All Party Hill Leaders' Conference, Shillong

Vs

Captain W. A. Sangma and Others

Civil Appeal No. 945 of 1977

(Syed M. Fazal Ali, P. K. Goswmi, A. C. Gupta JJ)

12.09.1977

JUDGMENT

GOSWAMI, J. –

1. The All Party Hill Leaders' Conference (hereinafter to be described as the APHLC) was constituted as a political party in the composite State of Assam on July 6, 1960. In 1962 the APHLC contested the general elections and secured 11 out of 15 seats in the Assam Legislative Assembly reserved for the Autonomous Hill Districts of the State of Assam and returned one member to the Lok Sabha. In 1967 it contested the general elections and secured 9 seats in the Legislative Assembly and returned one member to the Lok Sabha. In 1970 the autonomous State of Meghalaya within the State of Assam was constituted under Section 3 of the Assam Reorganisation Act, 1969, and the APHLC secured 34 seats in the Legislative Assembly. In 1972 the State of Meghalaya came into being as the 21st State of the Indian Union under Section 5 of the North-Eastern Areas (Reorganisation) Act, 1971. In the same year the APHLC contested the general elections and secured 32 seats in the Meghalaya Legislative Assembly out of 60 and returned two members to the Lok Sabha and one member to the Rajya Sabha.

2. It is claimed by the appellant that the APHLC is a vibrant and fully functioning political party. It has a high reputation for its national and patriotic outlook and its adherence to non-violence, constitutionalism, communal harmony and the spirit of moderation. APHLC has been influential not only in securing stability in the area in which it operates but also in bringing the various tribes of the North East into the national stream. In the implementation of national programmes APHLC has co-operated with the Indian National Congress but APHLC has always remained essentially a State party. The essence of APHLC, says the appellant, is the authority and security of the small hill tribes of the North East whose party it is and who do not which to lose their identity as such. The appellant further assets that it is in the national interest no less than the interest of these small hill tribes that they should possess a sense of unity and organisation within the APHLC which in turn maintains the best of relations with the Indian National Congress which is a national party.

3. The appellant also claims that the APHLC functions at several levels, namely Central District Circle and Village levels. At the Central leave it has affiliated to it several other parties, these being the Garo National Council, the Eastern India Tribal Union, the Khasi Jaintia Conference and the Jaintia Durbar. There is the Central Officer Bearers Committee comprising all the Central Office Bearers, namely, President, several Vice-Presidents, General Secretary, Joint Secretaries and Treasurer. Furthermore, there are branches at the District level each district having its own office bearers, executive committee and others committees. Thereafter there are Circles within the area of the district which correspond to M.L.A. constituencies. Further below and nearest to the grass roots

there are the village units comprising a village or a group of villages. There are about 300 village units in the State each unit having 50 to 200 members of APHLC according to the size of the village unit.

4. Originally the representatives of the District Congress Committees were also included in the APHLC but some time in 1961 the District Congress Committees left the APHLC.

5. It is also claimed that "the APHLC as a political party has thousands and thousands of members in the State of Meghalaya". As a counter to this assertion, it is stated by the respondents that "as per well-established convention of the erstwhile APHLC, the general Conference of the party was the supreme authority to discuss and to decide on any issue before it". It is pointed out by the appellant that the presence of a large membership has not been even denied by the respondents.

6. It is clear that the main object of the APHLC was to achieve statehood in the hill areas within the framework of the Constitution of India and to work out its own destiny maintaining its identity according to their own genius parting company with Assam. This was achieved finally on January 21, 1972, when the ruling party in the Central Government was the Indian National Congress. The APHLC election manifesto of 1972 while disclosing its programme and policy for the new State of Meghalaya announced as follows :

The APHLC, with the unreserved support of the people, has been instrumental in bringing about the creation of the Hill State, and it is confident that with the continued support and co-operation of the people, the Party will, through its programme, succeed in ushering in for the people of Meghalaya an era of hope, of justice and of equality of opportunity.

We have already shown above how the APHLC came out successful in the elections.

7. It appears that some time thereafter the question of merger of the APHLC with the Congress occupied the minds of the leaders. The 24th Session of the APHLC held at Shillong on June 19 and 20, 1973, considered "the future of the party and the question of merger with Congress" and "unanimously decided to maintain its identity and continue to serve the people as a party" [See APHLC Souvenir, 1960-1974, p. 17.]. The issue of merger of the APHLC with the Congress was, however, not dead and it again came up for consideration in the General Conference of the APHLC on August 19 and 20, 1976, with notice of two months issued in June 1976. It was again, in line with the previous policy, decided in that Conference "that friendly relations with the Indian National Congress should be maintained and strengthened". But no merger.

8. On November 1, 1976 in a meeting of the Central Office Bearers Committee, which is the executive body of the APHLC, Captain Sangma, who was President of the APHLC as well as Chief Minister of Meghalaya, made an announcement that "the Congress High Command had rejected the Resolution of friendly relations passed at the APHLC Conference on August 19 and 20, 1976 and had insisted that APHLC should merger with the Indian National Congress". Although there is some controversy about the correctness of the minutes of November 1, 1976, it appears therefrom that a General Conference of the APHLC was announced to be held at Mendipathar, Garo Hills District, on November 16, 1976, "to review the implementation of the political resolution of the Conference held at Shillong on August 19 and 20, 1976". The notice for this meeting was given with the agenda in the above quoted terms on November 3, 1976, and all delegates were requested to attend the Conference on November 16, 1976. It is rather intriguing that the agenda in the notice, with such a short interval, did not even specifically mention about discussion of the issue of "merger with the

INC" even to facilitate the news of this move to trickle far and wide into larger areas of the populace. Even so there was a storm of protests from several quarters. On November 4, 1976, the Executive Committee of the Khasi Hills District APHLC expressed grave concern about the matter and requested the President, Captain Sangma, to postpone the Conference. On November 8, 1976, several leaders from Garo Hills, including the then Chief Executive Member of the District Council and the then Chairman of the Garo Hills District Council, presented a memorandum to Captain Sangma requesting postponement of the Conference "so that the leaders and the workers of the party have time enough to consider the matter". On November 10 and 11, 1976, the Executive Committee of the Khasi Hills District decided not to participate in the Conference of November 16, 1976. The Committee further appealed to the President of the party for postponement of the holding of the proposed Conference "to enable the leadership to take the rank and file of the party and the people into confidence on the issues involved and through calm and objective discussions, evolve a consensus decision to the satisfaction of all concerned in keeping with the tradition and genius of the hill people". On November 14, 1976, two days prior to the Conference, the Shillong unit of the APHLC by a resolution requested Captain Sangma for giving the leaders and members of the party time and opportunity to consider all aspects of the merger issue "by mutual consultation at all levels, so that a consensus may be arrived at and thus maintain the unity of the party and the people".

9. Notwithstanding the opposition, it went unheeded and the Conference was held on November 16, 1976, at Mendipathar which was attended by 81 delegates out of 121 and a resolution was passed unanimously in favour of merger with the Congress. The resolution :

> recalls with fond memory the circumstances which actuated the people of the autonomous districts of the then composite State of Assam to constitute a common political platform of their own, styled as the All Party Hill Leaders' Conference with a view to solving certain issues vitally affecting their welfare and interests.
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This meeting also recalls in this context, that during the last few years, the APHLC's relationship with the Indian National Congress, including the question of merger has often been discussed in different forums, and formally in the 24th session of the party on June 19 and 20, 1973 at Shillong. The 26th session of the party held on August 19 and 20, 1976 reiterated its firm resolve to strengthen, through mutually agreed upon steps, the said relationship with the Indian National Congress. . . .

Taking into full account the political changes which have taken place in the mean time in the State and country it is realised that the earlier resolutions have virtually become irrelevant and it is high time now to take concrete steps. This meeting therefore regrets that there are nevertheless some of our people who do not want to face and consequently fail to appreciate the importance of the changed situation which will go against the interest of the State and the people to allow indecision to continue further.

Now, therefore, in view of the constant stand of the party to strengthen the good relationship with the Indian National Congress, and in view of the objective realities of the political situation obtaining in the country, and having noted the consensus of the people through their representatives and our following the plans and programmes of the Indian National Congress which has been consistently taking special care to promote the welfare and interests of the Scheduled Tribes as provided in the Constitution and having been convinced, after a most careful consideration, that

there is no better way to give practical shape to the long-standing convictions of the party to come closer to the Prime Minister and her party than by merging with the Indian National Congress thereby providing us with an opportunity to take full advantage of the national forum together with other hill people of the north-eastern region who have similar problems as we, and taking all these factors into serious and realistic consideration, this meeting hereby unanimously resolves that the APHLC be merged with the Indian National Congress in response to the desire of the Prime Minister, Shrimati Indira Gandhi, and her party for the larger and fuller interests of the people of Meghalaya in particular and of the country in general.

10. The meeting further authorised the President, Captain Sangma, "to form a committee consisting of 5 members to work out the modalities, technicalities and details of the merger with the Indian National Congress in consultation with the Congress High Command" and also authorised him "to announce the formal merger of the APHLC with the Indian National Congress and the consequent dissolution of the APHLC as a political party or association in the State of Meghalaya". The meeting also "appeal(ed) to the people of Meghalaya in particular to the leaders and supporters of the APHLC, to extend their full support to th(e) resolution".

11. It is an irony that although the meeting recalled the part played by "the people" in constituting "a common political platform" styled as the APHLC, the appeal by a vocal section of the party to go back to "the people" to clearly ascertain their wish as to obliteration of the "platform" constituted by them fell on deaf ears.

12. The Conference of 81 members, unmandated for the purpose, decided for the people and the President acquired from that small body absolute power to nominate his own committee and to do all that was necessary in order to announce the merger of the party with the INC. The saving grace of the resolution was "the appeal to the people of Meghalaya" to extend their support to the resolution.

13. The resolution had immediate repercussions. The very next day, November 17, 1976, four APHLC leaders, namely, Messrs. D.D. Pugh (General Secretary of APHLC), P.R. Kyndiah, S.D.D. Nicholas Roy and B.B. Lyngdoh issued the following Press statement :

> We deeply regret the decision taken by a section of APHLC leaders meeting at Mendipathar to leave the party and join the Congress despite the suggestion to postpone the meeting with a view to enable the leadership time to consult the rank and file of the party and to take the people into confidence. By this hasty decision Shri W.A. Sangma and his followers have shown their complete disregard of the will of the people on whose mandate the APHLC Government was formed.

The APHLC will continue to serve the best interests of the people and make its own distinctive contribution to the progress of the State and the country as a whole. In this connection, a Conference of the APHLC is being convened by the General Secretary on December 7, 1976.

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14. The following day, November 18, 1976, Messrs. B.B. Lyngdoh, S.D.D. Nicholas Roy, P.R. Kyndiah and D.D. Pugh, who were Ministers in the Government of Meghalaya, resigned from the Cabinet and addressed a letter to the Chief Minister (Captain Sangma) as follows :

In view of the fact that you and the other three Cabinet colleagues have decided to leave the APHLC

which had formed the present Government and that you have done so without a mandate of the people we feel it has become morally incumbent upon us to resign. We do, therefore, hereby submit our resignation from the Cabinet with immediate effect.

Even then President Captain Sangma did not cry halt. On November 20, 1976, Captain Sangma made an announcement as follows :

> Having been duly authorised by resolution of the 27th Session of the All Party Hill Leaders' Conference held on November 16, 1976 at Mendipathar, Garo Hills, Meghalaya, in pursuance of the decision of the Central Committee held on November 1, 1976 at Shillong I, Capt. W.A. Sangma, President of the All Party Hill Leaders' Conference, after finalising the modalities of the merger as directed by the aforesaid resolution, hereby announce the merger of the All Party Hill Leaders' Conference with the Indian National Congress with effect from the afternoon of November 20, 1976. The All Party Hill Leaders' Conference stands dissolved as a Political Party or Association in the State of Meghalaya with effect from the afternoon of the aforesaid date, and its assets including bank balance and securities as also liabilities stand merged with the Indian National Congress.

15. Without further loss of time, the next move began. By a letter dated November 28, 1976, Shri O.L. Nongtdu, describing himself as "Joint Secretary of the erstwhile APHLC" informed the Election Commission (hereinafter to be described as the Commission) that the APHLC had merged with the Indian National Congress (hereinafter to be referred to as the INC) and consequently it stood dissolved. He requested the Commission in that letter to "withdraw the election symbol (Flower) reserved for the erstwhile APHLC". He enclosed with that letter several documents containing the resolutions of the party.

16. As against that move, by a letter dated November 30, 1976 Shri D.D. Pugh informed the Commission that some APHLC leaders including Captain Sangma had joined the INC and thus defected from the APHLC, that the leaders who had left the party had no authority to decide dissolution of the party or to approach the authorities on the question of recognition or derecognition, that the party was still in existence and that there was no provision whatever for a person or a group of persons to dissolve this party of the people.

17. On December 9, 1976, the Commission forwarded to Shri D.D. Pugh, General Secretary, APHLC, copies of letters together with their enclosures received from Shri O.L. Nongtdu, Joint Secretary, APHLC, and invited comments thereon before December 31, 1976 "so as to enable the Commission to take further necessary action in the matter". Shri D.D. Pugh forwarded his comments to the Commission on December 24, 1976, concluding his representation as follows :

> The party having been recognised as a political party with the reserved symbol 'Flower' under the provisions of the Order, no occasion has arisen for not continuing the said symbol "Flower" to the party which has admittedly 14 members in the State Legislature, 15 members in the District Councils and thousands and thousands of members in the State of Meghalaya.

18. The Commission heard the parties on January 29, 1977, on which date Shri B.B. Lyngdoh filed an affidavit before the Commission. The Commission after hearing the parties passed its order on February 1, 1977, holding that -

the APHLC, a recognised State party in Meghalaya under the Election Symbols Order has ceased to exist and that therefore the name of that party and the symbol "Flower" reserved for it should be deleted from the list of recognised State parties in the Election Commission Notification S.O. 61(E) dated January 31, 1975 forthwith. The symbol "Flower" shall remain frozen with immediate effect. I also direct that in order to avoid confusion the said symbol should not be included as a free symbol in respect of the States of Meghalaya and Assam.

19. It is against the above order of the Commission that the appellant has brought this appeal by special leave.

20. At the outset a preliminary, objection has been taken on behalf of respondents 1 and 2 (hereinafter to be described as the respondents) to the maintainability of this appeal by special leave under Article 136 of the Constitution. The Commission being the 3rd respondent has not entered appearance.

21. It is submitted by Mr. Rao appearing on behalf of the respondents that the Election Commission is not a tribunal within the ambit of Article 136(1) of the Constitution.

22. This question centring round the Election Commission has been raised before this Court for the first time in this appeal. Although in two earlier decisions of this Court appeals were lodged in this Court by special leave from the decisions of the Election Commission, no objection with regard to the maintainability under Article 136 was raised (see Sadiq Ali v. Election Commission of India [(1972) 2 SCR 318 : (1972) 4 SCC 664.] and Ramashankar Kaushik v. Election Commission of India [(1974) 2 SCR 265 : (1974) 1 SCC 271.]). This would, however, not prevent the respondents from raising this question before us. We will, therefore, examine the matter first. If the answer is against the appellant, nothing further will arise for decision.

23. The earliest decision of this Court as to the ambit of Article 136(1) with reference to the order of a tribunal came up for consideration in the Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd. [(1950) 1 SCR 459 : AIR 1950 SC 188 : 1950 Lab LJ 21.]. The question whether an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, was a tribunal within the scope of Article 136 was raised in that case. By majority the Constitution Bench of this Court held that the Industrial Tribunal was a tribunal for the purpose of Article 136. Having regard to the scheme of Article 136, this Court was not prepared to place a narrow interpretation on the amplitude of Article 136. This Court observed at page 476/478 of the Report as follows :

> As pointed out in picturesque language by Lord Sankey, L.C. in Shell Co. of Australia v. Federal Commissioner of Taxation [1931 AC 275.], there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power. It seems to me that such tribunals though they are not full-fledged Courts, yet exercise quasi-judicial functions and are within the ambit of the word 'tribunal' in Article 136 of the Constitution.
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Tribunals which do not derive authority from the sovereign power cannot fall within the ambit of Article 136. The condition precedent for bringing a tribunal within the ambit of Article 136 is that it should be constituted by the State. Again a tribunal would be outside the ambit of Article 136 if it is not invested with any part of the judicial functions of the State but discharges purely administrative

or executive duties. Tribunals, however, which are found invested with certain functions of a Court of justice and have some of its trappings also would fall within the ambit of Article 136. . . .

Then after four years, B.K. Mukerjea, J. (as he then was) who was one of the dissenting Judges in Bharat Bank (supra), true to judicial discipline, spoke for the unanimous Court in the Constitution Bench in Durga Shankar Mehta v. Thakur Raghuraj Singh [(1955) 1 SCR 267 : AIR 1954 SC 520.] in the following words :

It is now well settled by the majority decision of this Court in the case of Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd. (supra) that the expression "Tribunal" as used in Article 136 does not mean the same thing as "Court" but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions.

24. The basic principle laid down in the Bharat Bank (supra) has not been departed from by this Court and has been reiterated in several later decision (see J.K. Iron and Steel Co. Ltd., Kanpur v. The Iron and Steel Mazdoor Union, Kanpur [(1955) 2 SCR 1315 : AIR 1956 SC 231 : (1956) 1 Lab LJ 227.]; M/s. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala [(1962) 2 SCR 339 : AIR 1961 SC 1669 : (1961) 31 Com Cas 387.]; Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand [1963 Supp 1 SCR 242 : AIR 1963 SC 677 : 1963 Lab LJ 524.]; The Engineering Mazdoor Sabha v. The Hind Cycles Ltd., Bombay [1963 Supp 1 SCR 625 : AIR 1963 SC 874 : (1962) 2 Lab LJ 760.]; and Associated Cement Companies Ltd. v. P.N. Sharma [(1965) 2 SCR 366 : AIR 1965 SC 1595 : (1965) 1 Lab LJ 433.]).

25. From a conspectus of the above decisions it will be seen that several tests have been laid down by this Court to determine whether a particular body or authority is a tribunal within the ambit of Article 136. The tests are not exhaustive in all cases. It is also well-settled that all the tests laid down may not be present in a given case. While some tests may be present others may be lacking. It is, however, absolutely necessary that the authority in order to come within the ambit of Article 136(1) as tribunal must be constituted by the State and invested with some function of judicial power of the State. This particular test is an unfailing one while some of the other tests may or may not be present at the same time.

26. It will be profitable to refer to an illuminating decision of the Constitution Bench in Associated Cement Companies Ltd. (supra). The question that was raised for decision in that case was as to whether the State Government of Punjab exercising is appellate jurisdiction under Rule 6 of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952, was a tribunal within the meaning of Article 136(1) of the Constitution. Section 49(2) of the Factories Act, 1948, provides that the State Government may prescribe the duties, qualifications and conditions of service of Welfare Officers employed in a factory. The State Government framed the Rules under Section 49(2) of the Factories Act and Rule 6(6) provides that a Welfare Officer upon whom a punishment is imposed may appeal to the State Government against the order of punishment and the decision of the State Government shall be final and binding. It is against a certain order passed by the State Government under Rule 6(6) that the company came to this Court by special leave and an objection was raised that the State Government exercising power under Rule 6(6) was not a tribunal within the meaning of Article 136(1). The objection was repelled in the following words :

Tribunals which fall within the purview of Article 136(1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their

decision and in that sense, they share with the courts one common characteristic; both the courts and the tribunals are "constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions". [Vide Durga Shanker Mehta v. Thakur Raghuraj Singh (supra)]. They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the courts is regularly prescribed and in discharging their functions and exercising their powers, the courts have to conform to that procedure. The procedure which the tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the courts, and features which are distinct and separate. The basic and the fundamental feature which is common to both the courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State [Pages 372-373 of the Report.].

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But as we already stated, the consideration about the presence of all or some of the trappings of a court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings, is the judicial power of the State or not. The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6(5) and Rule 6(6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory Rule and it can be exercised in respect on disputes between the management and its Welfare Officers. There is, in that sense, a lis; there is affirmation by one party the denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding. Besides, it is an order passed on appeal. Having regard to these distinctive features of the power conferred on the State Government by Rule 6(5) and Rule 6(6), we feel no hesitation in holding that it is a Tribunal within the meaning of Article 136(1) [Pages 386-387 of the Report.].

27. Mr. Rao submits that this Court in the above decision was particularly influenced by the fact that the State Government was exercising the power of appeal under Rule 6(5) and Rule 6(6). We are unable to hold that reference to the order being passed on appeal in the above passage had any decisive weight in arriving at the decision. In principal test which must necessarily be present in determining the character of the authority as tribunal is whether that authority is empowered to exercise any adjudicating power of the State and whether the same has been conferred on it by any statute or a statutory rule.

28. The Election Commission is a creature of the Constitution. The Commission shall consist of a Chief Election Commissioner and also other Election Commissioners if so considered necessary and when other Election Commissioners are appointed, the Chief Election Commissioner shall act as Chairman of the Election Commission. The Chief Election Commissioner is appointed by the President under Article 324(2) of the Constitution. Under Article 324(1), the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of the President and Vice-President shall be vested in the Election Commission. The Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and his conditions of service shall not be varied to his disadvantage after his appointment. However, unlike Judges of the Supreme Court or of the High Courts and the Comptroller and Auditor-General of India, he is not required to make and subscribe before the President an oath or affirmation under the Constitution. Again the Comptroller and Auditor-General shall not be eligible for further appointment either under the Government of India or under the Government of any State after he has ceased to hold his office [Article 148(4)]. Similar restrictions are there in the case of the Chairman of the Union Public Service Commission (Article 319). But there is no such restriction in the case of the Chief Election Commissioner. Even so, the Chief Election Commissioner is a high dignitary whose independence impartiality and fairmindedness are intended to be guaranteed by the Constitution in the manner set out above. Since the Chief Election Commissioner is, inter alia, charged with the solemn duty of conducting elections, he has to discharge manifold functions and powers in facilitating a fair and free election in our country avowedly wedded to democratic principles. India is a Democractic Republic and the elements of democratic concept and process should imbue every phase and feature of life, social and political.

29. For the purpose of holding elections, allotment of symbol will find a prime place in a country where illiteracy is still very high. It has been found from experience that symbol as a device for casting votes in favour of a candidate of one's choice has proved an invaluable aid. Apart from this, just as people develop a sense of honour, glory and patriotic pride for a flag of one's country, similarly great fervour and emotions are generated for a symbol representing a political party. This is particularly so in a parliamentary democracy which is conducted on party lines. People after a time identify themselves with the symbol and the flag. These are great unifying insignia which cannot all of a sudden be effaced.

30. The Constitution, as we have seen above, has vested conduct of all elections in the Commission. Amongst other things, conduct of elections would require decisions with regard to the allotment of symbols and solution of controversies regarding choice of symbols. Although under Article 327 Parliament is empowered to make provisions with respect to all matters relating to or in connection with elections and other matters specified therein, the Representation of the People Act made thereunder by Parliament has not expressly provided for any provisions with regard to symbols. However, under Section 169(1) of the Representation of the People Act, the Central Government is empowered to make rules after consulting the Commission for carrying out the purposes of this Act. Sub-section (2) of that section provides in particular, and without prejudice to the generality of the power under Section 169(1), that such rules may provide for the matters specified from (a) to (i). Clause (c), thereof, provides for the manner in which votes are to be given both generally and in the case of illiterate voters or voters under physical disability. The last clause is a residuary clause with regard to any other matter that may be required to be prescribed by this Act. These rules, when made by the Central Government, have to be laid before each House of the Parliament under sub-section (3) of Section 169 and parliamentary control is thus retained. The Conduct of Elections Rules, 1961, which have been framed in exercise of the power under Section 169 of the Act,

provide in Part II thereof for various matters under the title "General Provisions". Rule 5 in Part II thereof and sub-rules (4), (5) and (6) of Rule 10 therein deal with matters relating to symbols.

31. In exercise of the powers vested in the Commission under Article 324 and Rule 5 and Rule 10 of the Conduct of Elections Rules, 1961 (briefly the Rules) and all other powers enabling it in that behalf, the Election Commission made the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter to be referred to as the Symbols Order). The preamble of the Symbols Order says that it is an Order to provide for specification, reservation, choice and allotment of symbols at elections in parliamentary and assembly, constituencies, for the recognition of political parties in relation thereto and for matters connected therewith.

32. It is not necessary in this appeal to deal with the question whether the Symbols Order made by the Commission is a piece of legislative activity. It is enough to hold, which we do, that the Commission is empowered on its own right under Article 324 of the Constitution and also under Rules 5 and 10 of the Rules to make directions in general in widest terms necessary and also in specific cases in order to facilitate a free and fair election with promptitude. It is, therefore, legitimate on the part of the Commission to make general provisions even in anticipation or in the light of experience in respect of matters relating to symbols. That would also inevitably require it to regulate its own procedure in dealing with disputes regarding choice of symbols when raised before it. Further that would also sometimes inevitably lead to adjudication of disputes with regard to recognition of parties or rival claims to a particular symbol. The Symbols Order is, therefore, a compendium of directions in the shape of general provisions to meet various kinds of situations appertaining to elections with particular reference to symbols. The power to make these directions, whether it is a legislative activity or not, flows from Article 324 as well as from Rules 5 and 10. It was held in Sadiq Ali (supra) that "if the Commission is not to be disabled from exercising effectively the plenary powers vested in it in the matter of allotment of symbol and for issuing directions in connection therewith, it is plainly essential that the Commission should have the power to settle a dispute in case claim for the allotment of the symbol of a political party is made by two rival claimants". It has been held in Sadiq Ali (supra) that the Commission has been clothed with plenary powers by Rule 5 and sub-rules (4) and (5) of Rule 10 of the Rules in the matter of allotment of symbols.

33. In Sadiq Ali (supra) the Election Commission entertained the dispute under paragraph 15 of the Symbols Order. The vires of paragraph 15 was challenged in that case and this Court held that paragraph 15 was not ultra vires the powers of the Commission.

34. In Sadiq Ali (supra) the dispute was between two rival sections of the same party, namely, the Indian National Congress, and the dispute came squarely within the scope of paragraph 15 of the Symbols Order. Even the present impugned order is professedly passed by the Commission under paragraph 15 of the Symbols Order.

35. We may at once state that the controversy raised before the Commission is not squarely within the scope of paragraph 15 of the Symbols Order. That would, however, not conclude the matter as the controversy could well be adjudicated by the Commission, relating as it was, to derecognition of a recognised political party vis-a-vis the choice of their reserved symbol in connection with elections, although they may take place in future. The Commission will have the jurisdiction to determine the controversy raised, clothed as it is with the power to conduct elections under Article 324 and to give directions in general or in particular in respect of symbols which would involve the determination of claims as recognised political parties in the State. No objection, therefore, can be

taken to the Commission's adjudication of the matter as being beyond the scope of its jurisdiction.

36. The question which we are required to resolve is as to the character of the Commission in adjudicating this dispute with regard to recognition of APHLC as a continuing recognised political party in the State of Meghalaya. It appears that out of 121 members of the Conference 81 had decided by majority that APHLC stood dissolved and these members joined the INC. Forty members had opposed the move to dissolve the party and actually stayed away from the Conference when the resolution to dissolve the party was passed. That has led to the dispute as to whether, notwithstanding the majority resolution in the Conference, the APHLC could still continue as a recognised political party in the State of Meghalaya for the purpose of allotment of the reserved symbol.

37. There is thus a lis between two group of the Conference. The Commission is undoubtedly the specified and exclusive adjudicating authority of this lis. The Commission is created by the Constitution and the power to adjudicate the dispute flows from Article 324 as well as from Rule 5 and is thus conferred under the law as a fraction of judicial power of the State. The Commission has prescribed its own procedure in the Symbols Order, namely, to give a hearing to the parties when there is a dispute with regard to recognition or regarding choice of symbols. Paragraph 15 of the Symbols Order makes specific reference to the procedure to be adopted by the Commission in hearing like disputes and it is required to take into account all the available facts and circumstances of the case and to hear such representatives of the sections or the groups and other persons as desire to be heard. The decision of the Commission under paragraph 15 shall be binding on all rival sections or groups in the party. The Commission has followed, and if we may say so, rightly, this very procedure laid down in paragraph 15 in adjudicating the present dispute although the same may not be a dispute contemplated under this paragraph. The dispute with which the Commission was concerned in the present case was a dispute of more serious nature than that which may be envisaged between two rival sections of a political party or between two splinter groups of the same party claiming to be the party, since the respondents' claim, here, was to annihilate the party beyond recognition and for good. When, therefore, the Commission has laid down a reasonable procedure in the Symbols Order in dealing with such a dispute, it was incumbent upon the Commission to choose the same procedure, as, indeed, it actually did, in adjudicating the present dispute. If the Commission were not specially required under the law to resolve this dispute within the framework of the scheme contemplated under Article 324 read with the Rules supplemented by the Symbols Order, the parties would have been required to approach the ordinary courts of law for determination of their legal rights with regard to their recognition or derecognition. Since, however, a special machinery has been set up under the law relating to this matter and the same has to be decided with promptitude, the State's power of adjudicating such a dispute has been conferred upon the Election Commission in this behalf. It is true that the Election Commission has various administrative functions but that does not mean that while adjudicating a dispute of this special nature it does not exercise the judicial power conferred on it by the State.

38. To repeat, the power to decide this particular dispute is a part of the State's judicial power and that power is conferred on the Election Commission by Article 324 of the Constitution as also by Rule 5 of the Rules. The principal and non-failing test which must be present in order to determine whether a body or authority is a tribunal within the ambit of Article 136(1), is fulfilled in this case when the Election Commission is required to adjudicate a dispute between two parties, one group asserting to be the recognised political party of the State and the other group controverting the proposition before it, but at the same time not laying any claim to be that party. The fact that the decision is not relevant immediately for the purpose of a notified election and that disputes

regarding property rights belonging to the party may be canvassed in civil courts or in other appropriate proceedings, is not of consequence in determination of the present question.

39. It is true that Rule 5(2) and sub-rules (4), (5) and (6) of Rule 10 relate to an election which has been notified under Rule 3 of the Rules. That, however, does not detract from the position that under Rule 5(1), the Election Commission is empowered to specify symbols in general terms and also the restrictions to which the choice of symbols will be subjected. As stated earlier. Rule 5 is in Part II of the Rules under the title "General Provisions". The conferment of judicial power of the State on the Commission in the matter of adjudication of the dispute of the nature with which we are concerned clearly flows from Rule 5(1) read with Article 324 of the Constitution.

40. Mr. Rao submits that the primary function of the Election Commission is not adjudicatory and, therefore, it cannot be a tribunal for the purpose of Article 136. We are unable to accept this submission. The question is whether in deciding the particular dispute between the parties in a matter of the kind envisaged in the particular controversy, the Commission is exercising a judicial function and it has a duty to act judicially. Having regard to the character of the Commission in dealing with the particular matter and the nature of the enquiry envisaged and the procedure which is reasonable required to be followed, we hold that its primary function in respect of this subject matter is judicial. It is not necessary that this should be the only function of the Election Commission in order to answer the character of a tribunal under Article 136. Even in the Associated Cement Companies' case (supra) this Court has to deal with the exercise of power by the State Government under Rule 6(5) and (6) of the Punjab Welfare Officers Recruitment and Conditions of Services Rules, 1952 and it held that the State Government in acting under those rules was a tribunal within the ambit of Article 136(1). It goes without saying that the primary function of the State Government is not exercise of judicial power. We have to determine this question keeping in view the exercise of power with reference to the particular subject-matter although in some other matters the exercise of function may be of a different kind.

41. Mr. Rao further contends that the decision of the Commission in such a case is only a tentative decision and, therefore, the Commission does not answer the legal concept of a tribunal. We are unable to hold that the decision which the Commission gives after hearing the parties in a controversy in respect of the claim of a party to continue as a recognised party in the State continuing the reserved symbol already allotted to it is only a tentative decision. The decision that the tribunal gives is a definitive decision and is binding on both the contending parties so far as the claim to the reserved symbol is concerned. The decision with regard to the reserved symbol or for the matter of that any symbol for the purpose of election is within the special jurisdiction of the Election Commission and it is not permissible for the ordinary hierarchy of courts to entertain such a dispute. The Commission does not decide any rights to property, belonging to a political party or rival groups of a political party. That may be a matter for the ordinary civil courts with which were are not concerned in this appeal.

42. Thus the position that emerges from the above discussion is that the Commission is created under the Constitution and is invested under the law with not only administrative power but also with certain judicial power of the State, however fractional it may be. The Commission exclusively resolves disputes, inter alia, between rival parties with regard to claims for being a recognised political party for the purpose of the electoral symbol.

43. We are, therefore, clearly of opinion that the Commission fulfils the essential tests of a tribunal and falls squarely within the ambit of Article 136(1) of the Constitution. The preliminary objection

is, therefore overruled.

44. Now on the merits.

45. Before we proceed further we may look at the nature of the dispute before the Commission. The APHLC has been recognised as a political party in the State of Meghalaya since 1962. Unlike the INC this party has no written constitution of its own. It is, however, not disputed that APHLC is a democratically run party. True in normal working in a democratic organisation the rule of majority must prevail and there can be no dispute about a decision being arrived at by recourse to a majority vote in case members of a party are not unanimous on a particular issue. That, however, will not conclude the matter in this case as the Commission seems to have though it did.

46. The history of the party shows that it took its birth in 1960 and thereafter this party gathered momentum and strength to spearhead a peaceful constitutional movement for a separate hill State. Other matters were subordinate to this paramount issue which more or less unified the hills except certain areas which were happy to continue in the composite State of Assam. When the APHLC finally succeeded in 1972 in securing the statehood for Meghalaya they really won the battle for which they remained united with one common reserved symbol, namely, "Flower". After attainment of statehood the APHLC was returned in the elections that followed and took the reins of Government. No one then thought of liquidation or dissolution of the party because its paramount aim had been achieved.

47. The APHLC is a regional party but with high ideals of working out the salvation of the area as proud partners in a larger scheme of advancement of the whole nation without, at the same time, effacing their identity, culture and customs. We find from the records that the party as a whole believed in associating with the national stream of public life and indeed the last resolution of the APHLC in August, 1976, before the split in November 1976, was to strengthen their tie with the INC.

48. When a party like this has to disappear from the political firmament as a distinct party, it is a very grave and serious decision to take. A party which has been successfuly running a State Government cannot claim to be a party of mere leaders as is sought to be represented by the respondents and as the nomenclature may even apparently suggest. It is true the leaders took upon themselves the solemn task of fulfilment of the aspirations of the region and of the people but only on the basis as representatives of the people whose inner voice they articulated, whose ambition they strove to achieve. There could be no All Party Hill Leaders without the people to lead and without a general membership furnishing the infra-structure. Whether there has been regular membership for the party, about which also there is controversy between the parties, it would be a self-evident fact in a democratic party, which APHLC undoubtedly claims to be, that the leaders cannot operate from a super-structure without the base of the people.

49. We may in this context refer to a few incontrovertible facts while the APHLC was functioning in a normal way without any dispute. Take, for example, the notice of Shri P.R. Kyndiah, General Secretary, APHLC dated July 15, 1976, addressed to secretaries of Khasi Hills District APHLC, Shillong, Garo Hills District, APHLC, Tura, Jaintia Hills District APHLC, Jewai, All-India Garo National Council, Shillong, and District Garo National Council, Tura, regarding the 26th Conference of the APHLC on August 17 and 18, 1976. He writes in this letter :

> I request you kindly to inform the eligible delegates accordingly. Meanwhile you are

requested to send to me the list of the eligible delegates and invitees on or before August 6, 1976.

The note below the letter shows the persons who are entitled to join the Conference as full-fledged delegates. They are -

(a) Members of the Party Central Committee.

(b) All M. Ps., M.L. As. and M.D. Cs. belonging to the APHLC.

(c) Five representatives from each District Branches and affiliated political parties.

(d) Two nominees of the Party Chief Executive Members, District Councils and in the case of Khasi Hills District Branch, its Chairman is authorised to nominate the nominees.

(e) Four additional delegates from the host district.

It was also indicated in the note that the following numbers of invitees are allotted to each district branches for attending the Conference :

(i) Khasi Hills District Branch ... 15

(ii) Garo Hills District Branch ... 15

(iii) Jaintia Hills District Branch ... 8

50. We are told that the numerical strength of the delegates to such a Conference is 121. It must, however, be borne in mind that they are "delegates", that is to say, delegates of some body or persons who would in the usual course elect or authorise the delegates as their representatives to represent the larger body or assemblage in the Conference. There is clear evidence of the democratic feature in this very notice which showed the pattern of working of the APHLC. It is submitted on behalf of the respondents that the Conference of these delegates is authorised to take decisions on "any issue". Assuming that is so, such authority in absence of anything more cannot authorise a Conference of the delegates to write off the organisation or to sign its death warrant. "Any issue" on which decision may normally be taken by the Conference must relate to live matters of a living organ and not to its death wish. Without the nexus with the generality of membership decisions will derive no force or vigour and no party or conference can hope to succeed in their plans, efforts or struggle unless backed by the same. There is no evidence authorising the Conference to dissolve itself by merger or otherwise, and so it is not possible to apply the rule of majority only in the Conference for such a decision affecting the entire body as an entity, in the absence of a clear mandate from the general membership. Assuming that the Conference on November 16, 1976, decided by a majority to dissolve the APHLC, it would have been in accord with democratic principles to place that decision before the general membership of the party for ratification prior to implementing the mere majority decision of the Conference without regard to the wishes of the members as a whole. The President of the APHLC and those who were in favour of dissolution fell into this error and they cannot blame the minority of 40 members who openly disassociated with the hasty move and only wanted time for further discussion by taking "the rank and file" into confidence. It is very difficult to appreciate why this reasonable request from a responsible section of the Conference was completely unheeded and the President thought it proper to agree to take

upon himself the responsibility to announce the dissolution and hastily merge with the INC. The matter ought to have struck the President as a grave issue resulting, as it had done, in resignation of four members of the Meghalaya Cabinet on this very issue.

51. Again in this context it will be appropriate to refer to an admitted document being the resolution passed by the 20th Session of the All Party Hill Leaders' Conference held at Tura on October 14 and 15, 1968, when the party was a unified body. It may be apposite to extract the following passage from the minutes :

In its 19th Session held at Tura from September 17 to 19, 1968, the APHLC discussed the Government of India decision announced on September 11, 1968 to constitute an Autonomous Hill State. It was then decided to place the Government of India Plan before the people of the hill areas and obtain their reactions before the APHLC comes to a decision.

This 20th Session of the APHLC held at Tura on October 14 and 15, 1968, has received comprehensive reports of meetings held in this connection in the various parts of the hill areas. These reports convey that the consensus in the hill areas is that the people, while expressing deep disappointment at the failure of the Government of India to meet their aspirations in full and reasserting that a fully separate State would be the best solution, nevertheless feel that the Plan may be given a trial.

Now, therefore, having fully considered the public opinion in the hill areas, the political realities in the country and the larger interests of the country as a whole, this Conference, resolves to give the Autonomous Hill State Plan a fair trial with the clear understanding that the APHLC will continue all efforts to achieve a fully separate State comprising all the hill areas of the present State of Assam as envisaged in the resolution and Plan of the 3rd Session of the APHLC held at Haflong in November, 1960.

52. The above resolution adopted in 1968 would clearly show that the APHLC has been always working on democratic lines mindful of the public opinion in the entire hill areas and whenever momentous decisions had to be taken they thought it absolutely mandatory to consult the wishes of the people before taking a decision. This is, as it should be, for democracy cannot thrive as democracy by being an oligarchy masquerading for democracy. There could not have been a more momentous decision than the dissolution of a ruling party in the State.

53. It has crystal clear that the house was emotionally divided on the issue of merger with the INC and that the history of the move in the direction of the merger brought forth discordant notes and opposite trends. The portents were sufficiently indicative of almost unbridgeable fissures affecting the harmony in the party. Leaders who had harmoniously chosen peaceful paths on various issues in the past could not have been expected to tear asunder the homogeneity which successfully built up the party. It appears, the finale of the proposed assimilation did not filter from within but was, on the President's frank disclosure before the Central Committee, "wanted" from outside, a position to which several leaders immediately reacted.

54. The Commission fell into an error in holding that the Conference of the APHLC was the general body even to take a decision about its dissolution by a majority vote. The matter would have been absolutely different if in the general body of all members from different areas or their representatives for the purpose, assembled to take a decision about the dissolution of the party had reached a decision by majority. This has not happened in this case. At best the decision of the

Conference on November 16, 1976, was only a step in that direction and could not be held as final until it was ratified by the general membership. The fact that no membership registers were produced before the Commission or that there is controversy with regard to the existence of regular members or their enrolment would not justify the Conference to be indifferent to the consensus of the members as a whole whom they had always consulted in other momentous issues and but for whose active aid, support and participation they could not have achieved the Statehood for Meghalaya. The decision of the Commission, therefore, is completely erroneous.

55. There can be no flower without its sap. There cannot be leaders without people. There cannot be a party without members. Action of leaders ignoring the generality of membership is ineffective. Such action cannot be equated with the consensus of the membership which alone supplies the base for its sustenance.

56. There is another aspect of the matter. The controversy arises not during an election after it has been notified under Rule 3. The dispute relates to the consideration whether a recognised State party has ceased to be recognised, under the Symbols Order. The Commission has undertaken the enquiry in the context of paragraph 15 of the Symbols Order. We have already indicated that the dispute does not come within the scope of paragraph 15. Even so, the Commission would have the jurisdiction to adjudicate the dispute with regard to cancelling recognition of a recognised political party in terms of the directions under the Symbols Order. Under paragraph 7, sub-para (2) of the Symbols Order, notwithstanding anything contained in sub-paragraph (1) with which we are not concerned, every political party which immediately before the commencement of this Order is in a State a recognised political party shall on such commencement, be a State party in that recognised political party shall on such commencement, be a State party in that State and shall continue to be so until it ceases to be a State party in that State on the result of any general election held after such commencement. Under paragraph 6, sub-para (2) of the Symbols Order a political party shall be treated as a recognised political party in a State if and only if either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party and not otherwise, that is to say :

(A) that such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning, returned -

either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State;

or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes polled by all the contesting candidates set up by such party at the general election in the State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twenfth of the

total number of valid votes polled by all the contesting candidates in that constituency), is not less than four per cent of the total number of valid votes polled by all the contesting candidates at each general election in the State (including the valid votes of those contesting candidates who have forfeited their deposits).

57. It is not disputed that the APHLC with 40 members still claiming to continue its reserved symbol answers the test laid down in the Commission's directions for being recognised as a State political party under paragraph 6 of the Symbols Order. They had, on the date of entertainment of the dispute by the Commission, still the requisite membership fulfilling the test for recognition as a State political party. The Commission was, therefore, required to follow the provisions of the directions which it has laid down in the Symbols Order when the question of de-recognition of a party was raised before it. It is not a dispute between two factions of the same party, each claiming to be the party so that the Commission has to allow the symbol to one of them. The claim of the respondents before the Commission was that the APHLC had ceased to function as a recognised political party in the State and Captain Sangma's group having merged with the INC requested the Commission to scrap the APHLC out of existence with its reserved symbol so that the APHLC would be effaced from the political arena. The Commission was entirely wrong in its decision in view of its own directions embodied in the Symbols Order. The Commission could not be reasonably satisfied on the materials before it that under paragraph 6 read with paragraph 7 of the Symbols Order the APHLC had ceased to be a recognised political party in the State. Even by application of the directions which it has set out in the Symbols Order the Commission's decision is absolutely untenable.

58. Even after a major chunk of the APHLC led by Captain Sangma had jointed the INC, if those who still continued under the banner of the APHLC flag and symbol claimed to continue as APHLC and the directions in the Symbols Order did not authorise de-recognition of the APHLC as a body represented by the remainder, as we have found, no case is made out for any interference by the Commission with regard to the reserved symbol. Thus the APHLC, as a recognised state political party in Meghalaya, stays and is entitled to continue with their reserved symbol "Flower".

59. In the result the appeal is allowed and the decision of the Election Commission is set aside. The reserved symbol "Flower" stands restored to the APHLC. In the entire circumstances of the case there will be no order as to costs.

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