution. The provisions of Article 74 of the Constitution, are not pari materia with the provisions of Article 163, as Article 74 provides that there shall be a Council of Ministers, with the Prime Minister at their head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice as is rendered to him, provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice that is tendered after such reconsideration. While Article 163 provides that there shall be a Council of Ministers with the Chief Minister at their head, to aid and advise the Governor in the exercise of his functions, an exception has been carved out with respect to situations wherein, he is by or under this Constitution required to perform certain functions by exercising his own discretion.

52. The exception carved out by the main clause under Article 163(1) of the Constitution permits the legislature to bestow upon the Governor the power to execute certain functions that may be performed by him, in his own discretion, or in consultation with other authorities, independent of the Council of Ministers. While dealing with the powers of the Governor with respect to appointment and removal, or imposing punishment for misconduct, etc. the Governor is required to act upon the recommendations made by the High Court, and not upon the aid and advice rendered by the Council of Ministers, for the reason that the State is not competent to render aid and advice to the Governor with respect to such subjects. While the High Court retains powers of disciplinary control over the subordinate judiciary, including the power to initiate disciplinary proceedings, suspend them during inquiries, and also to impose punishments upon them, formal orders, in relation to questions regarding the dismissal, removal, reduction in rank or the termination of

services of judicial officers on any count, must be passed by the Governor upon recommendations made by the High Court. (Vide: Chandra Mohan v. State of U.P. & Ors. reported in AIR 1966 SC 1987 and Rajendra Singh Verma v. Lt. Governor (NCT of Delhi) & Ors. reported in (2011) 10 SCC 1, SCC p. 49, para 100).

53. In Bhuri Nath (supra), the question that arose was in relation to whether the Governor was bound to act in accordance with the aid and advice of the Council of Ministers, or whether he could exercise his own discretion, independent of his status and position as the Governor, by virtue of him being the ex officio Chairman of the Shri Mata Vaishno Devi Shrine Board under the Shri Mata Vaishno Devi Shrine Act, 1988. The Shrine Board discharges functions and duties, as have been described under the Act in the manner prescribed therein, and thus, after examining the scheme of the Act, this Court held that: (SCC p. 765, para 24)

> *'24…. The decision is his own decision, on the basis of his own personal satisfaction, and not upon the aid and advice of the Council of Ministers. The nature of exercise of his powers and functions under the Act is distinct, and different from the nature of those that are exercised by him formally, in the name of the Governor, under his seal, for which responsibility rests only with his Council of Ministers, headed by the Chief Minister.'*

54. In State of U.P. v. Pradhan Sangh Kshettra Samiti & Ors. reported in AIR 1995 SC 1512, this Court dealt with the position of the Governor in relation to functions of the State and held as under:

> *'37. Admittedly, the function under Article 243(g) is to be exercised by the Governor on the aid and advice of his Council of Ministers. Under the Rules of Business made by the Governor under Article 166(3) of the Constitution, it is in fact an act of the Minister concerned or of the Council of Ministers as the case may be. When the Constitution itself thus equates the Governor with the State Government for the purposes of relevant functions…. Further, Section 3(60)(c) of the General Clauses Act, 1897 defines 'State Government' to mean Governor which definition is in conformity with the provisions of the Constitution…*
>
> *38… … [The] 'Governor' means the Government of the State and all executive functions which are exercised by the Governor, except where he is required under the Constitution to exercise the functions in his discretion, are exercised by him on the aid and advice of Council of Ministers.'*
>
> *(emphasis added)*

55. In S.R. Chaudhuri v. State of Punjab & Ors. reported in AIR 2001 SC 2707, this Court held as under: (SCC pp. 138-39 & 146-47, paras 21, 40-41)

> *'21. Parliamentary democracy generally envisages (i) representation of the people, (ii) responsible government, and (iii) accountability of the Council of Ministers to the Legislature. The essence of this is to*

draw a direct line of authority from the people through the Legislature to the executive.

40. Chief Ministers or the Governors, as the case may be, must forever remain conscious of their constitutional obligations and not sacrifice either political responsibility or parliamentary conventions at the altar of 'political expediency'……

41…… Constitutional restraints must not be ignored or bypassed if found inconvenient or bent to suit 'political expediency'. We should not allow erosion of principles of constitutionalism.

(emphasis in original)

56. The principle of check and balance is a well-established philosophy in the governance of our country under our Constitution. If we were all to have our way, each person would be allowed to wage a war against every other person i.e. Bellum Omnium Contra Omnes. This reminds us to abide by Constitutional law followed by statutory law otherwise everybody would sit in appeal against the judgment of everybody.

57. In view of the aforesaid discussion, the law as evolved and applicable herein can be summarised to the effect that the Governor is bound to act on the aid and advice of the Council of Ministers, unless he acts as, 'persona designata' i.e. 'eo nomine', under a particular statute, or acts in his own discretion under the exceptions carved out by the Constitution itself."

[50] From the above, what has emerged is that under Article 163(2) of the Constitution, it would be permissible to the Governor to act without ministerial advice in certain situations, depending upon the circumstances therein, even though they may not specifically be mentioned in the Constitution as discretionary functions. One such situation is where no such advice will be available from the Council of Ministers or where one Ministry has resigned and the other alternative Ministry cannot be formed. Moreover, Article 163(2) 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.

[51] In *Gorantla Butchaiah Chowdary* (supra) a Division Bench of Andhra Pradesh High Court held that the Constitutional conventions leave no manner of doubt that the Governor has to exercise his own discretion so far as the dissolution of the

Legislative Assembly is concerned. Referring to Article 174(1) of the Constitution, it was held that it has vested the Governor with the power of summoning the Legislature, subject, however, to the condition that 6(six) months shall not intervene within the Sessions of the Assembly.

[52] In ***Pratapsingh Rajirao Rane*** (supra), a Division Bench of the Bombay High Court dealing with the question as to whether the Governor is answerable to the Court even in respect of a charge of *malafides* made the following observations:

> ***"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 If 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.***

[53] In ***K.A. Mathialagan*** (supra), the Madras High Court dealing with the writ petition filed by the Speaker of the Tamil Nadu Legislative Assembly for a direction to the respondents not to interfere in any manner with his right to continue to function as Speaker of the Tamil Nadu Legislative Assembly and also for preventive injunction restraining the Deputy Speaker of the Assembly from functioning as Speaker thereto

and also dealing with the Article 175(2) of the Constitution under which the Governor had given message, it was held thus:-

> *"7……..We are not impressed with this argument. There is nothing to indicate either in the provisions of the Constitution or in the rules framed under Art. 208 to gain the conclusion that the Assembly if summoned after prorogation would be clothed with a special garb of identification, nor would it impress it with a badge of singularity apart from normal. Art. 175 (2) of the Constitution of India does not create any such special situation. One of the Constitutional responsibilities of the Governor of a State is to summon an Assembly after he prorogues it. This is an event which must necessarily follow the initial prorogation and as such summoning the peculiar circumstances is the responsibility of the Governor of the State, h issues a message which is practically equal to the agenda of the session which has to be transacted in the summoned session of the Assembly. No provision of acceptable law has been brought to our notice nor any such practice prevailing in the British Parliament warrants the presumption that there is any distinctinctivencess or specially about a summoned Assembly. No doubt it is for the Speaker to preside over it and transact the business. But hat is not an indicia to sustain the extraordinary case of the petitioner that no one member present in the Assembly has the right t intercept his scheme of conduct of the proceedings which is even contrary to the mandate issued by the Governor under Art. 178 (2) when re-summoning the Assembly after prorogation. The censure motion against eh Minister, which is not a formal subject, allowed by the petitioner to be moved was not within the periphery of the message sent by the Governors and so normally could not be taken up for discussion under R. 21 (2). The message of the Governor which is a directive to all concerned, is at once a mandate and a mandate pregnant with details as to the subjects to be discussed in the Assembly session. As it is common ground as we shall presently refer to that such an agenda contained din the message was notified to all concerned including the Speaker and the Assembly reassembled to transact such notified businesses, it follows that the proceeding to be conducted therein are subject to the usual norms and principles which govern the conduct of such proceedings of a Legislative Assembly of a State and generally in accordance with the rules framed under Art. 208 of the Constitution. Such rules, unless there is cause of deviation and it is so desired by the House are ordinarily understood to be the magna caria for the conduct of the proceedings of the Assembly. There is therefore no peculiar significance attached to the session of the Assembly which is summoned after the prorogation.*
>
> *8. ….Even otherwise, the agenda having been prescribed by the Governor in the message as above, it was not open to the Speaker to bypass the same and introduce an irregular censure motion and cause it to be taken up out of turn at that particular juncture. IF the Speaker took the motion of no confidence of Thiru M.G. Ramachandran in the first instance as claimed and if the House resented the said action because of its out of context introduction, into the House of the Assembly and since it ran repugnant to the written mandate of the Governor under Art. 175(2), then the petitioner can have no basis for complaint. It cannot be said that the petitioner was*

ignorant of the nature and content of the subjects that are to be discussed on 2nd December 1972. In so far as 2nd December 1972 is concerned, it is peculiar in the sense that in the session which began on that day the itemized subjects set out in the message are to be discussed willy-nilly, and the Speaker, though the presiding officer therein, cannot, for reasons which are more personal in the instant case, attempt to make deliberate deviation therefrom so as to cloud the agenda by the introduction of non-discussable items in the floor of the Assembly. The petitioner himself was aware of the notice of motion of no confidence, given by members on 16th November 1972. He has also felt the pulse of the majority of the members of the Assembly even on 13th November 1972 when a memorandum signed by 183 members of the Assembly was sent asking the Speaker to resign. The Secretary of the Assembly, whose statement as to facts we have no reason to brush aside, states that the petitioner was aware of such a notice of motion dated 16th November 1972, which was sent to him for information. There was therefore a subject which would squarely come within item 8 of the message of the Governor. When after the question hour this motion was sought to be taken up at the instance of the movers of the resolution, any overt act on the part of the Speaker to ignore such a legitimate move on the part of the members of the Assembly can only be understood as a self serving one to buttress the events and to act up a contention which is prima facie not acceptable.

12. What emerges from the version of the events that happened on 2nd December 1972 is that there was undoubtedly pandemonium and confusion during the session. The petitioner who was presiding over the Assembly was aware that there was a resolution for his removal which was to be considered at the session. This is because the draft message of the Governor and the business to be undertaken by the Assembly was seen by him and approved by him. He would therefore be deemed to be conscious of the fact that there was a certain possibility of such a resolution for his removal being taken up for consideration by the House on 2nd December, 1972. With the consciousness he occupied the Chair and has therefore to face the limitations of such occupancy. The motion of Thiru M.G. Ramachandran which was given notice of on that date, no doubt, was an item which could be discussed normally in normal situations. But in view of the fact that the agenda of the summoned Assembly has been fixed by the Governor under Art. 175(2), it was the primordial duty of the Speaker as the holder of office under the Constitution to obey such a mandate and act in accordance with the itemized agenda therein. In our view, he ought not to have allowed the no confidence motion against the Ministry to removed at that stage before he began transacting the other business as set in the message. Even so, he had not the requisite control and authority to allow Thiru M.G. Ramachandran to move or discuss about the no confidence motion against the Ministry when he could not preside over the House. A vacancy in the office of the Speaker is created by Thiru N. Veerasami's rising after question hour and moving the resolution for removal of the Speaker. There was no occasion or necessity for him to fix up his removal from office. The date has already been fixed by himself giving assent to item 8 of the agenda which included one such resolution of which valid notice was given on 16th November, 1972. In our view, it was not even necessary for the Leader of House to seek for a dispensation of R. 53 by

invoking R.244. Apparently the Leader of the House by way of abundant caution sought for its dispensation. That by itself would not make any difference in the eye of law or in the wake of the constitutional PROVISIONS. The undeniable fact is that there was a resolution for the removal of the Speaker which could be validly taken up for consideration on 2nd December 1972, and it was this which was sought to be done immediately after the question hour. The petitioner, for reasons better known to himself, did not allow such a motion. Under Article 181(1), if at any sitting of the Legislative Assembly while, any resolution for the removal of the Speaker from his office is under consideration, the Speaker shall not, though he is present, preside. In such contingency, the provisions of Art. 180 (2) shall apply in relation to every such sitting as if the Speaker is absent. It is in those circumstances that the deemed vacancy was appreciated by the House and the leader of the House in consequence thereof sought the leave of the House through the Deputy Speaker for the latter to occupy the chair and conduct the proceedings thereafter. We are of the opinion that the attitude of the petitioner in not having allowed the resolution of Thiru N. Veerasami and others to be moved when it was sought to be moved was not in order and it was repugnant to the Constitution and its duly set norms. His attempt to continue to occupy the Chair when a resolution for his removal was under consideration is yet again a Constitutional violation. The expression 'for the removal of the Speaker' has to be given its full significance. The resolution for the removal of a Speaker is undoubtedly elastic in its content and somewhat different from a resolution to remove a Speaker. A resolution for the removal of the Speaker becomes operative when a notice of motion for the removal of the Speaker is given and is taken up for consideration. Eo instanti when such a resolution comes up for consideration there is a deemed vacancy under the provisions of the Constitution and the Speaker even though he is physically present is said to be constitutionally absent and cannot there fore be the Presiding Officer of the Assembly from that moment. It was this position that was correctly understood by the Leader of the House and the majority of the members when they allowed the Deputy Speaker to occupy the Chair. The minor incidents that followed such as switching off of the mike and the removal of the bell are all matters which happened inside the Assembly. Whether this court can review such events we shall consider presently. On a reasonable review of the events that happened inside the Assembly we have no hesitation to hold that there was vacancy in the office of the Speaker when Thiru N. Veerasami and others moved the resolution and the occupation of the Chair by the Deputy Speaker was in order. The proceedings as reflected in the printed book published by the Legislative Assembly department on 15th December 1972 gives the indelible impression that the motion of no confidence against the Speaker moved by Thiru N. Veerasami was moved, discussed and decided upon in a manner provided for both under the Constitution and under the rules. Firstly in accordance with the test as contained in the printed leaflets the leave of the House was sought and it was obtained. There was a further discussion thereon in which the petitioner did not participate, nor does it appear that he was anxious to speak on it. Ultimately by a voice vole the majority resolved to accept the mover's resolution. Even otherwise, the 145 affidavits filed by the Assembly members reiterating what is reflected in the printed pamphlet regarding the debates hat ensued in the Assembly on 2nd December, 1972 which are accepted by us prompt us to hold that the resolution to remove the Speaker was carried with a majority and that it is an effective, valid and a legally implementable resolution.

[54] In ***Nipamacha Singh*** (supra), this Court dealing with the notice relating to removal of Speaker of the 7th Manipur Legislative Assembly *vis-à-vis* Articles 212 & 179 of the Constitution of India, held that the Speaker was immune from interference by the Court and was protected under Clause (2) of Article 212 on the grounds that procedure laid down under Rules or Law had not been strictly followed, if he was acting within his jurisdiction. It was further held that the Speaker in rejecting the motion in notice of petitioners for removal of Speaker from Office exercised jurisdiction not vested on him but in Legislative Assembly and had violated constitutional rights of petitioners.

[55] In ***K.A. Mathaialagan*** (supra), the Full Bench of Madras High Court decided the questions of considerable importance as to the constitutional position of the Governor, with particular reference to the prorogation of the State Legislative Assembly. The relevant facts involved in the said case were – as a result of a split in the ruling party in the Tamil Nadu Legislature, the relations between the Speaker and the Chef Minister were strained. Following certain happenings in the Legislative Assembly, the Speaker adjourned the House for 3(three) weeks. Thereupon, the Governor of Tamil Nadu prorogued the legislature, intending to pass an Ordinance, which will enable the legislature to dispose of urgent business. But before that could be done, a writ petition was filed on which notice was issued to the Governor. On receipt of the notice ordinance was not issued.

[56] In the writ petition, the petitioner had applied for a writ of certiorari to quash the Governor's order proroguing the Legislative Assembly. The Governor and the Chief Minister were made parties. The ground for impugning the Governor's order was that it was passed mala fide, that the Governor should not have followed the Chief Minister's advice which was given to further the interest of the Chief Minister's party, and that the Governor should have acted according to his own discretion. The

Governor filed an affidavit contending that under Article 361(1) he was not answerable to the Court for anything done in the exercise of his powers; but without prejudice to that submission, he pleaded to the charge of mala fides on the merits and justified his action which had been taken on the advice of the Chief Minister. It may be mentioned that after an elaborate discussion of the constitutional position of the Governor, and of the immunity conferred on him by Article 361(1), the Court held on the facts that the Governor's order was proper and valid.

[57] In terms of the said Full Bench decision and the decision of the Apex Court in ***Samsher Singh*** (supra), the Governor is required to act in his discretion, which may or may not be expressly provided. In some cases, the Governor has the power to act in his discretion as a matter of necessary implication. Article 163(2) postulates that a question might arise whether by or under the Constitution, the Governor is required to act in his discretion; and Article 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. In view of article 163(2), the Court may not have jurisdiction to decide whether the Governor ought or ought not to act in his discretion.

[58] In this proceeding, both the writ petitions have raised the question whether the Governor had been advised by the Council of Ministers. According to the petitioners, the Governor could not have preponed the Assembly session exercising his purported power under Article 174(1) of the Constitution of India. Article 163(3) prevents the Court from going into that question. Consequently, the writ petitioners have raised the question whether under our Constitution the Governor was under an obligation to act in his discretion. In view of Article 163(2), the Governor and not the Court is the sole judge of that question.

[59] In ***Satyapap Dang (Supra),*** discarding the submission that the legislature should not be at the mercy of the Governor and the absolute field of action

open to the legislature and the Speaker would be unreasonably cut down and thus lead to assumption of absolute powers by Governors, the Apex Court declined to entertain such apprehensions. Referring to the kind of situation in which the State of Punjab was, the Apex Court opined that the action of the Governor, although was drastic but was constitutional and resulted from a desire to set right a disparate situation **as bacon once said, no remedy caused so much pain as those which are efficacious.**

[60] In ***Pu. Myllaihlychho(Supra)*** to which the learned counsel for the petitioners has referred to, referring to the powers and duties for the Governor as enumerated in the Constitution, the Apex Court observed that some of those powers are required to be exercised in his discretion and some other powers with the aid and advice of the council of Ministers. It was further observed that wherever the Constitution requires the satisfaction of the Governor for the exercise of any power or function, the satisfaction required by the Constitution is not personal suggestion of the Governor but the satisfaction in the constitutional sense under the Cabinet system of Government. In the said case, the members in question held office through the pleasure of the Governor and the council of Ministers advised the Governor to terminate their membership and all relevant records were placed before him. In such a situation and as the Governor was not left with any discretionary power, it was held that he was bound by the advice given by the council of Ministers.

[61] The decision in ***Valluri Basavaiah Chowdhary (Supra)*** was referred to in reference to the observations made in paragraphs 17, 18 and 21, which are reproduced below :-

> "***17.*** ***There is a clear distinction between 'an Act of legislature', 'a legislative act' and 'a resolution of the House'. The High Court has completely overlooked this distinction***.
>
> ***18.*** ***The Governor is a constitutional head of the State Executive, and has, therefore, to act on the advice of a Council of Ministers under Art. 163. The Governor is, however, made a component part of the State Legislature under Art. 164, just as the President is a part of***

Parliament. The Governor has a right of addressing and sending messages to under Arts. 175 and 176, and of summoning, proroguing and dissolving under Art. 174, the State Legislature, just as the President has in relation to Parliament. He also has a similar power of causing to be laid before the State Legislature the annual financial statement under Art. 202(1), and of making demands for grants and recommending 'Money Bills' under Art. 207 (1). In all these matters the Governor as the constitutional head of the State is bound by the advice of the Council of Ministers.

21. The function assigned to the Governor under Art. 176(1) of addressing the House or Houses of Legislature, at the commencement of the first session of each year, is strictly not a legislative function but the object of this address is to acquaint the members of the Houses with the policies and programmes of the Government. It is really a policy statement prepared by the Council of Ministers which the Governor has to read out. Then again, the right of the Governor to send messages to the House or Houses of the Legislature under Art. 175(2), with respect to a Bill then pending in the legislature or otherwise, normally arises when the Governor withholds his assent to a Bill under Art. 200, or when the President, for whose consideration a Bill is reserved for assent, returns the Bill withholding his assent. As already stated, a 'Bill' is something quite different from a 'resolution of the House' and, therefore, there is no question of the Governor sending any message under Art. 175(2) with regard to a resolution pending before the House or Houses of the Legislature."

[62] The above observation was in the context of the challenge to the judgement and order of the Andhra Pradesh High Court allowing a batch of 37 writ petitions in which the issue involved was, whether the **Urban Land (Ceiling and Regulation) Act, 1976** was ultra-vires the Parliament, so far as the state of A.P. is concerned. The High Court was of the view that the term "**Legislature"** in Article 252(1) of the Constitution comprises both the Ministers of Legislature i.e. the Legislative Assembly and the Legislative council and the Governor of the State. The Act was struck down on the ground that the Parliament was not competent to enact the impugned Act for the State of A.P., inasmuch as, the Governor of A.P. did not participate in the process of authorization in the passing of the Act by the Parliament. Repelling the construction placed by the High Court under Article 252(1), it was held that if any law made by the Legislature of a State is repugnant to any provision of law enacted by the Parliament, the law made by the Parliament shall prevail. It was also noticed that Article 252 empowers the Parliament to legislate for two or more States in

any of the matters with respect to which it has no power to make laws except as provided in Articles 249 and 250.

[63] It was in the above context, the Apex Court observed that the Governor has a right of addressing and sending messages too under Article 175 and 176 and for summoning, proroguing and dissolving under Article 174, the State Legislature, just as precedent as in relation to a Parliament. In para 19 of the judgement, it has been observed that the Governor is a component part of a legislature of a State under Article 168 in reference to the bill passed by the State Legislature, which has to be reserved for the assent under Article 200. The observation that there is no question of the Governor sending any message under Article 175(2) with regard to a resolution pending before the house is in reference to such a bill and not otherwise.

[64] ***Dr. Kashinath G. Jalmi (Supra)*** has been referred to in respect of the impugned order dated 15/12/2015, by which the Deputy Speaker set at naught the earlier order of the Speaker of the same date disqualifying the 14 MLAs who are respondents in this proceeding for the grounds assigned in the order. This issue is really become academic in this proceeding, inasmuch as, the order of the Speaker disqualifying 14 MLAs is under challenge in another writ petition being **WP(C) No. 9/2016,** in which an interim order has been passed suspending the effect and operation of the said order. Thus, since the parent order itself passed by the Speaker is subjudice in the said writ proceeding, the order of the Deputy Speaker holding the said order of the Speaker as *nonest* may not be advisable to be adjudicated upon in this proceeding, lest any finding embarrass / prejudices either parties in the said writ proceeding. It was broadly agreed upon by the learned counsel appearing for the parties that the order of the Deputy Speaker impugned in the writ petitions has virtually become academic as the outcome of the writ petition being **WP(C) No. 9/2016** will govern the parties.

[65] The decision in ***K.D. Sarmah (Supra)*** was referred to, to buttress the argument that there being suppression of material fact on the part of the respondents in respect of the resolution moved for removal of the Deputy Speaker, their prayers for vacation of the interim order and also to dismiss the writ petitions are liable to be rejected. The submission advanced was that the plea that the Governor was not apprised of the resolution for removal of the Deputy Speaker is incorrect, inasmuch as, vide **Annexure- RA/2** letter dated 08/12/2015 addressed to the Governor's Secretariat, the Secretary, Arunachal Pradesh Legislative Assembly had furnished information as follows :-

"*ARUNACHAL PRADESH LEGISLATIVE*

ASSEMBLY SECRETARIAT

No. LA/LEG-24/2015 Dated Naharlagun the 8th December, 2015

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,
Sd/- Illegible
(M. LASA)
Secretary
Arunachal Pradesh Legislative Assembly

Naharlagun".

[66] The above aspect of the matter has already been dealt with hereinabove.

[67] In **I.A. No. 30/2016**, the applicant has annexed the Annexure-VIII note of the ADC to the Governor which has been extracted above. As per the said note, the file was at the official residence of the Speaker at Itanagar. It is the specific case of the application in ***IA 30/2016*** that having not received any communication from the office of the Speaker of Arunachal Pradesh Legislative Assembly and also finding that no action has been initiated from his end, the Governor exercised his power conferred by Article 174(1) of the Constitution of India. Accordingly, he passed a speaking order dated 09/12/2015 modifying the summons already issued and instead summoning the 6th Arunachal Pradesh Legislative Assembly on 14/12/2015. It has further been stated that the message under Article 175(2) of the Constitution was issued fixing the resolution for removal of the Speaker as first item and that the Deputy Speaker shall preside over the house in accordance with the provision of Article 181 (1) of the Constitution of India.

[68] In ***Mayawati (Supra)***, it has been held that in para 6 of the 10th schedule does not completely exclude the jurisdiction of the Court under Article 226 of the Constitution. It was, however, held that the scope of judicial scrutiny in limited to ascertain when the decision was vitiated by jurisdictional errors, vice "**infirmity based on violation of the constitutional mandate, malafides, non-compliance with the Rules of Natural Justice and perversity."**

[69] The decision in ***Raja Ram Pal (Supra)*** was also referred to to emphasis on non-ouster of jurisdiction in the matter of judicial review in relation to exercise of Parliamentary provisions. While in para 431(f) summarizing the principles, the Apex Court held that the fact that parliament is an august body of coordinate constitutional

position, does not mean that there can be no judicial manageable standards to review exercise of its power, in para 431 (e) it was held that having regard to the importance of the functions discharged by the legislature under the constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges etc. have been regularly and reasonably exercised, not violating the law or the constitutional provisions, this presumption being a rebuttable one.

[70] The decision in ***Sir Kameshwar Singh (Supra)*** was referred to, to emphasis that the term '**Legislature"** is not always used in the constitution is including the Governor, although Article 168 maxim a component part of the said legislation. The particular observation was in the context of validity of **Bihar Land Reforms Act.**

[71] Having discussed the decisions referred to by the learned counsel for the parties and keeping in mind that the ratio of a decision will have to be understood in the background of the facts-situation involved in each case and that a decision is an authority for what it actually decides and what logically follows from it, the question is, as to whether the decisions of the Governor impugned in this proceeding are vitiated being opposed to the constitutional mandates.

[72] A few basic facts although noticed hereinabove may not be out of place to mention here. As highlighted in **IA No. 30/2016,** for the last more than 3 months, a group of 21 Members of the Legislative Assembly belonging to Ruling Indian National Congress (I) clamored for change of guard in Arunachal Pradesh. They also camped in Delhi to press their demand. On 19/11/2015, a group of 13 MLAs submitted a letter to the Governor seeking preponing of the session of Arunachal Pradesh Legislative assembly which was earlier scheduled to be held on and from 14/01/2016 to 18/01/2016 to consider and vote for the resolution for removal of the Speaker brought

by them. The notice of resolution was submitted on 19/11/2015 to the office of the Speaker and it was duly received. As per the provision of proviso of Article 179, at-least 14 days notice has to be given for moving a resolution for removal of Speaker or Deputy Speaker. As to what transpired thereafter has been noted above. When no response was received from the end of the Secretary, Arunachal Pradesh Legislative Assembly, the Deputy Secretary to the Governor vide his letter dated 03/12/2015 requested furnishing of the informations as enumerated in the said letter. In the mean time, a rumour was out in the air that some members of the Assembly had submitted a notice for removal of Deputy Speaker. It was in such circumstances, the Governor directed his officials to make enquiry regarding the matter. Pursuant to the said direction, the above quoted letter dated 07/12/2015 was issued. It is the specific case of the Governor that neither the office of the Speaker nor any other authority had informed the Office of the Governor about the notice for resolution of removal of Deputy Speaker at any point of time. It may not be out of place to mention here that even in the writ petition, the petitioners have not annexed any copy of such notice.

[73] In the mean time and as noted above, the Deputy Secretary to the Governor vide his letter dated 07/12/2015 in reference to the earlier communications, again requested the Secretary, Arunachal Pradesh Legislative Assembly to furnish the required information with the further request to send his reply latest by 08/12/2015. The Secretary by his letter dated 08/12/2015 submitted his reply to the queries. The note of the ADC that was prepared on the basis of the enquiries has been noted above. Having not received any communication from the office of the Speaker and also finding that no action has been initiated from his end, the Governor after obtaining legal opinions took recourse to Article 174(1) of the Constitution of India and passed a speaking order dated 09/12/2015 preponing the Assembly session. On the same date, he also issued a message under Article 175(2) of the Constitution fixing the resolution for removal of the Speaker as first item on agenda of the State Assembly.

[74] In support of the plea of the petitioners that the Governor could not have preponed the assembly session of his own, Rule 3 of the Rules of Procedure and Conduct of Business pertaining to the Arunachal Pradesh Legislative Assembly has been referred to. As per the said Rule, the Chief Minister shall, in consultation with the Speaker, fix the date of commencement and the duration of the session, advice the Governor for summoning the Assembly under Article 174 of the Constitution. **Rule 6(b)** speaks of Business Advisory Committee. It shall be the function of the committee to recommend the time that should be allocated for the discussion of the stage or stages of such Government bills and other business as the Speaker, in consultation of the Leader of the House, may direct for being referred to the Committee.

[75] Referring to the aforesaid provisions, it was submitted that the Governor could not have preponed the assembly session of his own accord as no such power is discernible under Article 174(1) of the Constitution of India. Countering the said argument, it was submitted on behalf of the respondents that validity of any proceeding in the legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. In this connection, they referred to the Article 212 of the Constitution. Needless to say that the provisions contained in the Rules of Procedure and Conduct of Business, cannot override the constitutional provisions.

[76] In ***Samsher Singh (Supra)*** itself on which the learned counsel for both the parties have placed reliance, the Apex Court has declared the law to the effect that the Governor being the custodians of all executive and other powers under various Articles shall, by virtue of those provisions, exercise his constitutional powers in accordance with the advice of Ministers, save in the exceptional situation enumerated in para 154 of the judgement, which however, is not exhaustive.

[77] Though normal rule is that the Governor acts on aid and advice of council of Ministers but there are exceptions under which Governor can act in his own discretion. It is well settled that the exercise of administrative power will stand vitiated if there is a manifest error of record or the exercise of power is arbitrary. In the instant case, when the requisition was placed seeking preponing of the session of Arunachal Pradesh Legislative Assembly to consider and vote for the resolution for removal of the Speaker, the Governor after providing the required notice, preponed the Assembly Session by passing the above quoted order dated 09/12/2015. The Governor having exercised his discretion in the facts and circumstances and having regard to the kind of discretion exercised, which is discretionary in nature to meet the demand of the situation, it cannot be said that he had acted beyond his scope, ambit and jurisdiction of a Governor as per the constitutional scheme. Mere allegation of malafide and biasness is not enough.

[78] Mere irregularity in the procedure while exercising discretionary powers cannot lead to a situation in which such action of the Governor would require interference exercising the power of judicial review under Article 226 of the Constitution of India. The position of law is clear that the Governor while taking decisions in his own discretion, enjoys immunity under Article 361 and the discretion exercised by him in the performance of such function is final in terms of Article 163(2), unless the same is vitiated with the kind of situation in which gross illegality and malafide exercise of power, opposed to the constitutional mandate are discernible on the face of it.

[79] In ***Rameshwar Prasad (Supra)***, the Apex Court in this regard made the following significant observation :-

> "***261. Judicial response to human rights cannot be blunted by legal jugglery. (See: Bhupinder Sharma v. State of Himachal Pradesh reported in 2003(8) SCC 551). Justice has no favourite other than the truth. Reasonableness,***

rationality, legality as well as philosophically provide colour to the meaning of fundamental rights. What is morally wrong cannot be politically right. The petitioners themselves have founded their claims on documents which do not have even shadow of genuineness so far as claim of majority is concerned. If the Governor felt that what was being done was morally wrong, it cannot be treated as politically right. This is his perception. It may be erroneous. It may not be specifically spelt out by the Constitution so far as his powers are concerned. But it ultimately is a perception. Though erroneous it cannot be termed as extraneous or irrational. Therefore however suspicious conduct of the Governor may be, and even if it is accepted that he had acted in hot haste it cannot be a ground to term his action as extraneous. A shadow of doubt about bona fides does not lead to an inevitable conclusion about mala fides."

[80] In the instant case when the request was made for preponment of the Assembly session with the notice to table the resolution for removal of the Speaker, the Governor appreciating the fact situation and the grounds indicated in the impugned order dated 09/12/2015 recording his satisfaction, exercised the power conferred by Article 174 (1) of the Constitution and preponed the assembly session. These discretion applied by the Governor is within the exceptions provided for within the constitutional scheme, some of which have been enumerated in ***Sameher Singh (Supra)*** and also in the later decisions referred to above. An opinion was formed by the Governor that there was an attempt on the part of the office of the Speaker to subvert the mandate of the Constitution and that it was imperative on the part of the Governor to interfere in the matter by exercising the powers conferred by Article 174 (1) of the Constitution.

[81] The language of Article 174(1) of the Constitution of India is directory in the matter of summoning of the House. Article 174(2) clearly says that the Governor may from time to time prorogue the House or dissolve the Legislative Assembly. It is evident that the power under Article 174 is to be exercised by the Governor in his discretion. If that were not so, it would lead to piquant situation to the detriment of proper and effective working of democratic principles of Government. For instance, if there is a motion of No Confidence pending

discussion in the Assembly, the Chief Minister in order to steer clear of the situation, may ask the Governor to prorogue the House. Similarly, where the Government is in a minority in the Legislative Assembly, the Chief Minister by the instrument of aid and advise to the Governor, can so manipulate the machinery of proroguing the House as to perpetuate his Council of Ministers and power, avoiding from time to time, facing the Assembly. Likewise, the Speaker being faced with the situation of removal (as in the instant case) may refuse to cooperate with the Governor in holding of the Assembly Session. Therefore, the Governor is under a duty to exercise his power under Article 174 only in his discretion, after considering all facts and relevant matters in summoning or preponing the summoning of the House. It is not for the Writ Court to examine as to whether the exercise of discretionary power of the Governor is in accordance with and will promote democratic principles inasmuch as any such exercise by the Court would take it to the political arena.

[82] The law is well settled that even an erroneous decision or interpretation of the rules or procedure by the Administrator cannot be the subject matter of scrutiny in a Court of law. Further, no writ can lie in a matter pertaining to holding of a Session of the Assembly and/or the resolutions passed in such Session and the nature of proceedings conducted therein. Article 212 of the Constitution clearly prohibits any such judicial interference.

[83] Under Article 159 of the Constitution, the Governor is to preserve, protect and defend the Constitution and the law of the country. He is the only person on the spot who can take stock of the situation and take appropriate action including the preponing the Session of the Assembly for consideration of the resolution for removal of the Speaker. He can exercise such powers in his discretion if he has reasons to believe that the Speaker and the Chief Minister are trying to prevent such a situation because they do not have the support of

majority to defeat such a resolution in the House. When No Confidence Motion is passed against the Government and the Ministry refuses to resign or when the Governor has a reasonable ground to believe that the Chief Minister no longer enjoys the Confidence of the Legislative Assembly and he is no longer prepared to face the Assembly immediately on one pretext or other or when the Governor believes that the Ministry is trying to maintain its majority in the Legislative Assembly by unfair means or when the Governor believes that the Speaker in order to prevent or delay his removal is not willing to hold Session of the House without any further delay, the Governor can always exercise his discretion and take appropriate action, which is not subject to judicial review in view of Article 163 of the Constitution.

[84] The Governor's constitutional role cannot be viewed as a frozen one. Neither the basic constitutional provisions nor the empirical situation at any point of time can adequately explain the reality of the Gubernatorial position. This role is essentially to be viewed as an evolving one. One crucial variable that determines the Governor's role is the state of domestic politics of a particular State. Viewed in this light, the Governor's role, in reality, is shaped and reshaped by the dynamics and the dominant forces and factors in State politics. Hence, it is futile to look for a standard role of the Governor that is of universal validity. It is not for the Court exercising its writ jurisdiction under Article 226 of the Constitution to sit over the action of the Governor to decide as to whether the Governor in a particular situation fairly exercise his discretion or that whether his exercise of discretion was in furtherance of democratic principles and fair democratic practices.

[85] One of the constitutional responsibilities of the Governor of a State is to summon the assembly after he prorogues. This is an event which must necessarily

follow the initiate prorogation and as such summoning in the peculiar circumstances is the responsibility of the Governor of the State. He issues a message which is practically equal to the agenda of the session which has to be transacted in the summoned session of the assembly. The point to be considered is that what was the scope and content of the impugned message given by the Governor under Article 175(2). The fact situation and the materials on the basis of which the Governor had issued the message under Article 175(2) has been noted above. There is no presumption that there is any distinctiveness or specialty about summoning assembly and which could be discussed in the session. Even otherwise the agenda having been prescribed by the Governor in the message indicated above, it was not open to the Speaker to bye-pass the same and to question the validity of the same invoking writ jurisdiction. The agenda of the summoned assembly having been fixed by the Governor under Article 175(2), it is the primordial duty of the Speaker as holder of the office under the Constitution to obey such a mandate and act in accordance with the itemized agenda therein. The expression "**for the removal of the speaker"** has to be given its full significance. A resolution for the removal of the Speaker becomes operative when a notice of motion for the Assembly of the Speaker is given and is taken up for consideration.

[86] As has been held by our own High Court in ***Nipamacha Singh (Supra),*** the Speaker in rejecting motion in notice of petitioners for removal of Speaker from office exercising jurisdiction not vested on him but in legislative assembly and had violated constitutional rights of the petitioners.

[87] As noted above, the Apex Court in ***Satyapal Dang (Supra)*** held that, Article 174 does not state what procedure is to be followed towards exercising power under it. Having regard to the facts and circumstances involved in the instant case, it cannot be said that the Governor was misdirected in preponing the

Assembly session and fixing the agenda items under Article 175(2) of the Constitution of India. If in the kind of situation that was prevailing in the State of Arunachal Pradesh as highlighted in all the I.As including **IA No. 2899/2015** filed in **WP(C) No. 7998/2015**, the Governor took the impugned action, it cannot be said to be unconstitutional so as to warrant interference exercising power of judicial review under Article 226 of the Constitution of India.

[88] As regards the challenge to the notification dated 16/12/2015 removing the petitioner involved in **WP(C) No. 7745/2015**, the same was passed in the preponed Assembly session and the same was pursuant to the motion for removal that was passed by 33 MLAs of 60 members house voting in favour of the resolution for removal of the Speaker and the resolution was notified vide Annexure-12 to the **IA No. 2838/2015** on 16/12/2015. Once the impugned decisions of the Governor exercised under Article 174(1) and 175(2) of the Constitution of India are upheld, the transaction of the business in the preponed assembly session including the resolution adopted by the 33 MLAs in the house of 60 members constitute majority towards removal of the Speaker which is also not under challenge will also have to be upheld.

[89] Above being the position that has emerged from various facts pleaded by the parties to this proceeding and the legal position emerged from various decisions referred to above and so also the constitutional provisions applicable to the issues involved, I am of the considered opinion that no interim order is warranted as has been prayed for in the writ petitions and consequently while rejecting the said interim prayer, the interim order passed on 17/12/2015 shall stand vacated.

[90] Although, it was submitted that this proceeding is confined to the prayer for vacation of the interim orders but as indicated above, all the I.As are not only

for vacation of the interim orders but also for dismissal of the writ petitions on the ground of non-maintainability. That apart, the learned counsel for the parties extensively argued on the merit of the case and nothing further is left for further argument touching the merit of the writ petitions. The reasons for vacating the interim order are also the reasons for rejection of the writ petitions In such a situation, no purpose will be served by keeping the writ petitions alive.

[91] As regards the submissions made by Mr. Jain, learned counsel representing the Governor for expunction of the adverse remarks appearing in the interim order, I am of the considered opinion that with the vacation of the interim orders, the said issue no longer survives. I only quote the following observations of the Apex Court in ***R.A. Mehta (Supra)*** to which the learned counsel representing the application in ***IA No. 30/2016*** has referred to :-

> "***104. This Court has consistently observed that Judges must act independently and boldly while deciding a case, but should not make atrocious remarks against the party, or a witness, or even against the subordinate court. Judges must not use strong and carping language, rather they must act with sobriety, moderation and restraint, as any harsh and disparaging strictures passed by them, against any person may be mistaken or unjustified, and in such an eventuality, they do more harm and mischief, than good, therefore resulting in injustice. Thus, the courts should not make any undeserving or derogatory remarks against any person, unless the same are necessary for the purpose of deciding the issue involved in a given case. Even where criticism is justified, the court must not use intemperate language and must maintain judicial decorum at all times, keeping in view always, the fact that the person making such comments, is also fallible. Maintaining judicial restraint and discipline are necessary for the orderly administration of justice, and courts must not use their authority to "make intemperate comments, indulge in undignified banter or scathing criticism". Therefore, while formation and expression of honest opinion and acting thereon, is a necessity to decide a case, the courts must always act within the four-corners of the law. Maintenance of judicial independence is characterized by maintaining a cool, calm and poised mannerism, as regards every action and expression of the members of the Judiciary, and not by using inappropriate, unwarranted and contumacious language. The court is required "to maintain sobriety, calmness, dispassionate reasoning and poised restraint. The concept of loco parentis has to take foremost place in the mind of a Judge and he must keep at bay any uncalled for, or any unwarranted remarks." (Vide: State of M.P. v. Nandlal Jaiswal, reported in AIR 1987 SC 251; A.M. Mathur v. Pramod Kumar Gupta, reported in AIR 1990 SC 1737; State of Bihar & Anr. v. Nilmani Sahu, reported in (1999) 9 SCC 211; In the matter of: "K" A Judicial Officer, reported in AIR 2001 SC 972; "RV", a Judicial Officer, reported in AIR 2005 SC 1441; and Amar Pal Singh v. State of U.P., reported in AIR 2012 SC 1995)."***

[92] All the Interim Applications i.e .A. No. 2838/2015, IA No. 2839/2015, IA No. 2843/2015 in WP(C) No. 7745/2015 are allowed by vacating the interim order dated 17/12/2015 as prayed for in the said applications. Consequently, I,A. No. 30/2016 in WP(C) No. 7745/2015 and I.A. No. 2899/2015 in WP(C) No. 7998/2015 also stand disposed of in terms of this judgement and order.

JUDGE

Sukhamay/Mukut/Kalita