REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4225 OF 2009
(Arising out of SLP (Civil) No. 14906 of 2009)

Jantia Hill Truck Owners Association …. Appellant

Versus

Shailang Area Coal Dealer and Truck
Owner Association and others …. Respondents

WITH

CIVIL APPEAL NOS. 4226-4227 OF 2009
(Arising out of SLP (Civil) Nos. 15450-15451 of 2009)
[CC Nos. 9222-9223/2009]

Ms. Mem Julet Passah … Appellant

Versus

Shailang Area Coal Dealer and Truck
Owner Association and others …. Respondents

WITH

CIVIL APPEAL NO. 4228 OF 2009
(Arising out of SLP (Civil) No. 15452 of 2009)
[CC No. 9224/2009]

Shri Mylliemngaph ….. Appellant

Versus

Shailang Area Coal Dealer and Truck Owner Association and others …. Respondents

AND

CIVIL APPEAL NO. 4229 OF 2009
(Arising out of SLP (Civil) No. 15454 of 2009)
[CC NO. 9231/2009]

Shri Trinspil K. Sangma ….. Appellant

Versus

Shailang Area Coal Dealer and Truck Owner Association and others …. Respondents

J U D G M E N T

S.B. SINHA, J. .

1. Leave granted.

2. This batch of appeals arise out of a judgment and order dated 23rd June, 2009 passed by a Division Bench of the Gauhati High Court at Guwahati whereby and whereunder the Memorandum dated 11th

September, 2003 issued by the Government of Meghalaya purported to be in terms of Section 138 (2)(b) of the Motor Vehicles Act, 1988 (for short 'the Act') was held to be illegal and a writ of or in the nature of mandamus was issued directing the Government of Mehalaya to make Rules in exercise of its powers thereunder.

3. The basic fact of the matter is not in dispute.

Several writ petitions were filed before the High Court alleging that trucks carrying cargo in the State of Meghalaya are compelled to pay substantial amounts to various entites at innumerable points who broadly fall under four categories – (1) persons operating weighbridges on various terms and conditions stipulated by the State of Meghalaya ; (2) the local tribal chiefs known as Sylems and Sardars ; (3) the authorities implementing the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and (4) the Police officers of the State of Meghalaya.

The Sylems and Sardars being the local tribal chiefs, admitted establishment of such toll gates and collection of monies from the cargo carrying vehicles asserting customary rights in them therefor and which are said to be protected by Sixth Schedule of the Constitution of India and the laws made by the District Council thereunder.

Indisputably a batch of the writ petitions including the connected appeals relating to the right of Sylems and Sardars who established Toll Gates and collection of monies by them, had been heard in part by the High Court.

It is also not in dispute that various interim orders were passed in the said pending mattes. The Gauhati High Court, however, took up for hearing a batch of six matters in regard to the legality of collection of monies by the operators of the weighbridges in the State of Meghalaya opining that the purported grievances made

in the other writ petitions relating to establishment of toll gates and collection of monies by other agencies could be determined later.

Checkgates on:			
Shallang- Riangdo-Athiabari Road (Meghalaya portion of the Road)			
1.	Shallang Area Labour Association At Kyllon-Mathei	-	Rs.50/-
2.	Western Hills Weigh Bridge (On Challan-Rs.30/- Actual charge is more at Nongdaju)	-	Rs.250/-
3.	Nongstoin Syiemship Checkgate at	-	Rs.400/-
4.	Nongstoin Syiemship Checkgate at	-	Rs.100/-
5.	MVI not a Checkgate but persons kept by this MVI at Athiabari	-	Rs.1000/- (No slip)
6.	Sirdar of Riangsih Checkgate at Myndo	-	Rs.100/-
7.	Sirdar of Jyrgam Checkgate at Tynghor	-	Rs.100/-
8.	Smoke-Testing Checkgate at Kamrangshi	-	Rs.65/- On slip actually collected Rs.250/-
9.	Pollution under control at Athiabari	-	Rs.65/- on slip actually collected Rs.250/-
10.	D. Shira Weighbridge at Athiabari	-	No slip Average per truck Rs.1000/-
11.	Police O.C.Hahim P.S.	-	Rs.400/- (No slip/ Challan)
12.	R.H. Weigh Bridge at Hahim	-	Rs.500/-
13.	Automobile Smoke Emission Testing Station near Hahim Bazar	-	Rs.250/- (not mentioned on slip)
14.	J.K. Rabha Weigh Bridge at Mauman	-	Rs.500/-
15.	Smoke Testing at Mauman	-	Rs.250/-
16.	Smoke Testing at Haldipara	-	Rs.250/-
	Total	-	Rs.5330/-

4. We may, at the outset also place on record that in the writ petition filed by the respondent – Shallang Area Coal Dealer and Truck Owner Association 16 points at which the driver/owners of the trucks are subjected to extortionate payments exacted without any authority of law were mentioned which are as under :-

5. The prayers in the said writ petition read as under :-

> "In the premises aforesaid, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to issue Rule calling upon the respondents to show cause as to why a writ of mandamus shall not be issued directing stoppage of collection of illegal tolls and subjection of weighment and "smoke testing" more than once on public roads in Assam and Meghalaya with immediate effect and as to why all illegal check gates including the gates where the trucks are subjected to weighment and "smoke testing" more than once wherein such toll collection takes place shall not be dismantled."

6. The writ petitioner-respondent, however, directly or indirectly did not question the validity or otherwise of the aforementioned Memorandum dated 11th September, 2003.

7. The State of Meghalaya in its counter-affidavit filed before the High Court inter alia stated :-

> "5. That with regard to the statement made in paragraphs 2, 3 4, 5, 6 and 7 of the petition your deponent denies the same and states that the Members of the Petitioner's Association have not made any complaint before the concerned Police Station or any other Respondent Authority regarding any illegal collection of tolls/ extortion as alleged in the petition. It may also be stated that so far illegal collection of tolls by the Respondent No. 6 is concerned; no Motor Vehicle Inspector has been posted in the Check gates as mentioned in the petition. As such illegal collection or extortion by the said person from the Members of the Petitioner's Association does not arise. The statements made in the petition are general statements containing wild allegations and the same are vague in nature. Whenever, any such complaint was received by the authority regarding any collection of illegal tolls, necessary steps were taken in the matter by the District Administration."

8. Before the High Court, however, on a query made by the Court, the learned Advocate General for the State of Meghalaya inter alia contended that check posts have been established and fees are being collected without framing any Rules and in terms of the said Memorandum.

9. By reason of the impugned judgment the High Court while recognizing that weighbridges can be established in terms of the Act but in absence of any Rules framed in this behalf no fee can be collected. The State of Meghalaya does not prefer any appeal thereagainst uptil now.

10. The appellants were not parties before the High Court.

11. Mr. Ranjit Kumar, learned senior counsel appearing for the appellants would contend that the appellants have preferred these appeals against the impugned judgment because in absence of any valid receipt granted to them by the authorized weighbridge owners, they would not be permitted to carry on inter-state transport business and thus their right under Article 301 of the Constitution would be violated.

12. Mr. A. Sarma, learned senior counsel appearing on behalf of the respondent-writ petitioner, however, would support the impugned judgment.

13. Before adverting to the question involved in these appeals, we may place on record the relevant part of the said Memorandum dated 11th September, 2003 laying down the procedures required to be followed by the Transport Department for granting permission for installation and operation of weighbridges for commercial and regulatory purposes. They read as under :-

> "1. This procedure shall be followed by the Transport Department for granting of permission of installation and operation of Weigh Bridge for commercial and regulatory purposes.

> 8. For the weighment of vehicles fees may be charged at a rate fixed by the Transport Department.
>
> 9. The weighment of vehicles, whenever and wherever it becomes necessary in connection with any of the affairs of any of the Departments of the State shall be done at the weighbridges installed under these directions/ procedure and in keeping with the relevant provisions of the Motor Vehicles Act, 1988.
>
> 10. Whenever _____ under these provisions a certificate of the weight of the vehicle shall be issued by or under the authority of the Transport Department and the same shall be taken cognizance of by all Government authorities/ Departments.
>
> 14. Fees shall be paid at the rate fixed by Government for each application for permission and for renewal of permission. All fees under these provisions shall be paid into the concerned Treasury and credited in the relevant Head of Account.
>
> 15. This Office Memorandum shall also apply and be binding on all the other weighbridges set-up on or before notification of this Office Memorandum.
>
> 17. These orders shall remain in force till the finalization and approval of the Rules for installation, Regulation, and Operation of weighbridges in Meghalaya."

14. Indisputably an interim order was passed on 11th June, 2008 directing stoppage of collection of monies from the truck owners/drivers by the various local tribal chiefs. Pursuant thereto or in furtherance thereof the Deputy Commissioner, West Khasi Hills, District of

Meghalaya issued an order dated 20th February, 2009 directing the said persons to remove/stop all the illegal Toll gates/Check gates/Weigh Bridge on public roads and stop collection of illegal tolls therein immediately within one week from the date of issue of the said letter.

15. Writ petitions were filed thereagainst and a learned Single Judge of the High Court kept the said stay order in abeyance during the pendency of the writ petitions. Writ appeals preferred thereagainst are pending before the Division Bench of the High Court.

16. As indicated heretobefore although various questions were raised in the writ petitions filed by the Association of the Coal Dealers and Truck Owner as also by tribal chiefs, the High Court thought it fit not to go into other questions except the one involved in these appeals.

17. It is not in dispute that the Act in unequivocal terms provides to specify among other things the weight which a carrier of a given description may carry. The said provisions are necessary not only for construction and maintenance of road but also to prevent accidents.

18. The Act provides for registration of the Motor Vehicles in terms of the provisions contained in Chapter IV of the Act. Section 41 prescribes that an application therefor is required to be accompanied by such documents, particulars and information and shall be made within such

period as may be prescribed by the Central Government. In terms of Section 58 of the said Act, the Central Government is authorized to notify the gross vehicle weight, and axle weight of certain types of transport vehicles.

Sub-section (3) of Section 113 of the Act prohibits any person to drive or cause or allow to be driven in any public place any motor vehicle – (a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration and (b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration.

19. Section 114 of the Act, which is relevant for our purpose, reads as under:-

> "114. Power to have vehicle weighed.
>
> (1) Any officer of the Motor Vehicles Department authorised in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 113,] require the driver to convey the vehicle to a weighing device, if any, within a distance of ten kilometres from any point on the forward route or within a distance of twenty kilometres from the destination of the vehicle for weighment; and if on such weighment the vehicle is found to contravene in any respect the provisions of section 113 regarding weight, he may, by order in writing, direct the driver to off-load the excess weight at his own risk and not to remove the vehicle or trailer from that place until the

> laden weight has been reduced or the vehicle or trailer has otherwise been dealt with so that it complies with section 113 and on receipt of such notice, the driver shall comply with such directions.
>
> (2) Where the person authorised under sub-section (1) makes the said order in writing, he shall also endorse the relevant details of the overloading on the goods carriage permit and also intimate the fact of such endorsement to the authority which issued that permit."

20. Section 138 of the said Act empowers the State Government to make rules. Sub-section 2(b) thereof states that such rules may provide for "the installation and use of weighing devices".

Section 194 of the said Act reads as under :-

> "194. Driving vehicle exceeding permissible weight. (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 113 or section 114 or section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load.
>
> (2) Any driver of a vehicle who refuses to stop and submit his vehicle to weighing after being directed to do so by an officer authorised in this behalf under section 114 or removes or causes the removal of the load or part of it prior to weighing shall be punishable with fine which may extend to three thousand rupees."

Section 211 of the Act provides for power to levy fee.

It reads :-

> "211. Power to levy fee.
>
> Any rule which the Central Government or the State Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of applications, amendment of documents, issue of certificates, licences, permits, tests, endorsements, badges, plates, countersignatures, authorisation, supply of statistics or copies of documents or orders and for any other purpose or matter involving the rendering of any service by the officers or authorities under this Act or any rule made thereunder as may be considered necessary:
>
> Provided that the Government may, if it considers necessary so to do, in the public interest by general or special order, exempt any class of persons from the payment of any such fee either in part or in full."

Section 212 provides for publication, commencement and laying of rules and notifications. Sub-sections (1), (2) and (3) thereof read as under:-

> "212. Publication, commencement and laying of rules and notifications.

> (1) The power to make rules under this Act is subject to the condition of the rules being made after previous publication.
>
> (2) All rules made under this Act shall be published in the Official Gazette, and shall unless some later date is appointed, come into force on the date of such publication.
>
> (3) Every rule made by any State Government shall be laid, as soon as may be after it is made before the State Legislature."

21. We may at this juncture also notice the provisions of Section 23 of the General Clauses Act, 1897 which reads :-

> 23. Provisions applicable to making of rules or bye-laws after previous publication.- Where, by any (Central Act) or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-
>
> (1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of person likely to be affected thereby.
>
> (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the (Government concerned) prescribed.
>
> (3) there shall be published with the draft a notice specifying a date on after which the draft will be taken into consideration.

> (4) the authority having power to make the rules or bye-laws , and where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may me received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified.
>
> (5) the publication in the (Official Gazette) of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made."

22. The core question which arises for consideration in these appeals is as to whether the State Government is empowered to issue any executive order in respect of the matters required to be prescribed by Rules.

23. Article 162 of the Constitution of India in unequivocal terms provides that the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. Such executive powers having regard to the Rule of Executive Business are framed in terms of Article 166. Clause (3) of Article 166 empowers the Governor to make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Minister of the said business in so far as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion.

24. The Memorandum was issued in the name of the Governor. It is not in dispute that it was authenticated in terms of clause (2) of Article 166 of the Constitution. The power was exercised by the State under the provisions of the Act. The said order was to remain in force till Rules are framed in the prescribed manner.

The provisions of the Act mandate that the unladen weight and laden weight must be determined. Indisputably, weighing devices had to be provided for the said purpose. It is true that for the said purpose Rules may have to be framed. It is, however, a well settled principle of law that even in a case where the statute provides for certain things to be done, subject to Rules, any action taken without framing the Rules would not render any action invalid. If a statute is workable even without framing of the Rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.

25. Non compliance of the provisions relating to "laden weight" and "unladen weight" being penal in nature must be held to be imperative in character. For the purpose of construction of the provisions of the Act the Courts will have to take into consideration the freedom on the part of the citizens as also non citizens to carry out trade and business in terms of

Article 301 of the Constitution of India, subject of course to the other provisions thereof.

26. The High Court itself noticed the two primary contentions of the writ petition for its consideration, which read :-

> "Essentially the grievances in these cases is two fold – (1) the State lacks the necessary authority of law to collect such fee and (2) even if the authority in law exists, that those who are entrusted with the responsibility of rendering the services and collecting the fee are acting in excess of the authority conferred on them."

27. The second contention was not answered.

In fact there was no sufficient pleadings brought on record by the parties in that behalf. The State for giving effect to the provisions of the statute may upon itself take the burden of providing for weighbridges and collection of fees etc. in exercise of its power under Article 298 or Article 162 of the Constitution of India. It may, however, permit to provide parties to install weighbridges, subject to regulations.

28. The Memorandum in question provides broad terms and conditions under which the private parties were authorized to set up weighbridges and collection of fees. Power of the State to do so is not in question. It is not a

case where fees are required to be prescribed for undertaking administrative action.

29. Apart from Section 211 of the Act the State is entitled to make laws for collection of fees in respect of any manner enumerated in List II of the Seventh Schedule of the Constitution of India as would be evident from Entry 66 thereof. If it itself carries on business, it is entitled to lay down the norms therefor.

30. Where the State or the State controlled agencies render services for the purpose of effectuation of the provisions of a Central Act, it, in our opinion, is entitled to charge a reasonable amount in respect thereof.

31. We may, in this behalf, refer to a decision of this Court in T. Cajee v. U. Jormanik Siem and another [[1961] 1 SCR 750]. The question which arose for consideration therein was as to whether in absence of any law regulating the appointment and succession of Chiefs and Headmen, a notice issued to the respondent therein to show cause as to why he should not be removed from his office, was valid. The respondent questioned the said legality of the show cause notice as also the order of suspension passed against him on the grounds :-

> "(i) That he could not be removed by administrative orders but only by making a law ;

(ii) that the Executive Committee could not take any action in this case, and

(iii) that the order of suspension was ultra vires."

Wanchoo, J. speaking for the Court opined as under :-

"The High Court seems to be of the view that until such a law is made there could be no power of appointment of a Chief or Siem like the respondent and in consequence there would be no power of removal either. With respect, it seems to us that the High Court has read far more into para 3(1)(*g*) than is justified by its language. Para 3(1) is in fact something like a legislative list and enumerates the subjects on which the District Council is competent to make laws. Under para 3(1)(*g*) it has power to make laws with respect to the appointment or succession of Chiefs or Headmen and this would naturally include the power to remove them. But it does not follow from this that the appointment or removal of a Chief is a legislative act or that no appointment or removal can be made without there being first a law to that effect. The High Court also seems to have thought that as there was no provision in the Sixth Schedule in terms of Articles 73 and 162 of the Constitution, the administrative power of the District Council would not extend to the subjects enumerated in para 3(1). Now para 2(4) provides that the administration of an autonomous district shall vest in the District Council and this in our opinion is comprehensive enough to include all such executive powers as are necessary to be exercised for the purposes of the administration of the district. It is true that where executive power impinges upon the rights of citizens it will have to be backed by an appropriate law; but where executive power is concerned only with the

> personnel of the administration it is not necessary — even though it may be desirable — that there must be laws, rules or regulations governing the appointment of those who would carry on the administration under the control of the District Council. "

The said decision has been noticed by this Court in Surinder Singh v. Central Govt., [(1986) 4 SCC 667]. It was held therein:-

> **"6.** The High Court has held that the disposal of property forming part of the compensation pool was *"subject"* to the rules framed as contemplated by Sections 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction-sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that court in *Bishan Singh* v. *Central Government.* The Division Bench in *Bishan case* took the view that since the disposal of the compensation pool property was *subject to the rules that may be made*, and as no rules had been framed, the Central Government had no authority in law to issue administrative directions providing for the transfer of the urban agricultural land by auction-sale. In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute

> expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute."

32. Mr. Sharma would lay emphasis on the opinion of the Bench in Cajee (supra) that executive power infringing upon the rights of the citizens would have to be backed by appropriate law.

The aforementioned observation was made in the context of the Constitutional provisions contained in the Sixth Schedule.

There exists a distinction between an executive order made in terms of Articles 73 and 162 of the Constitution of India and one made under the Sixth Schedule thereof.

Furthermore the levy of charges towards rendering services by itself does not infringe upon the right of any person.

33. Services of the weighbridges are required to be obtained by the drivers/owners of the trucks for fulfillment of their statutory obligations.

They cannot obtain such services free of any charges. When private parties are given the right to set up such weighbridges, indisputably they would be entitled to reasonable profit.

It was not the contention of the writ petitioner-respondent that the charges levied for getting their trucks weighed at the weighbridges are exorbitant or they are compelled to get their trucks weighed at several places, although they otherwise fulfill the statutory requirements laid down in Section 211 of the Act.

34. Our attention has been drawn by Mr. Sharma to a decision of this Court in The Commissioner., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, [AIR 1954 SC 282].

> **"44.** Coming now to fees, a "fee" is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

The ratio laid down therein is not in dispute.

35. We may, however, notice that the question has been considered by a Constitution Bench of this Court in Jindal Stainless Ltd. (2) and another vs. State of Haryana and others [(2006) 7 SCC 241]. The Bench noticed the difference between 'a tax' 'a fee' and 'a compensatory tax" inter alia in the following terms :-

> **"40.** Tax is levied as a part of common burden. The basis of a tax is the ability or the capacity of the taxpayer to pay. The principle behind the levy of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. In the case of a tax, a particular advantage, if it exists at all, is incidental to the State's action. It is assessed on certain elements of business, such as, manufacture, purchase, sale, consumption, use, capital, etc. but its payment is not a condition precedent. It is not a term or condition of a licence. A fee is generally a term of a licence. A tax is a payment where the special benefit, if any, is converted into common burden.
>
> **41.** On the other hand, a fee is based on the "principle of equivalence". This principle is the converse of the "principle of ability" to pay. In the case of a fee or compensatory tax, the "principle of equivalence" applies. The basis of a fee or a compensatory tax is the same. The main basis of a fee or a compensatory tax is the quantifiable and measurable benefit. In the case of a tax, even if there is any benefit, the same is incidental to the government action and even if such benefit results

> from the government action, the same is not measurable. Under the principle of equivalence, as applicable to a fee or a compensatory tax, there is an indication of a quantifiable data, namely, a benefit which is measurable."

[See also M. Chandru v. The Member Secretary, Chennai Metropolitan Development Authority and another, [2009 (2) SCALE 750].

36. Although not very relevant, we may notice that this Court in Vimal Kumari v. State of Haryana and others, [(1998) 4 SCC 114] has held that even the draft rules may be followed where no rules in accordance with the statutory provisions have been framed. {See also High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, [(2003) 4 SCC 712] and Mahabir Vegetable Oils (P) Ltd. and another v. State of Haryana and others, [(2006) 3 SCC 620]}.

37. Mr. Ranjit Kumar relying on the decision of this Court in Indian Express Newspapers (Bombay) Pvt. Ltd. and others v. Union of India and others, [(1985) 1 SCC 641], would contend that the High Court had no jurisdiction to direct State to frame Rules. We need no go into the said question as before us Mr.Ranjan Mukherjee, learned counsel appearing on behalf of the State of Meghalaya made a categorical statement that the Rules would be framed within eight weeks.

38. This Court in Surinder Singh (supra) opined that a copy of the order must be produced before the High Court before the same can be quashed. The validity of an order issued by the State Government, furthermore should be questioned by a person aggrieved upon raising grounds therefor. The State must be given an opportunity to file a counter-affidavit meeting those grounds.

39. We, therefore, are of the opinion that the impugned judgment cannot be sustained. The same is, therefore, set aside.

40. The writ petitioners, however, would be at liberty to file additional affidavit (s) questioning the validity or otherwise of the said Memorandum. The High Court must also give an opportunity to the State and other interested parties to present their respective cases before the High Court.

41. The High Court in the peculiar facts and circumstances of this case may also consider the desirability of consideration of the matters pending before it together, if not already disposed of, so that the points raised by the writ-petitioners may be dealt with comprehensively.

42. The appeals are allowed. No costs.

…….J.
[S.B. SINHA]

…….J.
[DEEPAK VERMA]

New Delhi
July 10, 2009