Serial No.03
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.3/2019

Date of Order: 24.05.2019

State of Meghalaya & ors Vs. Amon Rana & ors

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice
Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A Kumar, Advocate General with
Ms. R Colney, GA

For the Respondent(s) : Mr. R Gurung, Adv for R/1
Ms. A Paul, ASG for R/2&3

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

ii) Whether approved for publication in press: Optional

Per Mohammad Yaqoob Mir, 'CJ'

1. By medium of this appeal, judgment dated 10.12.2018 passed in WP (C) No.448 of 2018 captioned "Shri Amon Rana v. State of Meghalaya & ors", has been assailed on numerous grounds as enumerated in para-8 of the memo of appeal.

2. It was brought to the notice of the Court that in view of the observations made and directions passed in the judgment impugned regarding matters which were not issues in the writ petition, SLP has been filed before the Hon'ble Apex Court with the following prayer:-

> "(a) Issue appropriate writ/direction directing the Hon'ble Chief Justice, Meghalaya High Court, Shillong to withdraw all judicial works from Hon'ble Justice S.R. Sen forthwith;
> (b) Pass ad interim ex-parte relief in terms of prayer (a);
> (c) Pass such other of further orders as to this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. Pendency of SLP with aforesaid prayer in our humble opinion will not operate as a bar for deciding the instant appeal as is also submitted by learned counsel for the parties, more so Hon'ble Judge against whom aforesaid relief has been sought on reaching superannuation has retired.

4. Learned Advocate General while projecting the case for reversal of the judgment impugned has placed reliance on various judgments rendered by Hon'ble Supreme Court to be quoted while considering his contentions herein below.

5. Learned counsel for the respondent No.1 submits that the respondent No.1 had applied for certificate required to be produced for recruitment in armed force, before the Additional Deputy Commissioner, East Khasi Hills, Shillong (appellant herein), but was dragged continuously. Appointment of petitioner vide appointment order dated 11.08.2018 was subject to the production of said certificate and other documents. Faced with uncertainty due to in action on the part of the appellant was constrained to file writ petitions. Provisional certificate has been granted same may be treated as final.

6. Learned ASG had produced a communication addressed to her by the Deputy Secretary where-under she has been asked to seek three weeks' time for filing reply. Since the submissions on behalf of Advocate General appearing for the appellants and of learned counsel for respondent No.1 were concluded on 20.05.2019, therefore, she made a submission that the issue of domicile certificate is a larger issue requires proper adjudication, therefore, the case may be remanded so that writ petition is a fresh decided.

7. The submission of learned ASG that she is under instructions to seek three weeks' time to file reply is totally misplaced. Firstly, respondents No.2 and 3 were not the party to the main petition they were arrayed as party respondents No.2 and 3 by learned Single Judge vide order dated 27.11.2018 on their behalf no reply or counter affidavit was filed as against the writ petition. Her submission has been recorded in the judgment impugned which reads as under:-

> "Ms. A Paul, learned ASG submits that from para 8 of the affidavit, it is clear that the Government of Meghalaya has an intention not to grant the domicile certificate, which goes against the whole concept of the Constitution of India and prayed that necessary judgment may be passed."

8. The contention of learned ASG that grant of domicile certificate is a larger issue and has to be consistent with the Citizenship Act and matter is not a State subject, runs contrary to her submission as she has made before

learned Single Judge. That apart, according to her, Notification dated 13.01.1995 as has been quashed was required to be quashed. But that submission is without any substance because that Notification dated 13.01.1995 issued by the Government of Meghalaya, Political Department provides that Permanent Residence Certificate/Domicile Certificate should not be issued in case of candidates wishing to join army or recruitment to posts and services. However, certificate could be issued in the form of letter in such cases. If the argument of learned ASG is taken as correct that domicile certificate is linked with Citizenship Act, then, this Notification should not be questioned by learned ASG. That apart, while taking care of all the Notifications, the Government of Meghalaya had issued another Notification on 29.05.2017 providing for issue of certificate under various heads which include item-9 **certificate for recruitment in Armed/Para Military/Police Force**.

9. The submission of learned ASG that the case may be remanded so that larger issue is adjudicated upon is also without any substance because writ petitioner has been granted provisional certificate in accordance with Notification No.POL.97/74/Pt-I/327 dated 29.05.2017 which Notification has neither been challenged nor was the subject matter of challenge in the writ petition nor has been looked into as is clear from the judgment impugned. Even the other two Notifications one dated 10.06.(year not clear) and another one dated 13.01.1995 too were not the subject matter of challenge in the writ petition. There is no order against the interest of respondents No.2 and 3 it appears that they have been impleaded as party respondents so as to ensure implementation of the directions contained in the judgment impugned.

10. Writ petitioner is not concerned with any of the developments as have taken place during writ proceedings he was concerned only for issue of requisite certificate in his favour so as to join the armed force. Provisional certificate had been issued to him in compliance to the order of learned Single Judge then has joined the armed force. Now, provisional certificate as issued if made absolute will automatically suggest that so far writ petition is concerned no issue survive for contest by the writ petitioner. Learned ASG submits that the issue of domicile certificate is a larger issue

but that can be taken care of, if at all any such petition is filed by any aggrieved party.

Background of the case:

11. Respondent No.1 (writ petitioner) had applied for issue of domicile certificate which was not issued, therefore, filed WP (C) No.415 of 2018 which with the consensus of learned counsel for the parties was disposed of on 15.11.2018 with a direction to the appellant herein to accord consideration to the case of the petitioner for issue of domicile certificate under the rules. Since the petitioner had claimed that he had been provisionally selected for recruitment in Sol GD cat, however, his final selection was subject to the production of documents which include domicile certificate. Therefore, appellant was directed to pass the order permissible under the rules within five days.

12. On 19.11.2018 vide letter No.P.15/DOM/V/2014/Misc/160 appellant conveyed to the petitioner that his application for Armed Forces Certificate vide reference No.MEG-AFC/2018/00172 has been rejected. Aggrieved whereof, respondent No.1 filed fresh petition [WP(C) No. 448 of 2018].

13. In the affidavit-in-opposition as filed by the respondents therein it has been stated that the **writ petitioner had applied through online method for certificate for recruitment in Armed/Para/Military/Police force vide reference No.MEG-AFC/2016/00172 dated 18.01.2018 along with documents i.e. family ration card, Birth Certificate, AADHAAR Card, School Certificate**, Father's Service Identity Card and Electoral Photo Identity Card. The birth certificate of respondent No.1 was sent for verification to the issuing authority i.e. Pedaldoba PHC, West Garo Hills on 21.03.2018. In response thereof, a letter dated 11.04.2018 was received from Pedaldoba PHC, wherein it was mentioned that the genuineness of the birth certificate is doubtful on five reasons:-

> "(i) There is no person named Amon Rana under Pedaldoba PHC census;
> (ii) There is no village – Goeragre under Pedaldoba PHC;
> (iii) The registration number is false;
> (iv) The signature is not of the previous Registrar and;
> (v) The seal and stamp also did not belong to Pedaldoba PHC."

14. Vide interim direction dated 26.11.2018, Additional Deputy Commissioner, East Khasi Hills, Shillong was directed to issue domicile certificate on 26.11.2018 itself with a condition that same will remain subject to the outcome of the writ petition. In compliance thereof, provisionally certificate has been issued in favour of respondent No.1, as a result whereof he joined the armed services for which he was selected and appointed.

15. During pendency of the writ petition, on 27.11.2018 learned Single Judge has after hearing the submissions observed that for addressing the matter once and for all, presence of Central Government is necessary. Resultantly, Secretary Home Affairs, Government of India and Secretary Law, Government of India were made as party on whose behalf Ms. A Paul, ASG had appeared. Finally, writ petition was disposed of vide detailed judgment impugned dated 10.12.2018.

16. In the judgment impugned learned Single Judge has observed that difficulties faced by the residents to get domicile certificate and permanent certificate, is a vital issue, therefore, it is required to be examined since inception of India (Bharat Barsh), then, what was within the knowledge of learned Single Judge about history has been stated in the judgment and in the process certain observations have been made then it has opined that he did not agree with the Notification No.POL.422/76/55 dated 13.01.1995 and Notification No.POL.97/74/174 dated 10.06.(year not clear) then has set aside the two notifications and directed the respondents to follow the guidelines as laid down in **Rabbe Alam v. State of Meghalaya** reported in **(2017) MJ 128**.

17. Finally, while parting with the judgment has made an appeal to the Government of India for taking necessary steps to bring a law to safeguard the interest of Hindus, Sikhs, Jains, Buddhists, Christians, Parsis, Khasis and Garos who have already come to India and who are yet to come from Pakistan, Bangladesh and Afghanistan as well as persons of Indian origin who are residing abroad after taking historical background in view as discussed and quoted.

18. Learned Single Judge has issued a clarification on 14.12.2018 that he has not said anything about secularism. Nor his judgment is politically

motivated or influenced by any party. He is not a religious fanatic rather respect all religions because God is one.

19. The first contention of learned Advocate General is that the two notifications No.POL.97/74/174 dated 10.06.(year not clear) and No.POL.422/76/55 dated 13.01.1995 were not under challenge in the writ petition. In the notification dated 10.06.(year not clear) for avoiding confusion the expression "Permanent Home" and word "merely" as existed in the earlier letter dated 22.12.1976 was clarified to the effect that for the purpose of issue of Permanent Residence Certificate, a person must be residing continuously for a period not less than 12 (twelve) years in the area. The Notification dated 13.01.1995 pertains to the question which **arose regarding issue of Permanent Residence Certificate/Domicile Certificate in respect of the applicants or candidates wishing to join the army or recruitment to posts and ser**vices. **It was made clear that Permanent Residence Certificate** should not be issued in such cases since it is limited only for educational purposes. **Even domicile certificate** also cannot be issued as it has got specific connotations in so far as Indian Citizenship Act is concerned. These two notifications admittedly were not under challenge.

20. In absence of challenge to the said notifications same could not be set aside. In this behalf learned Advocate General has rightly placed reliance on the judgment rendered in the case of **State of Andhra Pradesh & anr v. K. Jayaraman & ors: (1974) 2 SCC 738**. Following portion of para 3 is relevant to be quoted:-

> "3. It is clear that, if there had been an averment, on behalf of the petitioners, that the rule was invalid for violating Articles 14 and 16 of the Constitution, relevant facts showing how it was discriminatory ought to have been set out. After this has been done, the respondents, including the State of Andhra Pradesh, could have been in a position to set up other facts which may have indicated why the rule was not discriminatory. Such questions cannot be decided without relevant assertions on questions of fact which may have to be investigated if controverted. It is only after facts affecting the validity of such a rule have been set out and opportunity given to controvert them that a set of either admitted facts or established facts emerges by reference to which the validity of such a rule could be tested and a decision on the question could be given. ....."

In this behalf from the judgment rendered in the case of **K. Vasudevan v. Mohan N. Mali & ors: (2002) 10 SCC 117**. Following para 5 of the judgment is relevant to be quoted:-

> "5. It is clear that before the High Court there was no challenge to the relaxation as such. What was contended was that the appellant before us had not put in 18 years of service in the senior scale and, therefore, he would not be entitled to the benefit of the relaxation. **But the High Court went on further to examine the validity of the circular itself. In our view, such a course was not permissible for the High Court particularly when there is no challenge to the circular relaxing conditions**, as was stipulated in the circular dated 12-8-1987. ....."
>
> (Emphasis supplied)

It is also be advantageous to quote para 9 of the judgment rendered in the case of **Secretary to the Govt. and anr v. M. Senthil Kumar: (2005) 3 SCC 451** as hereunder:-

> "9. Therefore, there was no express view expressed regarding the validity of the policy decision by the Tribunal as wrongly concluded by the High Court. Obviously, **the High Court could not have made out a case for adjudication which was not even part of the pleadings**. In *V.K. Majotra v. Union of India*[2]*: [(2003) 8 SCC 40: 2003 SCC (L&S) 1202* – this Court observed as under:- (SCC p.45, para 8)
>
> > "Counsel for the parties are right in submitting that the point on which the writ petition has been disposed of was not raised by the parties in their pleadings. The parties were not at issue on the point decided by the High Court."
> >
> > (Emphasis supplied)

21. Applying the law as has been laid down, setting aside of the two Notifications by learned Single Judge in absence of any challenge in the memo of writ petition was totally impermissible, therefore, findings regarding same are not sustainable.

22. Next it is contended by learned Advocate General that the direction for taking necessary steps to bring a law to safeguard the interest of Hindus, Sikhs, Jains, Buddhists, Christians, Parsis, Khasis and Garos and certain other observations made in the judgment are not consistent with the preamble and other provisions of the Constitution. In this behalf has placed reliance on the judgment rendered in the case of **Sardar Syedna Taher Saifuddin Saheb v. State of Bombay: AIR 1962 SC 853**. Para 48 of the judgment is advantageous to be quoted:-

"48. The validity of Bombay Act 42 of 1949 (which I shall hereafter refer to as the impugned Act) has to be judged in the light of these admitted premises. Articles 25 and 26 which are urged as violated by the impugned Act run:

"25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.-The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II-In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

I would add that **these Articles embody the principle of religious toleration that has been the characteristic feature of Indian civilization from the start of history**, the instances and periods when this feature was absent being merely temporary aberrations. **Besides, they serve to emphasize the secular nature of Indian Democracy which the founding fathers considered should be the very basis of the Constitution**." (Emphasis supplied)

23. From the judgment passed in **Kesavananda Bharati v. State of Kerela: (1973) 4 SCC 225**. Paras 283, 292, 487, 581, 582 and 583 of the judgment are relevant to be quoted:-

"283. It was the common understanding that fundamental rights would remain in substance as they are and they would be

amended out of existence. It seems also to have been a common understanding that **the fundamental features of the Constitution, namely, secularism, democracy and the freedom of the individual would always subsist in the welfare state**.

292. The learned Attorney General said that every provision of the Constitution is essential; otherwise it would not have been put in the Constitution. This is true. But this does not place every provision of the Constitution in the same position. The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. **The basic structure may be said to consist of the following features**:

> (1) Supremacy of the Constitution;
> (2) Republican and Democratic form of Government;
> (3) **Secular character of the Constitution**;
> (4)Separation of powers between the legislature, the executive and the judiciary;
> (5) Federal character of the Constitution."

487. **India is a secular State** in which there is no State religion. Special provisions have been made in the Constitution guaranteeing the freedom of conscience and free profession, practice and propagation of religion and the freedom to manage religious affairs as also the protection of interests of minorities. The interests of scheduled castes and the scheduled tribes have received special treatment. The Rule of Law has been ensured by providing for judicial review. Adult suffrage, the "acceptance of the fullest implications of democracy" is one of the most striking features the Constitution. According to K.M. Pannikar, "it may well be claimed that the Constitution is a solemn promise to the people of India that the Legislature will do everything possible to renovate and reconstitute the society on new principles."

581. The argument that the Nation cannot grow and that the objectives set out in the Preamble cannot be achieved unless the amending power has the ambit and the width of the power of a Constituent Assembly itself or the People themselves appears to be based on grounds which do not have a solid basis. The Constitution-makers provided for development of the country in all the fields social, economic and political. The structure of the Constitution has been erected on the concept of an egalitarian society. **But the Constitution-makers did not desire that it should be a society where the citizen will not enjoy the various freedom** and such rights as are the basic elements of those freedoms, e.g., the **right to equality**, **freedom of religion** etc., so that his dignity as an individual may be maintained. It has been strongly urged on behalf of the respondents that a citizen cannot have any dignity if he is economically or socially backward. No one can dispute such a statement but the whole scheme underlying the Constitution is to bring about economic and social changes without taking away the dignity of the individual. Indeed, the same has been placed on such, a high pedestal that to ensure the

freedoms etc., their infringement has been made justiciable by the highest court in the land. The dictum of Das, C.J., in Kerala Education Bill case (supra) paints the true picture in which there must be harmony between Parts III and IV; indeed the picture will get distorted and blurred if any vital provision out of them is cut or denuded of its identity.

582. The basic structure of the Constitution is not a vague concept and the apprehensions expressed on behalf of the respondents that neither the citizen nor the Parliament would be able to understand it are unfounded. **If the historical background, the Preamble, the entire scheme of the Constitution, the relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure**. (These cannot be catalogued but can only be illustrated):

(1) The supremacy of the Constitution.
(2) Republican and Democratic form of government and sovereignty of the country.
(3) **Secular and federal character of the Constitution**.
(4) Demarcation of power between the Legislature, executive and the judiciary.
(5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.
(6) The unity and the integrity of the Nation.

583. The entire discussion from the point of view of the meaning of the expression "amendment" as employed in Article 368 and the limitations which arise by implications leads to the result that the amending power under Article 368 is neither narrow nor unlimited. On the footing on which we have proceeded the validity of the 24th Amendment can be sustained if Article 368, as it originally stood and after the amendment, is read in the way we have read it. The insertion of Articles 13(4) and 368(3) and the other amendments made will not affect the result, namely, that the power in Article 368 is wide enough to permit amendment of each and every article of the Constitution by way of addition, variation or repeal so long as its basic elements are not abrogated or denuded of their identity." (Emphasis supplied)

24. In the judgment impugned while tracing the history as was within knowledge certain observations have been made which according to learned Advocate General are offending the preamble of the Constitution.

25. True it is that there was no requirement to go into superfluous questions. Secondly, any observation directly or in directly which offends the preamble of the Constitution cannot be sustained.

26. There was no requirement to look into the issues which were not projected by either party. Petition was filed by one petitioner seeking issue

of domicile certificate which was under process delay was in view of fake character of the birth certificate produced by the petitioner. The case set up by the petitioner has been sidetracked. Unnecessarily issue for determination has been sidelined resultantly judgment has travelled in a different sphere addressing the matters which were not at all issues in the writ petition. Writ petition was not in a representative capacity or by Public Interest Litigation (PIL). The observation that issue or non-issue of Permanent Residence Certificate/Domicile Certificate is a difficulty faced by general public but the public did not appear before the Court. On such count observations and request for bringing a law have been unnecessarily made.

27. Learned Advocate General was right in contending that in exercise of writ jurisdiction even otherwise direction for any policy framing is impermissible. According to him, in effect, while referring to the different faiths, observations have been made to bring a law so as to safeguard the interest of Hindus, Sikhs, Jains, Buddhists, Christians, Parsis, Khasis and Garos who have already come to India and who are yet to come from Pakistan, Bangladesh and Afghanistan as well as persons of Indian origin who are residing abroad. These were not the issues at all and have a colour of offending secular colour of the country and the provisions of the Constitution of India. Paras 11 and 12 of the judgment rendered in the case of **Mallikarjuna Rao & ors v. State of Andhra Pradesh & ors: (1990) 2 SCC 707** are relevant to be quoted:-

> "11. The observations of the High Court which have been made as the basis for its judgment by the Tribunal were only of advisory nature. The High Court was aware of its limitations under Article 226 of the Constitution of India and as such the learned Judge deliberately used the word "advisable" while making the observations. **It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution**. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to react scowlingly to any such advice.
>
> 12. This Court relying on *Narender Chand Hem Raj v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh*[1]*: (1971) 2 SCC 747: (1972) 1 SCR 940* and *State of Himachal Pradesh v. A parent of a Student of Medical College, Simla*[2]*:*

[(1985) 3 SCC 169], held in *Asif Hameed v. State of Jammu & Kashmir: [1989 Supp. (2) SCC 364]* as under: (SCC p.374, para 19)

> "When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. **The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive**." (Emphasis supplied)

28. Para 9 of the judgment rendered in the case of **State of Himachal Pradesh & ors v. Satpal Saini: (2017) 11 SCC 42** is also relevant to be quoted:-

> "9. Similarly, in *Supreme Court Employees' Welfare Assn. v. Union of India*[7]: [(1989) 4 SCC 187: 1989 SCC (L&S) 569], this Court held that a court cannot direct the legislature to enact a particular law. This is because under the constitutional scheme, Parliament exercises a sovereign power to enact law and no other authority can issue directions to frame a particular piece of legislation. This principle was reiterated in *State of J&K v. A.R. Zakki*[8]: [1992 Supp (1) SCC 548; 1992 SCC (L&S) 427: AIR 1992 SC 1546], where this court observed that: (*.R. Zakki*[8] case) (SCC p.554, para 10)
>
> > "10. ..... A writ of mandamus cannot be issued to the legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. Section 110 of the J&K Constitution, which is on the same lines as Article 234 of the Constitution of India, vests in the Governor, the power to make rules for appointments of persons other than the District Judges to the Judicial Service of the State of J&K and for framing of such rules, the Governor is required to consult the Commission and the High Court. This power to frame rules is legislative in nature. A writ of mandamus cannot, therefore, be issued directing the State Government to make the rules in accordance with the proposal made by the High Court."
>
> In *V.K. Naswa v. Union of India*[9]: [(2012) 2 SCC 542: (2012) 1 SCC (Cri) 914], this court referred to a large number of decisions and held that: (SCC p.547, para 18)

> "18. Thus it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner."

In this behalf paras 3 and following portion of para 4 of the judgment rendered in the case of **Union of India v. E.I.D. Parry (India) Ltd.: (2000) 2 SCC 223** are also relevant to be quoted:-

> "3. In the present appeal, which is directed against the judgment of the High Court, it is contended on behalf of the learned counsel for the appellant that there was no occasion for the High Court to have looked into the validity of the Goods Tariff Rule quoted above or to hold that rule to be ultra vires the Railways Act, 1890. This contention appears to be absolutely correct.
>
> 4. .... The High Court of its own proceeded to consider the validity of the rule and ultimately held that it was not in consonance with the relevant provisions of the Railways Act, 1890 and consequently held that it was ultra vires. **This view is contrary to the settled law that a question, which did not form part of the pleadings or in respect of which the parties were not at variance and which was not the subject-matter of any issue, could not be decided by the court**. ....." (Emphasis supplied)

29. Next it was contended by learned Advocate General that the observations made in the judgment impugned are contrary to the well set principles. In this behalf has rightly placed reliance on the judgment rendered in the case of **Om Prakash Chautala v. Kanwar Bhan & ors: (2014) 5 SCC 417**. Following portion of para 19 of the judgment is relevant to be quoted:-

> "19. It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. ....."

30. So far as the observations and appeal for legislation are concerned, judgment impugned has travelled beyond the pleadings. The observations and directions being not inconformity with law, in-consistent with constitutional principles and being superfluous in the context of the memo of writ petition and provisions of the Constitution shall have to be ignored, as such shall be treated as *non est*.

31. **The issue in the writ petition was very simple i.e. as to whether the petitioner was entitled to the certificate applied for**. The

Additional Deputy Commissioner has not addressed the issue regarding certificate of the writ petitioner properly. While rejecting the application for issue of certificate has also protracted the matter unnecessarily much to the disadvantage of the writ petitioner. To put it in a very simple manner, the writ petitioner had applied for recruitment in Armed forces so needed the said certificate.

32. In the State of Meghalaya when a situation arose for bringing uniformity in a matter of issue of various kinds of certificates, a Committee was constituted and the recommendation of the Committee for adoption of standardized application forms (input) etc. were to be processed and issued for various purposes. It shall be quite relevant to reproduce the said notification hereunder:-

"**The 29th May, 2017**

No.POL.97/74/Pt-I/327 – With a view to bring uniformity in the matter of issue of various kinds of certificates in the State of Meghalaya, the Government of Meghalaya is pleased to accept the recommendation of the Committee constituted *vide* Government Notification No.POL.160/2001/61, dated 5th September, 2012 under the chairmanship of the Commissioner and Secretary, IT Department for adoption of standardized application forms (input) and the certificate format (output) to be processed and issued by the offices of Deputy Commissioners and Sub-Divisional Officers (Civil) in the State of Meghalaya for the following purposes with effect from the date of issue of this Notification.

1. Application forms for issue of Income Certificate (input).
2.Application for issue of Permanent Residence Certificate (input).
3. Application for issue of Senior Citizen Certificate (input).
4. Application for issue of SC/ST Certificate (input).
5. Format of Income Certificate (output).
6. Format of Permanent Residence Certificate (output).
7. Format of Senior Citizen Certificate (input).
8. Format of SC/ST Certificate (output).
9. **Application forms for issue of Certificate for recruitment in Armed/Para Military/Police Force (input)**.
10. Application for issue of Residential Certificate for identity proof while travelling (especially for uneducated and unemployed) (input).
11. Format of certificate for recruitment in Armed/Para Military/Police Forces (output).
12. Format of Residential Certificate for identity proof while travelling (especially for uneducated and unemployed) (output).

The proformae for the aforesaid 'input' and 'output' formats are enclosed herewith.

Notifications issued *vide* No.POL.97/74/Part-I/190 dt.24th June, 2013 and No.POL.97/74/Pt-I/199 dated 4th September, 2013 stand cancelled."

33. The relevant application form (input) and format of certificate which pertains to the applicant is in Annexure-A to the said Notification. For acceptance of the application, the documents required to be submitted are as under:-

"(i) Two Passport size Photographs
(ii) **Birth Certificate/School Certificate**
(iii) Any one of Residential Proof:
(Ration Card/Patta/EPIC/Electricity Bill/Telephone Bills/ Headman Certificate/Others
(iv) Supporting Documents to indicate why the Certificate is required."

The format certificate is as under:-

"GOVERNMENT OF MEGHALAYA
OFFICE OF THE DEPUTY COMMISSIONER
EAST KHASI HILLS DISTRICT: SHILLONG

CERTIFICATE FOR RECRUITMENT IN ARMED/PARA MILITARY/POLICE FORCES

Paste a Recent Passport Photograph here

No. _____

Date_____

1. Certified that Shri/Smti/Kumari_____son/daughter of Shri_____ and Smti_____ is residing at Locality_____Village/Town_____Post Office_____Police Station_____District East Khasi Hills, State of Meghalaya, Pin No. _____

2. This certificate is used for the sole purpose of recruitment in the Armed/Paramilitary/Police Forces.

3. This does not constitute a Permanent Residence Certificate for any other purpose.

Deputy Commissioner,
East Khasi Hills District,
Shillong."

34. Petitioner admittedly had produced along with his application the documents i.e. family ration card, supporting documents for which Armed

Force Certificate was required, Birth Certificate, AADHAAR Card, School Certificate, Father's Service Identity Card and Electoral Photo Identity Card. His birth certificate had been sent for verification, genuineness of which was found to be doubtful. Requirement was either **birth certificate or school certificate** when school certificate was produced regarding date of birth there was no requirement of going to further details of another birth certificate. The petitioner had produced police verification certificate as well. On excluding the birth certificate on the basis of other documents as were produced requisite certificate for employment should have been issued.

35. Petitioner admittedly had applied for recruitment in armed forces and was selected and appointed. Further delay in production of requisite certificate would have deprived him of opportunity of joining the armed forces. The Additional Deputy Commissioner without realizing the position of the petitioner and prospect of his appointment, sidelined all the documents which as per the Notification dated 29.05.2017 were produced. Once the applicant had produced the school certificate, there was no requirement of producing birth certificate. The Additional Deputy Commissioner has dragged the petitioner on the basis of birth certificate beyond proportion and forced him to file writ petitions. May be for there could be action for fakeness of birth certificate which could be taken separately but unnecessarily requisite certificate which otherwise was due to be issued in favour of the petitioner in accordance with the Notification dated 29.05.2017 as quoted hereinabove was not issued. Thus, provisional certificate issued in favour of the petitioner was to be treated as final. The writ petition should have been allowed accordingly same has escaped the attention in the process issues which were not the subject matter of the writ petition have been looked into when same is unwarranted.

36. After bestowing our thoughtful consideration to the entire gamut of the matter we have reached to a firm conclusion that the judgment impugned dated 10.12.2018 is legally flawed and is in-consistent with the constitutional principles, the observations made and directions passed therein are totally superfluous, therefore, is set aside in its entirety, as such shall be *non est.*

37. Writ petition for the stated reasons regarding prayer of the respondent No.1 (writ petitioner) for issue of requisite certificate is allowed and provisional certificate as issued in pursuance to the interim direction in favour of the writ petitioner based on which he has joined the armed force shall be treated as final.

38. Appeal succeeds shall stand disposed of as above.

(H.S. Thangkhiew)
Judge

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
24.05.2019
"lam AR-PS"