**Serial No.01**
**Regular List**

# HIGH COURT OF MEGHALAYA
# AT SHILLONG

WP (C) 523 of 2019 Date of Judgment: 03.01.2020

Shri. Stevie M. Marak & 2 Ors **Vs.** GHADC & Ors

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Dr N. Mozika Sr. Adv. with
Mr. P. Nongbri, Adv.

For the Respondent(s) : Mr. S. Dey, Adv for R 1
Ms. S. Alam, Adv. for R 2
Mr. K. Paul, Adv. for R 3

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: No

1. The Petitioner No 1, Shri Stevie M. Marak is a Member of the Garo Hills Autonomous District Council (GHADC) from Boldamgri Constituency, the Petitioner No 2, Shri Boston Marak is also a Member of the GHADC from Nogorpara Constituency, while the Petitioner No 3, Shri Rupert N. Sangma is also another Member of the GHADC from Tura Constituency.

2. The above named Petitioners were duly elected to the GHADC in the General Election to the Garo Hills Autonomous District Council held in October 2015, the same being notified in 'The Gazette of Meghalaya' (Extraordinary) on the 16th October 2015.

3. The Executive Committee of the GHADC is led by Shri Dipul R. Marak the Member from Rochonpara Constituency who is a member of the Nationalist People's Party.

4. During the sitting of the 14th Session of the Garo Hills Autonomous District Council, some members expressed want of confidence in the Executive Committee and accordingly, 10(ten) Members of the District Council(MDCs) including the Petitioners No 1 and 2 herein vide letter dated 25.11.2019 addressed to the Secretary(Legislative) Garo Hills Autonomous District Council(GHADC), the Respondent No 2 herein, has brought in a motion of " No Confidence" in the present Executive Committee led by Shri Dipul R. Marak on the grounds stated therein. The said letter was annexed as Annexure 3 to this Writ Petition.

5. The Chairman of the Council found the said notice of motion of "No Confidence" dated 25-11-2019 in order and the same was read out during the said session on 25-11-2019 for leave of at least 25% of the Members present. Leave was duly granted by more than 25% of the members present.

6. The Secretary, Garo Hills Autonomous District Council vide letter under Memo No.GDC-L/2/Agenda/2015/259-264 dated 26.11.2019 brought out the revised agenda for 27-11-2019 which now reads as follows:

"1. Voting of Demand for Grants.

2. Election of Deputy Chairman of the GHADC, Tura

3. Discussion on Motion of Non-Confidence and Voting."

7. Accordingly, on 27-11-2019, when the Session was in progress, the agendas for the day was taken up and with regard to the agenda No 2,

election of the Deputy Chairman of the GHADC, two names were nominated as candidates for the said post, namely, Shri Augustine R. Marak the candidate of the ruling party/alliance and Shri Mettringson Momin, the candidate of the Opposition side.

8. In the election of the Deputy Chairman of the Council, Shri Mettringson Momin secured 15 votes against the 13 votes secured by Shri Augustine R.Marak, one vote being invalid. Shri Momin was accordingly declared elected as the Deputy Chairman of the GHADC.

9. Before the discussion on agenda No 3, "Discussion on non-Confidence and voting" could be taken up; the Chairman of the GHADC adjourned the Session of the House 'sine die' without taking up Agenda No 3.

10. It is the case of the Petitioners that the Chairman of the District Council acting in a highly illegal and arbitrary manner, instead of taking up agenda No 3 adjourned the session of the House sine die without initiating any discussion and voting on the same and as such, this act was done with a mala fide intention to allow the ruling alliance to remain in power even without enjoying the confidence of the House.

11. It is also the case of the Petitioners that since the ruling alliance has lost the election to the post of Deputy Chairman, when its candidate Shri Augustine R. Marak conceded defeat to the candidate of the Opposition group, Shri Mettringson Momin, this is a clear indication that the Executive Committee does not enjoy the confidence of the House and if the No-Confidence Motion was taken up and voted upon, there is every likelihood that the No-Confidence Motion would have been adopted and the Executive

Committee headed by the present Chief Executive Member(CEM) would have been removed.

12. The Petitioners have also alleged that the action of the Chairman in adjourning the House sine die without discussing the motion of Non-confidence in the House within twenty four hours from the time at which leave was asked for, is a contravention of Rule 71(2) of the Assam and Meghalaya Autonomous District ( Constitution of District Council) Rules 1951(amended) which stipulates that the motion of no-confidence shall be taken up on such day, not being more than two days and not less than twenty-four hours from the time at which leave is asked for.

13. Till date the motion of non-confidence has not been taken up which clearly indicates that the same is politically motivated to enable the Chairman to facilitate the illegal continuance of the Executive Committee which is against the democratic principles.

14. The Petitioners have further averred that the illegal act of the Chairman in adjourning the session of the District Council sine die without discussing the motion of non-confidence in the House within twenty-four hours from the time at which leave is asked for is highly illegal, arbitrary and malafide which is liable to be interfered with by this Court in exercise of powers under Article 226 of the Constitution of the India.

15. The prayer of the Petitioners is that this Court may be pleased to direct the Respondents to convene the session of the House forthwith to take up the motion of non-confidence for discussion and voting in terms of Agenda No 3 as notified vide GDC-L/2/Agenda/2015/259-264 dated 26-11-2019.

16. The Respondent No 1, the Garo Hills Autonomous District Council, Tura represented by the Secretary, Executive Committee, GHADC has submitted through its learned Counsel, Shri S. Dey that no response is required from this Respondent.

17. The Respondent No 2, The Secretary (Legislative), Garo Hills Autonomous District Council, Tura has however filed a preliminary objection –cum- Affidavit mainly on the maintainability of this writ.

18. Similarly, the Respondent No 3, the Chairman of the GHADC, has filed a preliminary affidavit-in-opposition also on the ground of maintainability of this writ petition.

19. However, in course of hearing of this instant writ petition, all the parties herein have agreed that this matter can be finally heard and disposed of and accordingly, this Court has heard the argument advanced by the learned Counsels of the respective parties.

20. The main thrust of the argument advanced by the Petitioners is that the Chairman having acted illegally and arbitrarily in adjourning the session of the House sine die abruptly, this Court may be pleased to direct the Respondents, particularly the Chairman of the GHADC to convene the Session for taking up the agenda No 3 and for initiating the discussion of the motion of Non- confidence in the present Executive Committee.

21. Dr. N. Mozika, the Learned Senior Counsel for the Petitioners along with Mr. P. Nongbri, Learned Counsel has submitted that the Chairman has adjourned the sitting of the House sine die and as such, Rule 47 (2) of the Assam and Meghalaya Autonomous District ( Constitution of District Council) Rules 1951(amended)[ hereinafter referred to as the

'Rules'], which speaks of termination of a session, in which case any business left over shall lapse unless it is included in the list of business of any day during the next session, is not attracted in this particular case.

22. Dr. Mozika has further submitted that an interpretation of Rule 47(2) mentioned above would mean that "Adjournment sine die" is the termination of a sitting, while "Prorogation" is the termination of a session as contemplated in Rule 47 (2) and "Dissolved" is the dissolution of the House for the conduct of Election.

23. Dr. Mozika has argued that the main prayer of the Petitioner is for this Court to direct the Respondent/ Chairman to take up the motion on Non-Confidence and in this regard, this Court is well within its power to issue such a direction in as much as the action of the Respondent/Chairman is clearly illegal and arbitrary and unconstitutional and therefore this is not a case of mere irregularity which will prevent this Court to interfere in such proceedings , but a case where the writ jurisdiction is squarely applicable.

24. Pressing the need for a floor test vis-a vis the No-confidence motion tabled by the Opposition alliance, Dr. Mozika further argued that in similar circumstances to ensure that the democratic fabric of this Country is not the subject of attack or brought to disrepute, the Courts, more particularly the Apex Court has shown the way to the extent that a floor test was directed to be conducted to enable a particular party or alliance to prove its majority on the floor of the house.

25. Citing the case of "***Shiv Sena and Others -Vrs- Union of India and Others***" in which the Supreme Court, vide Order dated 26-11-2019 passed in Writ Petition (Civil) No 1393 of 2019, has inter-alia, at paragraph

27 of the same ordered for a floor test to be held on 27-11-2019 as regard the trail of strength in the Maharashtra Legislative Assembly is concerned, Dr. Mozika has reiterated that the Respondent 3/Chairman of the GHADC may be directed to re-convene the sitting of the House and that the Agenda-3 relating to the motion of Non-confidence may be taken up as per procedure of the House.

26. Elaborating further on the contention of the Petitioners that the action of the Respondent No 3/Chairman of the GHADC in evading the discussion and voting on the non-confidence motion, Dr. Mozika has referred to Rule 71 of the 'Rules' which reads as follows:

> "71. (1) *A motion expressing want of confidence in the Executive Committee or a motion disapproving the policy of the Executive Committee in regard to any particular matter may be made with the consent of the Chairman and subject to the restriction that the member making the motion shall present to the Secretary a written notice of the motion before the commencement of the sitting of the day.*
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> *(2) if the Chairman is of the opinion that the motion is in order, he shall read the motion to the Council and shall request those members who are in favour of leave being granted, to rise in their places and, if not less than one-fourth of the members present rise accordingly, the Chairman shall intimate that leave is granted and that the motion will be taken on such day, not being more than two days and not less than twenty-four hours from the time at which leave is asked for, as he may appoint.*
> *Provided that if exigencies of business require, the Chairman shall have power to relax the rules and take up the motion earlier than twenty-four hours.*
>
> *(3) if less than one fourth of the members rise, the Chairman shall inform the member that he has not the leave of the Council."*

27. By not taking up the motion inspite of the same being tabled in accordance with Rule 71, Dr. Mozika has asserted that the Chairman has failed to perform his constitutional obligations and therefore had acted illegally and arbitrary which can be remedied by this Court only by directing for a floor test to be taken up on a specific date.

28. Again, citing the case of *Shiv Sena* (supra), Dr. Mozika has submitted that in paragraphs 20, 23,24,25 and 26 of the said Order, the Apex Court has observed as follows:

> **"20.** *In a situation wherein, if the floor test is delayed, there is a possibility of horse trading, it becomes incumbent upon the Court to act to protect democratic values. An immediate floor test, in such a case, might be the most effective mechanism to do so. A similar view was expounded by B.P. Jeevan Reddy, J., in the celebrated nine-Judge Bench decision of this Court in* ***S.R. Bommai v. Union of India, (1994) 3 SCC 1,*** *wherein he held as follows:*
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> > *"**395**. The High Court, in our opinion, erred in holding that the floor test is not obligatory. If only one keeps in mind the democratic principle underlying the Constitution and the fact that it is the Legislative Assembly that represents the will of the people — and not the Governor — the position would be clear beyond any doubt. .... There could be no question of the Governor making an assessment of his own. The loss of confidence of the House was an objective fact, which could have been demonstrated, one way or the other, on the floor of the House. In our opinion, wherever a doubt arises whether the council of Ministers has lost the confidence of the House, the only way of testing it is on the floor of the House except in an extraordinary situation where because of all-pervasive violence, the Governor comes to the conclusion — and records the same in his report — that for the reasons mentioned by him, a free vote is not possible in the House."*
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> ***23**. Six years later, in* ***Anil Kumar Jha v. Union of India, (2005) 3 SCC 150****, similar directions were passed by this Court after recording and taking notice of events that had taken place and few developments which were in the offing, as reported in the media, to observe and direct as follows:*
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> > *"5. Though many a relief has been sought for in the writ petition, as also in the application for grant of ex parte stay, for the present, we are satisfied that a strong prima facie case on the averments made in*

*the petition duly supported by affidavit, has been made out to issue the following interim directions and we order accordingly:*

> *(1) The session of the Jharkhand State Assembly has already been convened for 10-3-2005 on which day the newly elected Members of the Legislative Assembly shall be administered oath. We direct the session to continue and on 11-3-2005 i.e. the next day and on that day the vote of confidence to be put to test.*
>
> *(2) The only agenda in the Assembly on 11-3-2005 would be to have a floor test between the contending political alliances in order to see which of the political parties or alliance has a majority in the House and hence a claim for Chief Ministership.*
>
> *(3) It is emphasised that the proceedings in the Assembly shall be totally peaceful, and disturbance, if any, caused therein shall be viewed seriously.*
>
> *(4) The result of the floor test would be announced by the pro tem Speaker faithfully and truthfully.*
>
> *(5) This order by the Court shall constitute notice of the meeting of the Assembly for 11-3-2005 and no separate notice would be required.*
>
> *(6) Till 11-3-2005 there shall be no nomination in view of Article 333 of the Constitution and the floor test shall remain confined to the 81 elected members only.*
>
> *(7) We direct the Chief Secretary and the Director General of Police, State of Jharkhand to see that all the elected Members of the Legislative Assembly freely, safely and securely attend the Assembly and no interference or hindrance is caused by anyone therein. Dr. A.M. Singhvi, learned Senior Counsel appearing for the State of Jharkhand through the Chief Secretary and the Director General of Police has very fairly assured the Court that even otherwise it is the duty of the State and its high officials to take care to do so and the direction made by the Court shall be complied with in letter and spirit."*

*The aforesaid directions were interim in nature and were passed on the basis of averments made in the*

*petition duly supported by an affidavit. Writ petitions were directed to be listed on the date of hearing fixed.*

***24.*** *Ten years later, in* ***Union of India v. Sh. Harish Chandra Singh Rawat, (2016) SCC Online SC 442****, again an interim order was passed after the special leave petitions were taken up for hearing, though after concession which was made by Mr. Mukul Rohatgi, the then Attorney General for India, that the Union of India has no objection, which the Court had appreciated, to observe that the floor test should be conducted on a special session of Uttarakhand Legislative Assembly to be summoned/convened in which the only agenda would be the vote of confidence sought by the first respondent and apart from the said agenda nothing will be discussed. Directions were issued to the Chief Secretary and the Director General of Police, State of Uttarakhand, to see that all qualified Members of the Legislative Assembly, freely, safely and securely attend the Assembly and no hindrance is caused to them. The floor test was to commence at 11:00 a.m. and was directed to be completed by 1:00 p.m. There was another direction that the Confidence Motion having been put, a division of the House shall take place and members inclined to vote in favour of the Motion shall sit on one side/wing and those voting against the Motion shall sit on the other side/wing. The entire proceedings were to be video-graphed and video recording was directed to be placed before the Court for being perused. The special leave petitions were directed to be listed thereafter.*

***25****. In* ***Chandrakant Kavlekar v. Union of India, (2017) 3 SCC 758,*** *the challenge raised was to a press note and communication from a leader of a party to the Governor of the State on the issue relating to whether a particular party had misrepresented the facts. Observing that the sensitive and contentious issue could be resolved by a simple direction requiring holding of the floor test at the earliest. This would remove all possible ambiguities and would result in giving the democratic process, the required credibility. By order dated 14.03.2017, the Governor of the State of Goa was requested to ensure that a floor test is held on 16.03.2017. Further, it would be the only agenda for the day so as to determine whether the Chief Minister administered the oath of office enjoys the support of the majority. The order further highlights that the floor test should be held as early as possible.*

***26****. Lastly, we would refer to* ***G. Parmeshwara v. Union of India, (2018) 16 SCC 46,*** *wherein identical directions were issued in respect of formation of Government in the State of Karnataka to test whether the Chief Minister so appointed*

*enjoyed the majority support of the House. Noticing the fact that the elected members of the Legislative Assembly, as in the present case, were yet to take oath and the Speaker was also not elected, the following procedure was directed to be followed for conducting the floor test:*

"*8…*

*(A) Pro-tem Speaker shall be appointed for the aforesaid purpose immediately.*

*(B) All the elected members shall take oath tomorrow (19-5-2018) and this exercise shall be completed before 4.00 p.m.*

*(C) The Pro-tem Speaker shall conduct the floor test on 19-5-2018 at 4.00 p.m. in order to ascertain the majority and it shall not be by secret ballot and these proceedings shall be conducted in accordance with law.*

*(D) Adequate and sufficient security arrangements shall be made and Director General of Police, State of Karnataka will himself supervise the said arrangements so that there is no lapse on this count whatsoever."*

*It was directed that the floor test would be conducted immediately the next date, i.e., the date following the order*."

29. On the conduct of the Chairman of the Council, Dr. Mozika has submitted that the Chairman being a constitutional authority holds a pivotal position in the Constitutional scheme of parliamentary democracy and is considered to be the guardian of the rights and privileges of the District Council and its members. He is therefore required to act in a fair and transparent manner and in accordance with democratic values and principles.

30. In this case, the Chairman acting in a partisan manner and in a highly illegal and politically motivated manner in gross violation of democratic principles had adjourned the House soon after the result of the election of the Deputy Chairman, has manifested that the ruling side has lost the confidence of the House and in all probability, if the Non-confidence motion is held, the ruling side would have lost the majority in the House and by adjourning the House sine die, the Chairman has facilitated illegal

continuance of the Executive Committee which is totally against the democratic principles and basic structure of the Constitution of India.

31. In this regard, Dr. Mozika has cited the case of "***Shrimanth Balasaheb Patil -Vs- Hon'ble Speaker, Karnataka Legislative Assembly***," in Writ Petition (C) No 992 of 2019, in which the Supreme Court has emphasized the requirement of imbibing constitutional morality by the constitutional functionaries. Undemocratic and illegal practices within the political arena should be curtailed.

32. The case of "***Union of India -Vs- Shri Harish Chandra Singh Rawat***" (2016) SCC Online SC 618 was also cited, where at paragraph 8 of the same the Apex Court has observed as follows:

> "*8. ….. This Court, being the sentinel on the qui vive of the Constitution is under the obligation to see that the democracy prevails and not get hollowed by individuals. The directions which have been given on the last occasion, was singularly for the purpose of strengthening the democratic values and the constitutional norms. The collective trust in the legislature is founded on the bedrock of the constitutional trust. …..*"

33. Yet another contention raised by the Learned Senior Counsel for the Petitioners in response to the reference of the Learned Counsels for the Respondent to Rule 41 of the 'Rules', is that the Respondent cannot take recourse to Rule 41 of the Assam and Meghalaya Autonomous District( Constitution of District Council) Rules 1951(amended) which is para materia with Article 212 of the Constitution of India since in this instant case, the Chairman has committed an illegality and not mere irregularity in as much as Rule 71 (2) has been violated by adjourning the House sine die without fixing any further date for the agenda No 3 to be taken up by the House.

34. Again, citing the case of "***Raja Ram Pal -Vs- Speaker, Lok Sabha***" reported in ***(2007) 3 SCC 184***, Dr. Mozika has submitted that the Hon'ble Apex Court has held as follows:

> *"**377.** In U.P. Assembly case (Special Reference No. 1 of 1964) [AIR 1965 SC 745: (1965) 1 SCR 413 sub nom Keshav Singh, In re] the issue was authoritatively settled by this Court, and it was held, at SCR pp. 455-56, as under: (AIR p. 768, para 62)*
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> > *Article 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular."*
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> ***378.** With reference to the above quoted observations recognizing the permissibility of scrutiny in a court of law on allegation that the impugned procedure was illegal or unconstitutional, the learned Additional Solicitor General submitted that these observations need to be clarified and the expression "illegality" must necessarily mean "unconstitutionality, that is violation of mandatory constitutional or statutory provisions.*
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> ***384.** The prohibition contained in Article 122(1) does not provide immunity in cases of illegalities. In this context, reference may also be made to Sarojini Ramaswami v. Union of India [(1992) 4 SCC 506: 1992 Supp (1) SCR 108] . The case mainly pertained to Article 124(4) read with the Judges (Inquiry) Act, 1968. While dealing, inter alia, with the overriding effect of the rules made under Article 124(5) over the rules made under Article 118, this Court at SCR pp. 187-88 made the following observations: (SCC p. 572, para 94)*
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> *"94. We have already indicated the constitutional scheme in India and the true import of clauses (4) and (5) of Article 124 read with the law enacted under Article 124(5), namely, the Judges (Inquiry) Act, 1968 and the Judges (Inquiry) Rules, 1969, which, inter alia contemplate the provision for an opportunity to the Judge concerned to show cause against the finding of 'guilty' in the report before Parliament takes it up for consideration along with the motion for his removal. Along with*

*the decision in U.P. Assembly case (Special Reference No. 1 of 1964) [AIR 1965 SC 745: (1965) 1 SCR 413 sub nom Keshav Singh, In re] has to be read the declaration made in Sub-Committee on Judicial Accountability [(1991) 4 SCC 699] that 'a law made under Article 124(5) will override the rules made under Article 118 and shall be binding on both the Houses of Parliament. A violation of such a law would constitute illegality and could not be immune from judicial scrutiny under Article 122(1).' The scope of permissible challenge by the Judge concerned to the order of removal made by the President under Article 124(4) in the judicial review available after making of the order of removal by the President will be determined on these considerations."*

35. Dr. Mozika has submitted that under Rule 22 (1) of the Rules, the Executive Committee shall be responsible to the District Council and may be removed on a vote of no-confidence passed by a majority of the members of the District Council at a meeting specially convened for the purpose, the procedure for this is found in Rule 71. The Petitioners are therefore not challenging the validity of the procedure of the House, but only the violation of Rule 22(1) and 71 which is evident from the foregoing submission made herein.

36. Lastly, Dr. Mozika has submitted that the Petitioners are not asking for this Court to convene the session of the House, but as per the prayer made in the writ petition, the Petitioner have made a prayer before this Hon'ble Court to direct the Respondents to convene the session of the House so as to take up the Agenda No 3 as notified vide und Memo No GDC-L/2/Agenda/2015/259-264 dated 26.11.2019.

37. Ms. S. Alam, the Learned Counsel for the Respondent No 2, the Secretary (Legislative), Garo Hills Autonomous District Council, Tura has strongly opposed the submission and contention of the Learned Senior

Counsel for the Petitioners in as much as the maintainability of this writ was questioned.

38. Referring to Rule 71(2) of the Rules, Ms. Alam has submitted that once leave was granted for moving the motion, the Chairman will intimate that leave was granted and that the motion will be taken up on such day, not being more than two days and not less than twenty-four hours from the time at which leave was asked for.

39. Ms. Alam went on to submit that after leave was granted to the motion of no-confidence on 25th November, 2019, the agenda for the 14th Session of the GHADC was revised and a third agenda was added that said " discussion on motion of no-confidence and voting". However, when the previous agenda was taken up, the election of the Deputy Chairman was held and during the counting, it turned out that the candidate from the ruling party/alliance had got only 13 votes, while the candidate from the opposition had actually got more votes, the ruling party/alliance realized that some of its members had cross-voted and defied the proverbial whip (though Ms Alam has conceded that no whip was actually issued), a meeting of the party members was called and nineteen members walked out resulting in great disturbance in the well of the House. After that, the Chairman did not feel it would be possible to have any reasonable discussion, or that the business of the House could be carried out and it was then that he took the decision to adjourn the House to the next session.

40. The decision to adjourn the House was taken by the Chairman under Rule 44(3) of the Rules which provides that the Chairman may in case of grave disorder arising in the District Council suspend any sitting for such

time as may be determined by him. Referring to the case of "***S.R. Bommai – Vs- Union of India" (1994) 3 SCC 1*** at paragraph 395, Ms. Alam has submitted that the Court recognized that floor tests could be adjourned in extraordinary situations, if it was felt that the atmosphere was not conducive to a free vote, which is the case as far as the said 14th Session of the GHADC is concerned, which prompted the Chairman to act accordingly while adjourning the session.

41. Another contention raised by Ms. Alam is that the Petitioners has not raised any 'point of order' challenging the Chairman's action as provided in Rule 41 of the Rules which states that "**No proceedings of the District Council shall be deemed to be, or ever to have been, invalid by reason of any rule not being, or not having been, complied with; but in case of any such non-compliance, any member may raise a point of order**"

42. Rule 42(2) of the Rules provides for any member to raise a point of order for the decision of the Chairman, but in doing so shall confine himself to stating that point. However, the Petitioners if they perceived any arbitrariness in the adjournment of the proceedings, the only course open to them is to raise a point of order, which they have not done so.

43. Ms. Alam has again submitted that Rule 41 and 42 of the Rules are *pari materia* with Article 122 of the Constitution of India, which bars the enquiry of courts into proceedings of parliament. Article 122(1) states that: "**the validity of any proceedings in Parliament shall not be called in question on the ground of any irregularity of procedure**". Article 122(2) states that "**no officer or member of Parliament in whom power are**

**vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of these powers**."

44. To justify the contention made in this regard, Ms Alam has referred to the case of "***Ramdas Athawale -Vs- Union of India(UOI) and Ors***" reported in ***(2010) 4 SCC 1/MANU/SC/0212/2010***, wherein at paragraphs 25 and 26 of the same, the Supreme Court has observed as under:

> *25. The question that arises for consideration in this writ petition is whether the decision of the Speaker directing resumption of sitting of the Lok Sabha which was adjourned sine die on 23rd December, 2003 is susceptible to judicial review in a proceeding under Article 32 of the Constitution of India? Under Article 122 of the Constitution, the Courts are precluded from making inquiry into proceedings of Parliament. Article 122 reads as under:*
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> > ***122****. Courts not to inquire into proceedings of Parliament: (1): The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.*
> >
> > *(2) No officer or Member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.*
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> *26. A plain reading of Article 122 makes it abundantly clear that the validity of any proceeding in the Parliament shall not be called in question on the ground of any irregularity of procedure. The prayer in the writ petition is to declare the proceedings in the Lok Sabha pursuant to the Notice dated 20th January, 2004 issued under the directions of the Speaker as unconstitutional. The petitioner is essentially raising a dispute as to the regularity and legality of the proceedings in the House of the People. The dispute raised essentially centers around the question as to whether the Speaker's direction to resume sittings of the Lok Sabha which was adjourned sine die on 23rd December, 2003 is proper? The Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions. He is the interpreter of its rules and*

*procedure, and is invested with the power to control and regulate the course of debate and to maintain order. The powers to regulate Procedure and Conduct of Business of the House of the People vests in the Speaker of the House. By virtue of the powers vested in him, the Speaker, in purported exercise of his power under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha got issued notice dated 20th January, 2004 through the Secretary General of the Lok Sabha directing resumption of sittings of the Lok Sabha which was adjourned sine die on 23rd December, 2003. Whether the resumed sittings on 29th January, 2004 was to be treated as the second part of the 14th session as directed by the Speaker is essentially a matter relating purely to the procedure of Parliament. The validity of the proceedings and business transacted in the House after resumption of its sittings cannot be tested and gone into by this Court in a proceeding under Article 32 of the Constitution of India."*

45. Pointing to the provisions of Rule 47(2) of the Rules, which prescribes that "**all business left over on termination of a session shall lapse unless it is included in the list of business on any day during the next session**", Ms. Alam has contended that since the Chairman has not ruled on any point of order relating to the dissolution of the meeting of 27th November 2019, for any reasons connected thereto, therefore in law the motion has lapsed since it is time bound by the Rules itself. The motion of non-confidence has to be discussed and voted upon within two days of leave being granted and since the discussion and voting did not take place within the prescribed period, the motion has lapsed and has to be re-introduced.

46. Ms. Alam has submitted that in the case of "***Chahtrapal Singh –Vs- State of U.P.***" and in "***Gyan Singh –Vs- The District Magistrate, Bijnor (Full Bench)***" the Allahabad High Court has held that where a statutory period for holding of meeting to vote on a motion of no-confidence is prescribed, and it does not take place within that time limit, then the motion would lapse and would have to be reintroduced.

47. Finally, Ms. Alam has submitted that the motion may be reintroduced after following due procedure and leave is granted, the meeting may be convened to hold a floor test.

48. Mr. K. Paul, the Learned Counsel for the Respondent 3, the Chairman of the GHADC in his submission before this Court has firstly argued that the Respondent 3 will assail the maintainability of this writ, however has later agreed that this matter may be taken up as a whole and be finally heard on merits.

49. Mr. Paul has also submitted that in view of the embargo provided under Rule 41 of the Rules of 1951, the validity of any proceedings of the House is not amenable to challenge and the same cannot be called in question on the ground of any alleged non-compliance or irregularity and if any such irregularity has occurred, the remedy available is to raise a point of order.

50. Countering the argument advanced by the Learned Senior Counsel for the Petitioners that after the election of the Deputy Chairman which was won by the candidate of the Opposite Parties, if the agenda No 3 was taken up, the probability that the Executive Committee having lost the majority will have to step down, Mr. Paul has submitted that the election of the Deputy Chairman has no bearing on the testing of strength of the House and as such, the apprehension of the Petitioners that they have the majority has no basis at all.

51. Referring to the petition of the writ Petitioners, wherein at Annexure 5 of the same, the Petitioners has annexed a newspaper clipping of a news report under the caption " NPP-led EC loses majority; Cong wins Dy.

Chairman's post" Mr. Paul has submitted that at page 28 of the writ petition, the concluding part of the newspaper report says that there was a walk out by the treasury benched of the ruling alliance led by the CEM, following which the Chairman/Respondent 3, whose job is to maintain discipline in the House has to adjourn the proceedings by invoking Rule 44(3) of the Rules which reads as follows:

> "*The Chairman may in case of grave disorder arising in the District Council suspend any sitting for such time as may be determined by him*".

52. In this regard, Mr. Paul has also cited the case of "*Ramdas Athawale* (supra)" as reported in ***(2010) 4 SCC 1***, more particularly paragraphs 30,31,39 and 40 to submit that there is no illegality or arbitrary conduct of the Chairman while adjourning the said session on 27.11.2019 and that the Chairman's role is similar to that of the Speaker of the House of Parliament and as such, his conduct in the house cannot be challenged as provided under Rule 41 of the Rules.

53. The relevant portions quoted by Mr. Paul are reproduced herein as follows:

> *"30. A plain reading of Article 122 makes it abundantly clear that the validity of any proceeding in the Parliament shall not be called in question on the ground of any irregularity of procedure. The prayer in the writ petition is to declare the proceedings in the Lok Sabha pursuant to the Notice dated 20th January, 2004 issued under the directions of the Speaker as unconstitutional. The petitioner is essentially raising a dispute as to the regularity and legality of the proceedings in the House of the People. The dispute raised essentially centers around the question as to whether the Speaker's direction to resume sittings of the Lok Sabha which was adjourned sine die on 23rd December, 2003 is proper?*
>
> *31. The Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions. He is the interpreter of its rules and procedure, and is invested with the power to control and regulate the course of debate and to*

*maintain order. The powers to regulate Procedure and Conduct of Business of the House of the People vests in the Speaker of the House. By virtue of the powers vested in him, the Speaker, in purported exercise of his power under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha got issued notice dated 20th January, 2004 through the Secretary General of the Lok Sabha directing resumption of sittings of the Lok Sabha which was adjourned sine die on 23rd December, 2003. Whether the resumed sittings on 29th January, 2004 was to be treated as the second part of the 14th session as directed by the Speaker is essentially a matter relating purely to the procedure of Parliament. The validity of the proceedings and business transacted in the House after resumption of its sittings cannot be tested and gone into by this Court in a proceeding under Article 32 of the Constitution of India.*

*39. No decision of the Speaker can be challenged by a member of the House complaining of mere irregularity in procedure in the conduct of the business. Such decisions are not subject to the jurisdiction of any Court and they are immune from challenge as understood and explained in Keshav Singh's case and further explained in Indira Nehru Gandhi v. Raj Narain wherein it was observed that: (Indira Nehru case, SCCp. 46, para 70)*

> *"70 ... the House is not subject to the control of the courts in the administration of the internal proceedings of the House."*

*40. It is a right of each House of Parliament to be the sole judge of the lawfulness of its own proceedings. The Courts cannot go into the lawfulness of the proceedings of the Houses of Parliament. The Constitution aims at maintaining a fine balance between the Legislature, Executive and Judiciary. The object of the constitutional scheme is to ensure that each of the constitutional organs function within their respective assigned sphere. Precisely, that is the constitutional philosophy inbuilt into Article 122 of the Constitution of India."*

54. On the reliance of Learned Senior Counsel for the Petitioners on the case of *Shiv Sena* (supra), Mr. Paul has submitted that there is no proceedings of the House and as such, Article 122 cannot be invoked.

55. On the averments made by the Petitioners in the writ petition at paragraphs 11 and 12, Mr. Paul has submitted that assertion of the Petitioners that by not taking up the motion of non-confidence within

twenty-four hours and upto maximum of 2 days from the time leave was asked for and by adjourning the House sine die, the Chairman had acted illegally, is not correct in as much as the Chairman had acted in accordance with the Rules and as per Rule 41 of the Rules. What happened within the domain of the House cannot be challenged.

56. Mr. Paul has also referred to Rule 36 of the Rules and has submitted that there is a provision in the Rules which provides for summoning of the District Council. Proviso 2 of the said Rule reads as follows:

> *" ..... Provided further that on receipt of a requisition signed by not less than two-thirds of the members of a District Council, the Chairman shall summon a special meeting of the Council...."*

This according to Mr. Paul is the remedy available to the Petitioners for the alleged infraction complained of, which the Petitioners have not taken recourse to but has instead approach this Court with this Writ Petition and as such, this writ is not maintainable and is liable to be dismissed.

57. Finally Mr. Paul would submit that as per the above mentioned proviso to Rule 36 of the Rules, the Chairman, as and when the requisition is received, will take up the matter of the motion of non-confidence.

58. Having duly noted the submission and contention of the parties herein, the Respondent No 1 choosing not to participate in this matter, this Court has given due consideration to the issues raised by the learned Counsel for the rival parties.

59. What has to be decided, the facts and circumstances of the case having been recorded above which needs no repetition, is the answer to the question as to whether the Chairman while adjourning the House sine die on 27th November, 2019 without taking up the agenda No 3, that is, the motion of non-confidence, has committed an irregularity or an illegality and arbitrary act, thus depriving the  of the Petitioners as members of the Garo Hills Autonomous District Council their privileges and exercise of their rights.

60. The fact situation of the case which is not is dispute is that the Respondent 3 as Chairman of the GHADC has adjourned the sitting of the House on 27-11-2019 as soon as the agenda No 2 was taken up and election of the Deputy Chairman of the House was concluded, resulting in the member of the Opposition alliance, Shri Mettringson Momin to triumph over Shri Augustine R. Marak, the member of the ruling party/alliance. This has resulted in the agenda No 3, slated to be taken up next which is regarding the discussion and voting of the Non-Confidence motion, not to be taken up on that day.

61. In the case of "*Ramdas Athawale*" (supra), the question raised before the Court is whether the action of the Speaker to direct resumption of the sitting of the Lok Sabha, which was adjourned sine die on 23rd December 2003 is proper or not. The Apex Court having heard the parties and noting the submission and contention raised and after discussing the matter, has in essence held that the action of the Speaker to direct resumption of the sittings is valid and deserved no interference by the Court.

62. In the instant case, the decision of the Chairman to adjourn the 14th sitting of the GHADC on 27-11-2019, for whatever motive one can impute, has the backing of the relevant Rule, more particularly Rule 44 (3).

63. The fact that the Chairman had adjourned the sitting sine die, which means the termination of a sitting of the House without any definite date being fixed for its sitting, would make one to presume that the Chairman had resorted to Rule 44(3) in doing so.

64. As to the procedural aspect of the action taken by the Chairman in adjournment of the sitting of the House sine die under Rule 44(3), the prerogative solely being vested on the Chairman, the same cannot be said to be invalid and therefore would be covered by Rule 41 of the Rules.

65. The Chairman by adjournment of the House sine die on 27-11-2019 without taking up agenda No3 has caused non compliance of Rule 71(2) of the Rules. However, this too would be saved by the application of Rule 41.

66. Following the ratio in the case of "*Ramdas Athawale*", this Court would affirm that the conduct of the Chairman in adjournment of the sitting of the House sine die on 27-11-2019, if, for reasons of grave disorder, would not be interfered with.

67. On the other hand, under the peculiar facts and circumstances of this case, the argument of the Learned Senior Counsel for the Petitioners that the action of the Chairman in adjourning the House sine die on 27-11-2019 without taking up agenda No 3 which relates to the discussion and voting on the Non-Confidence motion, leave of which the Chairman had granted, smacks of partisan attitude of the Chairman in as much as, after seeing the loss of the candidate of the ruling party/alliance to the post of

Deputy Chairman of the House, it would be naturally assumed that the very next agenda on the motion of non-confidence would go the same way, that is, a defeat of the ruling party/alliance and the inevitable fall of the Executive Committee, the Chairman being a member of the ruling party/alliance, has some credence.

68. Time and again, the Apex Court in a catena of cases has emphasized the requirement of imbibing constitutional morality by constitutional functionaries and in the case of *Shiv Sena* (supra) as relied upon by the Petitioners, the Apex Court taking this factor into consideration has acceded to the prayer of the Petitioners therein and has directed that a floor test be conducted on the terms and conditions laid down therein.

69. In this regard, the reliance of the Learned Senior Counsel for the Petitioners on the *Shiv Sena* case, more particularly at paragraphs 20,23,25 and 26 of the same (reproduced at paragraph 27 above) finds its acceptance with this Court, the principles being similar to that of the case in hand, in as much as there is a demand for the ruling party/alliance to prove its strength and this can only be done on the floor of the House.

70. The learned Counsels for the Respondents have also raised the issue that, if aggrieved by the decision of the Chairman to adjourn the House sine die, the Petitioners have the remedy of raising a 'Point of Order' as contemplated under Rules 41 and 42 of the Rules, which was not resorted to by the Petitioners and as such, the said decision of the Chairman cannot be questioned at this point of time.

71. Any member may raise a point of order in case of non-compliance of any rule, Rule 71(2) in this case and the same will be considered by the Chairman as provided under Rule 42 of the Rules.

72. Rule 42 reads as follows:

> "42. (1) The Chairman shall decide all points of order of which may arise and his decision shall be final.
>
> (2) Any member may, at any time, submit a point of order for the decision of the Chairman, but in doing so shall confine himself to stating the point."

73. Before answering this point, a look at the meaning and purport of a 'Point of Order' will reveal as to whether the Petitioners have lost the opportunity to press for a ruling from the Chairman in this regard.

74. According to one definition, a Point of Order relates to the interpretation or enforcement of the *Rules of Procedure and Conduct of Business* in the House or convention or such Articles of the Constitution as regulate the business of the House and raises a question which is within the cognizance of the Speaker. A Point of Order may be raised only in relation to the business before the House at the moment, provided that the Speaker may permit a Member to raise a Point of Order during the interval between the termination of one item of business and the commencement of another if it relates to maintenance of order in, or arrangement of business before, the House. A Member may formulate a Point of Order and the Speaker shall decide whether the point raised is a Point of Order and if so give the decision thereon, which is final.

75. Considering the fact that the Chairman had abruptly adjourned the sitting of the house on 27-11-2019 as soon as the agenda No.2 was taken up and decided would show that no opportunity was presented to the

petitioners to raise a 'Point of Order' and as such, the arguments of the learned counsel for the respondents in this regard cannot be accepted.

76. As to the argument advanced by Mr. Paul that the petitioners have also the remedy available to them according to the second proviso of Rule 36 of the Rules and that as and when the said requisition is made the Chairman will take up the matter of the Non-Confidence Motion, what can be understood here is that a special meeting of the council can be requisitioned by not less than two third of the members of the District Council upon which the Chairman will summon the special meeting.

77. Again what can be understood by the expression 'adjourned sine die' in popular parliamentary practice means the termination of a sitting of the House without any definite date being fixed for its next sitting.

78. It is also well settled that in this present case, it is the Chairman who has adjourned the sitting of the House sine die and consequently, it is also the Chairman who has the power to issue direction for sitting of the House subsequently and as such the House is considered to be in session, unless it is prorogue or dissolved and no question of requisition will arise under the circumstances.

79. At this juncture, it may be pointed out that from the argument of the parties, the Petitioners have prayed for a direction to the Respondent to convene the sitting of the House to take up the motion of Non-Confidence, while the Respondent No 2 is not averse to the proposition as is evident from paragraph 15 of the Affidavit of the Respondent No.2, wherein it is averred that the motion may be reintroduced after following procedure, leave if granted to the motion then meeting may be convened to hold the floor test

and from the submission of the Learned Counsel for the Respondent 3, Mr. K. Paul who has submitted that if requisition is made by the members, the Chairman on consideration of the same may convene the House for taking up the motion of Non-Confidence. It therefore appears that all concerned are not opposed to the sitting of the House to take up the motion of Non-Confidence.

80. Again, since the matter vests in the Chairman and no definite date was fixed for resumption of the sitting of the House for taking up the said Agenda No 3, as was held in the *Shiv Sena* case (supra), if the floor test is delayed, there is a possibility of horse trading.

81. In view of the above and placing reliance on the authority of the *Shiv Sena* case (supra) and the principles enunciated therein in as much as the Apex Court has held that it is incumbent upon the Court to act to protect democratic values, considering the conduct of the Chairman in this case, as an equitable relief, I am of the considered opinion that in exercise of the power under Article 226 of the Constitution of India, this writ petition be disposed of with the following directions:

1. That the Respondent No 3 is to convene the sitting of the Garo Hills Autonomous District Council within one week from today.

2. That the sole agenda of the said sitting will be to take up the motion of Non-Confidence for discussion and voting.

82. With the above, this writ petition is hereby disposed of.

83. No costs.

84. Registry is directed to furnish a copy of this Order to the Chairman, Garo Hills Autonomous District Council, Tura for compliance.

**Judge**

Meghalaya

03.01.2020

***"D.Nary, PS"***

