PU MYLLAI HLYCHHO AND ORS. A

v.

STATE OF MIZORAM AND ORS.

JANUARY 11, 2005

[R.C. LAHOTI, CJ., SHIVARAJ V. PATIL, K.G. BALAKRISHNAN, B.N. SRIKRISHNA AND G.P. MATHUR, JJ.] B

Constitution of India, 1950—Sixth Schedule as amended by (Constitution (Amendment) Act, 1988)—Paragraph 2(1), 2(6A), 20 BB, Article 163: C

Formation of District Councils—Nomination of members by the Governor in consultation with Council of Ministers—Held, Governor vested with discretionary power to nominate members—Mere consultation with Council of Ministers would not mean that Governor failed to exercise discretionary power vested in him—Nomination held valid. D

District Councils—Nominated Members—Termination of membership—Validity of—Scheme prescribing nominated members to hold office at the pleasure of Governor—Power to terminate not left to discretion of Governor but in consultation with Council of Ministers—Held, termination is valid as Governor acted on the advice of Council of Ministers—Non hearing of members before termination is not illegal as they held office at the pleasure of Governor. E

Interpretation of statutes—Omission of applicability of rule of Natural Justice in a statute expressly or by implication would not invalidate the statute.

F

The Sixth Schedule to the Constitution evolved a scheme for administration of tribal areas in Assam, Meghalaya Mizoram and Tripura through institution of District Councils or Regional councils. Pursuant to the scheme, Mara Autonomous District Council (MADC) was constituted. The nominated members were to hold office at the pleasure of Governor. On 8.8.2000, 4 persons were nominated by Governor. On 5.12.2001, G **Governor notified termination of the nominated members. Subsequently Governor issued another Notification dated 6.12.2001 nominating 4 persons. In a writ petition challenging the termination and fresh nomination, Single Judge upheld termination order and set aside the fresh nomination of 3 out of 4 members. Both Appellant and State appealed.** H

A Division Bench refused to interfere with the order of Single Judge. In special leave to appeal, a Division Bench granted special leave and in view of the fact that the issue involved substantial question of law as to the interpretation of the Constitution, the matter came before the Constitution Bench.

B Appellant contended that the termination order was passed without giving any notice and hence there was violation of principles of Natural Justice; that Notification dated 6.12.2001 nominating 4 members by virtue of powers under sub paragraph (1) of Paragraph 2 was not constitutionally valid; and that in case of nomination, Governor accepts the advice of his C Council of Ministers and did not exercise discretionary powers vested in him under Paragraph 20BB of Sixth Schedule.

Dismissing the appeal, the Court

HELD: 1. Governor was bound by the aid and advice of the Council D of Ministers and the termination of the 4 members from the MADC by order of the Governor on 5.12.2001 was perfectly in accordance with the Constitutional provisions and the Sixth Schedule to the Constitution. The nomination of the 4 members to the Council by order dated 6.12.2001 was legal and the Governor acted by virtue of the discretionary power vested in him. [294-F-G]

E

2. Sub paragraph 6A of Paragraph 2 shows that the members nominated shall hold office at the pleasure of the Governor. The Governor is given powers to terminate the membership of the Council under sub-paragraph 6A of Paragraph 2. The Governor is not given any discretion F under Paragraph 20BB, in respect of powers to be exercised under sub paragraph (6A) of Paragraph 2. Under the discretionary powers of the Governor, in discharge of his functions, the power to be exercised under sub paragraph (6A) of Paragraph 2 is not included, whereas it is specifically mentioned that the power of the Governor to be exercised under sub paragraph (1) of Paragraph 2 could be exercised in his G discretion in the mode prescribed under paragraph 20-BB of the Sixth Schedule. Thus, these provisions would show that as regards the nomination of 4 members to the MADC, the Governor can exercise the discretionary powers whereas the power of termination of the members under sub paragraph (6A) of Paragraph 2 is not left to the discretion of H the Governor, but he shall exercise the same as envisaged under the Constitutional provisions in a democratic form of Government which is

explicitly made clear by various provisions of the Constitution, especially Article 163. [286-G-H; 287-A-B] A

3.1. 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 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 and he is competent to make rules for convenient transaction of the business of the Government of the State, by allocation of business among the Ministers, under Article 166(3) of the Constitution. In regard to the executive action taken in the name of the Governor, he cannot be sued for any executive action of the State and Article 300 specifically states that Government of a State may sue or be sued in the name of the State subject to the restriction placed therein. [288-D-F] B C

Ram Jawaya Kapur v. *State of Punjab,* AIR (1955) SC 549; *A. Sanjeevi Naidu* v. *State of Madras,* [1970] 3 SCR 505, 511 and *U.N.R. Rao* v. *Indira Gandhi,* [1971] 2 SCC 63 and *Sardari Lal* v. *Union of India,* [1971] 3 SCR 461, referred to. D

3.2. In the instant case, the members held office during the pleasure of the Governor and the Council of Ministers advised the Governor to terminate the membership of these appellants and all relevant records were placed before the Governor. The relevant papers show that the contents of all the relevant files were brought to the knowledge of the Governor and he accepted the advice of his Council of Ministers. As the Governor was not left with any discretionary power, he was bound by the advice given by the Council of Ministers. The termination of the members from Council has rightly been upheld by the High Court. [290-B-C] E F

Edwingson Bareh v. *State of Assam and Ors.; Chelliah Kodeeswaran* v. *Attorney General of Ceylon,* (1970) AC 1111, at 1118 PC, referred to.

4. The Sixth Schedule to the Constitution is a part of the Constitution and cannot be interpreted by forgetting the other provisions in the Constitution. It is impossible to visualize complete segregation of the Sixth Schedule from the rest of the Constitution. Therefore, it is not correct to say that tribal areas are to be administered as per the provisions of the Sixth Schedule only. The nominated members held their office at G H

A the pleasure of Governor. The Constitutional protection and privileges available under Article 311 to a person who holds a civil post under the Union or States are not applicable to a member of a Council who is nominated by the Governor. [290-G; 291-F; 292-A]

5. If the statute expressly or by necessary implication omits the
B application of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness. Therefore, the contention of the appellants that these members of the Council were not heard before their nomination/appointment was terminated and hence illegal cannot be accepted, as they held their office at the pleasure of the Governor.
C [292-C-D]

Dr. Rash Lal Yadav v. *State of Bihar and Ors.*, [1994] 5 SCC 267 and *A.K. Kraipak* v. *Union of India,* [1969] 2 SCC 262, referred to.

6. The Governor of Mizoram has been given discretionary powers
D to nominate four members to the Council. Paragraph 20BB inserted in the Sixth Schedule to the Constitution by Constitution (Amendment) Act, 1988 expressly gives this power. Paragraph 20BB also says that the Governor shall consult the Council of Ministers and if he thinks it necessary, the District Council or the Regional Council concerned, and take such action as he considers necessary in his discretion. Therefore, it
E is clear that the Governor shall consult the Council of Ministers, but the consultation with the District Council or the Regional Council is optional. The Governor could have even consulted the District Council or the Regional Council in this regard. There is nothing to show that the Governor did not exercise his discretionary powers independently. Except
F for the fact that the file for nominating new members initiated from the Council of Ministers, there is nothing on record to show that the Governor failed to exercise the discretionary power vested in him. The Governor exercised his discretion after making proper consultations, as envisaged under Paragraph 20BB of the Sixth Schedule and the nomination of the four members had been validly made. Moreover, Article 163(2) of the
G Constitution expressly prohibits challenging the validity of the exercise of such discretionary power. [292-E-F; 293-B; 294-E; 293-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 661-662 of 2003.

H From the Judgment and Order dated 27.6.2002 of the Gauhati High

Court at Assam in W.A. Nos. 181 and 182 of 2002. A

Anil Nauriya, Ms. Beena Madhavan and Ms. Sumita Hazarika for M/s. Lawyer's Knit & Co. for the Appellant.

U.U. Lalit, Prasenjit Keswani, Ms. Hemantika Wahi and Ajay Choudhary for the Respondents. B

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J. The provisions of the Sixth Schedule to the Constitution have evolved a separate scheme for the administration of the tribal areas in Assam, Meghalaya, Mizoram and Tripura through the institution C of District Councils or Regional Councils. These councils are vested with legislative power on specified subjects, allotted sources of taxation and given powers to set up and administer their system of justice and maintain administrative and welfare services in respect of land, revenue, forests, education, public health etc.

D

The Mara Autonomous District Council, hereinafter to be referred as "MADC" has thus been constituted as per the provisions of Paragraph 2(1) read with Paragraph 20 of the Sixth Schedule to the Constitution of India. The MADC consists of 19 elected members and the election is through adult franchise and 4 members are nominated by the Governor of Mizoram by E virtue of the powers conferred on him under Paragraph 2(1) read with Paragraph 20BB of the Sixth Schedule to the Constitution. The term of the elected members is for a period of five years from the date appointed for the first meeting of the Council after the General Election to the Council and the four nominated members would hold office at the pleasure of the Governor. The first sitting of the Council after the General Election was held on 9.2.2000 F and on 8.8.2000 four members, namely, Mrs. Lalbiakluangi Sailo; Mr. Myllai Hiychho, Mr. C. Lawbei and Mr. S. Lalremthanga were nominated by the Governor of Mizoram as members of MADC in exercise of the powers conferred under sub-para (1) of Paragraph 2 read with Paragraph 20BB of the Sixth Schedule, and read with sub-rule (1) of Rule 7 of the Mizoram G Autonomous District Councils (Constitution and Conduct of Business of the District Councils) Rules, 1974.

The Governor of Mizoram by a Notification issued on 5.12.2001 terminated the appointment/nomination of the four members who were nominated on 8.8.2000. Thereafter, another Notification was issued on H

A 6.12.2001 whereby four members were nominated to MADC. It may also be pointed out that one member, namely, K. Chiama had submitted a No Confidence Motion to the Secretary, MADC, against the Executive Committee on 4.12.2001. The Chairman granted leave for the No Confidence Motion and it was to be discussed and be voted on 6.12.2001. The date for discussion and voting of the No Confidence Motion was postponed from 6.12.2001 to
B 7.12.2001. The termination of the membership of four members and the nomination of new members were challenged in a Writ Petition filed before the Aizawl Bench of the Gauhati High Court. The High Court, by an interim order, suspended the Notification dated 6.12.2001 whereby new members were nominated to MADC. Aggrieved by the order of suspension of the
C nomination to MADC, the State of Mizoram filed an appeal before the Division Bench, being Writ Appeal No. 518 of 2001. Initially, the Division Bench granted an ex-parte stay of the order of suspension of Notification granted by the learned Single Judge, but thereafter directed that the Writ Petition be heard and disposed of by the learned Single Judge.

D The learned Single Judge by his order dated 18.4.2002 partly allowed the Writ Petition. The nomination of three out of the four members was set aside by the learned Single Judge. However, the Notification dated 5.12.2001 whereby the membership of the four members was terminated was upheld by the learned Single Judge. In the Writ Appeal preferred by the State, the
E quashing of the Notification dated 6.12.2001 was challenged and the petitioners in the Writ Petition by a separate Writ Appeal challenged the order of the learned Single Judge whereby the Notification dated 5.12.2001 was upheld. The Division Bench of the High Court of Gauhati upheld the validity of both the Notifications and aggrieved by the same, the present appeals have been filed.

F When the matter came up for consideration before a Bench of two Judges on 27.1.2003, the following order was passed :

"Leave granted.

G The issue which has been raised in this appeal relates to the interpretation of paragraph 2(1) and sub-paragraph (6A) of Paragraph 2 read with paragraph 20-BB of the Sixth Schedule to the Constitution. The dispute centres around the nature of the discretion to be exercised by the Governor in nominating and removing persons to the District Councils of Mizoram. We are of the view that the issue raises a
H substantial question of law as to the interpretation of the Constitutional

provisions having repercussions throughout the State of Mizoram. In terms of Article 145(3), the matter must be placed before the Hon'ble Chief Justice. The application for interim relief is also referred alongwith the main appeal."

Thereafter, the matter came up before a Bench of three Judges and on 28.7.2004, the Bench observed that in view of the order dated 27.1.2003, the matter needs to be heard by a Constitution Bench. Thus the matter has come up before the Constitution Bench.

We heard learned counsel for the appellants and also the learned counsel for the State of Mizoram.

The relevant provisions of the Sixth Schedule to the Constitution regarding the administration of tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram are as follows:

"1. **Autonomous district and autonomous regions..**

2. **Constitution of District Councils and Regional Councils** - (1) There shall be a District Council for each autonomous district consisting of not more than thirty members of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.

(2) .....

(3) Each District Council and each Regional Council shall be a body corporate by the name, respectively, of "the District Council of (name of district)" and "the Regional council of (name of region)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) .....

(5) .....

(6) .....

(6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a

A nominated member shall hold office at the pleasure of the Governor:

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at
B a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate.

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member
C whom he replaces.

(7) ....."

By virtue of an amendment carried out by the Constitution Amendment Act, 1988 [67 of 1988] (Section 2), a new paragraph was added as "20BB",
D which is to the following effect:

"20-BB: Exercise of discretionary powers by the Governor in the discharge of his functions - The Governor, in the discharge of his functions under sub-paragraphs (2) and (3) of paragraph 1, sub-paragraphs (1) and (7) of paragraph 2, sub-paragraph (3) of paragraph
E 3, sub-paragraph (4) of paragraph 4, paragraph 5, sub-paragraph (1) of paragraph 6, sub-paragraph (2) of paragraph 7, sub-paragraph (3) of paragraph 9, sub-paragraph (1) of paragraph 14, sub-paragraph (1) of paragraph 15 and sub-paragraphs (1) and (2) of paragraph 16 of this Schedule, shall after consulting the Council of Ministers and if
F he thinks it necessary, the District Council or the Regional Council concerned, take such action as he considers necessary in his discretion."

The above provisions show that under sub-rule (1) of Paragraph 2, the Governor of Mizoram is competent to nominate four members to MADC.

G Sub paragraph 6A of Paragraph 2 further shows that the members thus nominated shall hold office at the pleasure of the Governor. The Governor is given powers to terminate the membership of the Council under sub-paragraph 6A of Paragraph 2. The Governor is not given any discretion under Paragraph 20BB, in respect of powers to be exercised under sub paragraph (6A) of Paragraph 2. Under the discretionary powers of the Governor
H in discharge of his functions, the power to be exercised under sub paragraph

(6A) of Paragraph 2 is not included, whereas it is specifically mentioned that the power of the Governor to be exercised under sub paragraph (1) of Paragraph 2 could be exercised in his discretion in the mode prescribed under paragraph 20-BB of the Sixth Schedule. Thus, these provisions would show that as regards the nomination of four members to the MADC, the Governor can exercise the discretionary powers whereas the power of termination of the members under sub paragraph (6A) of Paragraph 2 is not left to the discretion of the Governor, but he shall exercise the same as envisaged under the Constitutional provisions in a democratic form of Government which is explicitly made clear by various provisions of the Constitution, especially Article 163, which is to the following effect :

> "163. **Council of Ministers to aid and advise Governor** - (1) There shall be a Council of Ministers with the Chief Minister as 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."

There are several powers and duties for the Governor and some of these powers are to be exercised in his discretion and some other powers are to be exercised by him with the aid and advice of the Council of Ministers. The executive powers of the State are vested in the Governor under Article 154 (1). Article 163(1) states that there shall be a Council of Ministers with the Chief Minister as 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.

Article 163(2) states that 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

A shall not be called in question on the ground that he ought or ought not to have acted in his discretion. 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. This draft article was omitted when it became Article 164 in the B Constitution. There are certain powers and functions of the Governor which speak of the special responsibilities of the Governor. These articles are 371A(1)(b), 371A(1)(d), 371A(2)(b) and 371A (2)(f). Similarly, there are certain provisions in the Sixth Schedule, where the words "in his discretion" are used in relation to certain powers to be exercised by the Governor.

C

Our Constitution envisages the Parliamentary or Cabinet system of Government of the British model both for the Union and the States. 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 D on the aid and advice of the Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.

The executive power also partakes the legislative or certain judicial actions. Wherever the Constitution requires the satisfaction of the Governor E 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 and he is competent to F make rules for convenient transaction of the business of the Government of the State, by allocation of business among the Ministers, under Article 166(3) of the Constitution. It is a fundamental principle of English Constitutional Law that Ministers must accept responsibility for every executive act. It may also be noticed that in regard to the executive action taken in the name of the Governor, he cannot be sued for any executive action of the State and Article G 300 specifically states that Government of a State may sue or be sued in the name of the State subject to the restriction placed therein. This Court has consistently taken the view that the powers of the President and the powers of the Governor are similar to the powers of the Crown under the British Parliamentary system. We followed this principle in *Ram Jawaya Kapur* v. G *State of Punjab,* AIR (1955) SC 549, *A. Sanjeevi Naidu* v. *State of Madras,*

[1970] 3 SCR 505, 511 and *U.N.R. Rao* v. *Indira Gandhi,* [1971] 2 SCC 63. A

A discordant note was struck in *Sardari Lal* v. *Union of India,* [1971] 3 SCR 461 wherein this Court held that the functions of the President under Article 311(2) of the Constitution cannot be delegated to anyone else in the case of a civil servant of the Union and the President has to be satisfied personally that in the interest of the security of the State it is not expedient B to hold an inquiry prescribed under Article 311(2).

In *Shamsher Singh* v. *State of Punjab,* [1974] 2 SCC 831, it was held that the decisions in *Sardari Lal's* case did not lay down correct principles of law as such decision was contrary to *A. Sanjeevi Naidu's* case and *U.N.R. Rao's* case and those decisions were neither referred to nor considered in C Sardari Lal's case. In *Shamsher Singh's* case (supra), the powers of the Governor were considered in detail.

The scope and ambit of the powers of the Governor came up for consideration before a Seven Judge Bench in *Shamsher Singh* v. *State of* D *Punjab and Anr.,* [1974] 2 SCC 831. There, the two appellants were the members of the Subordinate Judicial Service in Punjab. On the recommendations of the High Court of Punjab & Haryana, the services of the two appellant-Judicial Officers were terminated with immediate effect. The appellants contended that the Governor as Constitutional or formal head of the State can exercise powers and functions of appointment and remove the E members of Judicial Service only personally whereas the State contended that the Governor exercises powers of appointment and removal conferred on him by or under the Constitution, like executive powers of the State or Government, only on the aid and advice of his Council of Ministers and not personally. Speaking for the majority, Ray, C.J. held: F

> "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 G 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. H

A Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion."

B

In the instant case, the members held office during the pleasure of the Governor and the Council of Ministers advised the Governor to terminate the membership of these appellants and all relevant records were placed before the Governor. The relevant papers show that the contents of all the relevant C files were brought to the knowledge of the Governor and he accepted the advice of his Council of Ministers. As the Governor was not left with any discretionary power, he was bound by the advice given by the Council of Ministers. The termination of the members from Council has rightly been upheld by the High Court.

D The counsel for the appellants further contended that the Sixth Schedule to the Constitution is a "Constitution within the constitution" and that the Governor of Mizoram is not bound by the aid and advice of the Council of Ministers and the power of the Governor of Mizoram is independent of the rest of the Constitution itself This plea was raised on the basis of the opinion expressed by *M. Hidayatullah*, former Chief Justice of India, as he then was, E in his third *Anundoram Barooah Law Lectures* at Gauhati in 1978. *Hidayatullah*, CJ., traced the history of the formation of Mizoram State and also inclusion of the Sixth Schedule to the Constitution. In his lecture, it was stated :

F "..It is not compulsory for the Governor to consult the Council of Ministers. He may do so, but he is not bound to do so, nor is he bound to accept their advice. The entire history of these areas, the thought that went into the enactment of the Sixth Schedule as a Constitution independent of the rest of the Constitution clearly establishes this."

G

Based on this, it was argued that the tribal areas are to be administered as per the provisions of the Sixth Schedule only. This contention of the appellants cannot be accepted for various reasons. The Sixth Schedule to the Constitution is a part of the Constitution and cannot be interpreted by forgetting the other provisions in the Constitution. It is impossible to visualize complete H segregation of the Sixth Schedule from the rest of the Constitution. As regards

the inclusion of the Sixth Schedule to the Constitution, there is a legislative history, but that by itself is not sufficient to hold that the Sixth Schedule is a "Constitution within the Constitution." This aspect of the matter came up for consideration in *Edwingson Bareh* v. *State of Assam and Ors.* (infra). The majority in that decision repelled this contention. This was a case in which the appellants challenged the Notification of the Governor of Assam to create an autonomous district to be called Jowai district excluding it from the United Khasi-Jaintia Hills District with effect from 1.12.1964. A Commission was appointed by the Governor and the Commission went into the question and submitted a report and it was considered by the Council of Ministers and it decided to accept the report of the Commission. A memorandum was drawn up and the whole file was placed before the Governor, who after reading the file recorded "Seen, thanks". The Assembly thereafter passed a resolution approving the proposal of the Government and a Notification creating new district was issued. This Notification was challenged in that case. The appellants contended that the Governor acted outside his authority. The plea of the appellants was rejected and it was held that the Governor exercised his powers and acted on the advice of his Council of Ministers and the affidavit filed by the respondents showed that the matter was considered by the Council of Ministers and the proceedings were placed before the Governor who read the proceedings and expressed his concurrence with words "Seen, thanks", and the Court held that this was in accordance with the conditions prescribed by para 14(2) of the Sixth Schedule. Therefore, the contention that the Governor was not bound by the aid and advice of the Council of Ministers is only to be rejected.

A B C D E

The termination of the membership of four members from the Council was also challenged on the ground that these members were not given any notice and they were not heard and that there was a violation of the principles of natural justice. It is pertinent to note that these members held their office at the pleasure of the Governor.

F

Ordinarily, the "pleasure" doctrine comes into play when the appointment of a Crown servant is terminated. *Lord Diplock in Chelliah Kodeeswaran* v. *Attorney General of Ceylon,* (1970) AC 1111, at 1118 PC stated the English law as follows :

G

> "It is now well established in British Constitutional theory, at any rate as it has developed since the eighteenth century, that any appointment as a Crown servant, however subordinate, is terminable at will unless

H

A it is expressly otherwise provided by legislation. "

The Constitutional protection and privileges available under Article 311 to a person who holds a civil post under the Union or States are not applicable to a member of a Council who is nominated by the Governor.

B This Court in *Dr. Rash Lal Yadav* v. *State of Bihar and Ors.*, [1994] 5 SCC 267 held that the principles of natural justice are not applicable in the absence of express words. That was a case where the removal from the Chairmanship of Bihar Schools Board was challenged. Relying on an earlier decision in *A.K. Kraipak* v. *Union of India,* [1969] 2 SCC 262, it was held that if the statute, expressly or by necessary implication omits the application C of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness.

Therefore, the contention of the appellants that these members of the Council were not heard before their nomination/appointment was terminated D and hence illegal, cannot be accepted, as they held their office at the pleasure of the Governor.

The next point that was raised for consideration is whether the Notification dated 6.12.2001 nominating four members to the Council by virtue of the powers under sub paragraph (1) of Paragraph 2 was E constitutionally legal. As already noticed, the Governor of Mizoram has been given discretionary powers to nominate four members to the Council. Paragraph 20BB inserted in the Sixth Schedule to the Constitution by Act 67 of 1988 expressly gives this power. Paragraph 20BB also says that the Governor shall consult the Council of Ministers and if he thinks it necessary, the District Council or the Regional Council concerned, and take such action F as he considers necessary in his discretion. Therefore, it is clear that the Governor shall consult the Council of Ministers, but the consultation with the District Council or the Regional Council is optional. The learned Single Judge found fault with the procedure adopted by the Government of Mizoram in bringing the matter to the notice of the Governor to nominate the four G members to MADC.

The counsel for the appellants contended that in the case of nomination of four members, the Governor accepted the advice of his Council of Ministers and he did not exercise the discretionary powers vested in him under Para 20BB of the Sixth Schedule. This contention was raised on the basis that the H initiation for issuing the Notification dated 6.12.2001 was from the Council

of Ministers and the Governor acted upon the advice of the Council of Ministers. We do not find any force in this contention. Under the provisions of Paragraph 20BB, the Governor shall consult the Council of Ministers. Merely because of the fact that the Governor made consultation with the Council of Ministers for nominating four members, it cannot be assumed that Governor failed to exercise the discretionary powers. The Governor could have even consulted the District Council or the Regional Council in this regard. There is nothing to show that the Governor did not exercise his discretionary powers independently. Moreover, as noted above, Article 163(2) of the Constitution expressly prohibits challenging the validity of the exercise of such discretionary power.

The counsel also contended that Paragraph 20-BB to the Sixth Schedule was inserted by the Constitution (Amendment) Act, 1988 (Act 67 of 1988) with the object of giving more autonomous powers to administrators of tribal areas and that is why the Governor was given more discretionary powers and that is evident from the object and reasons given in the Constitution (Amendment) Act, 1988 and it was submitted that the Governor should have exercised the powers independently and any advice or instruction on the part of the Council is objectionable and would make the notification illegal.

The relevant portion of the objects and reasons of Act 67 of 1988 is as follows:-

"1.....

2. Over a period of time, the minority tribals of Mizoram covered under the Sixth Schedule have come to feel that their autonomy under the Sixth Schedule will be more meaningful and they can achieve speedier progress if there is less overall control of the State Government over them in matters like approval of the rules made by the District Councils, nomination of their members, appointment of Commission to inquire into their administration, their dissolution, etc. They have, therefore, represented that the Governor should exercise powers in his discretion in these matters. In the Memorandum of Settlement on Mizoram, there is a provision that the rights and privileges of the minorities in Mizoram as envisaged in the Constitution shall continue to be preserved and protected. Similarly, in the Memorandum of Settlement on Tripura, there is a commitment to the protection of tribal interests.

A 3. In pursuance to the Memoranda and to meet the aspirations of the minority tribals in Mizoram and Tripura it has been provided that the Governor shall act in his discretion in the discharge of certain of his functions. Opportunity has been availed of to bring the language of the provisions relating to the application of the Acts of Parliament and of the State Legislatures in line with the language used in the B corresponding provisions in relation to the State of Assam. The Bill also provides for a time limit in making over the share of royalties to the District Councils.

4. The Bill seeks to achieve the aforesaid objects."

C Relying on the object and reasons of the Amendment Act, the counsel for the appellant contended that the Governor had been given discretionary power to nominate the members to the Council and the facts disclosed that he nominated members with the aid and advice of the Council of Ministers and this was not in accordance with the provisions of Paragraph 20BB and D the autonomy envisaged under the provisions of the Sixth Schedule is not given its true and meaningful importance. The contention of the appellants is that by inserting Paragraph 20-BB to the Sixth Schedule Governor is given more discretionary powers to protect the autonomy of the tribal areas and if Governor acts on the aid and advice of the Council of Ministers and does not act independently, the purpose of the legislation is not achieved. Except for E the fact that the file for nominating new members initiated from the Council of Ministers, there is nothing on record to show that the Governor failed to exercise the discretionary power vested in him. The Governor exercised his discretion after making proper consultations, as envisaged under Paragraph 20BB of the Sixth Schedule and the nomination of the four members had F been validly made.

In the result, we hold that the Governor was bound by the aid and advice of the Council of Ministers and the termination of the four members from the MADC by order of the Governor on 5.12.2001 was perfectly in accordance with the Constitutional provisions and the Sixth Schedule to the G Constitution. The nomination of the four members to the Council by order dated 6.12.2001 was legal and the Governor acted by virtue of the discretionary power vested in him. The Governor was justified in making consultation with the Council of Ministers and the Governor making such incidental consultation with the Council of Ministers did not in any way affect his discretionary power. No other authority interfered with the independent exercise of the H

Governor's discretion in nominating the four members to the MADC and the Notification issued by the Governor on 6.12.2001 was validly made and the decision of the Division Bench of Gauhati High Court does not call for any interference. A

The appeals are without any merit and are dismissed accordingly. There will be no order as to costs. B

D.G. Appeals dismissed.