Serial No. 01 **Supplementary List**
MLHC010013562023

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 383 of 2023

Reserved on : 04.06.2026
Pronounced on : 17.11.2026
Uploaded on : 17.11.2026

Whether the operative part or full judgment is pronounced : Full Judgment

1.Shri Tolentine Wahlang
S/o (L) Nestor Lyngdoh,
R/o Nonglynkien Village, Maharam Syiemship,
South West Khasi Hills District, Meghalaya.

2. Shri Haspingwel Kharhari,
S/o (L) Stickshon Marngar,
R/o Mawtiehbah Village, Raid Saw Symper,
South West Khasi Hills District, Meghalaya.

… Petitioner(s)

Versus

1.State of Meghalaya represented by
The Chief Secretary to the Government of Meghalaya,
Shillong.

2. The Secretary/Deputy Secretary/Under Secretary/Joint Secretary
To the Government of Meghalaya,
District Council Affairs Department, Shillong.

3. The Khasi Hills Autonomous District Council,
Represented by the Secretary to the Executive Committee,
East Khasi Hills District, Shillong.

4. The Chief Executive Member,
Khasi Hills Autonomous District Council, Shillong

5. The Deputy Chief Executive Member,
Khasi Hills Autonomous District Council, Shillong

6. Chairman/Secretary,
Khasi Hills Autonomous District Council, Shillong

7. The Executive Member, In-charge Law,
Khasi Hills Autonomous District Council **…. Respondent(s)**

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Judge
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Mr. H.L. Shangreiso, Sr. Adv. with
Mr. T. Dkhar, Adv.

For the Respondent(s) : Mr. A. Kumar, AG with
Mr. K.P. Bhattacharjee, GA (For R 1&2)
Mr. K. Paul, Sr. Adv. with
Mr. S. Khyriem, Adv. (For R 3-7)

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i) Whether approved for reporting in Law journals etc: Yes/No

ii) Whether approved for publication in press: Yes/No

Per. H.S. Thangkhiew, Judge:

JUDGMENT:

1. The main challenge in the instant writ petition, is to the vires of ***The Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Electors of Hima Maharam) (Amendment) Act, 2019***, which was passed by the Khasi Hills Autonomous District Council on 25.07.2019, which received the assent of the Governor on 15.09.2023, and published in the Gazette of Meghalaya Extra Ordinary Issue dated

26.09.2023. The challenge is on the ground that the said amendment Act, was enacted in violation of the mandatory legislative process and custom.

2. The Principal Act of 2006, was enacted under the law-making power of Paragraph-3 of the Sixth Schedule of the Constitution of India and the assent of the Governor received under Paragraph-3(3) read with the ***Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951*** (hereinafter known as the Rules of 1951). This enactment of 2006, was as per substantive law and mandatory legislative procedure. The Amendment of 2019, as contended by the petitioners is that the same was passed without proper consultation, in violation of established procedure and further that, the respondents relied solely on the Bill passed by the District Council on 25.07.2019, which however was not tabled before the House for reconsideration and as per their assertion, suffers from serious procedural defects, being in violation of Rule 93 of ***The Assam and Meghalaya Autonomous Districts (Constitution of District Councils), Rules 1951,*** and as such is liable to be declared ultra vires.

3. Mr. H.L. Shangreiso, learned Senior counsel assisted by Mr. T. Dkhar, learned counsel for the petitioners has submitted that in pursuance to Rule 73(2) of ***The Assam and Meghalaya Autonomous Districts (Constitution of District Councils), Rules 1951***, the Amendment Bill of 2019, was introduced without seeking the opinion of the Dorbar Hima,

which is against the enactment of the Original 2006 Act. The Amendment Bill of 2019 was proposed to be introduced he submits, in the Council Session by a Notification dated 22.07.2019, issued by the Deputy CEM KHADC, and the amendment sought by the Bill were firstly, after Section-1 Sub-section (2) of the Principal Act of 2006, a proviso was to be inserted that in Raid Saw Symper, the Act would apply only to matters of Village administration and not to land administration, and secondly after Section-2, after Clause-j, a proviso was to be inserted that in Raid Saw Symper, the Myntri shall also be known as Rangbah Shnong (Headman), and finally a proviso to Section-8 after Sub-section-(3), was to be inserted fixing a 3(three) year term of office for the Myntri or Headman and prescribing the procedure for election to that post. The learned Senior counsel contends that the amendment itself is untenable as the post of Myntri within the Maharam Syiemship, is not equivalent to Rangbah Shnong (Headman) and that the Original Act of 2006 made no such distinction and did not contemplate a situation where a Myntri would be demoted to the status of Headman, as has been done in the Amendment Act of 2019 for Raid Saw Symper.

4. The Bill it is submitted, was passed by the respondent No. 3, and notified on 02.08.2019, whereafter written objections was filed by the Maharam Syiemship before the Governor not to assent to the same. The said objections he submits was forwarded to the respondent No. 2, by letter dated

10.09.2019, who then formally informed the District Council (respondent No. 3) about the objections to the proposed Bill vide letter dated 17.10.2019. After a lapse of some time he submits, the respondent No. 2 vide letter dated 15.02.2021, then communicated to the respondent No. 3 that the Bill having not received the assent of the Governor, the same be reconsidered in light of the written objections filed by Maharam Syiemship. Clarification was also sought he submits, by the respondent No. 2 on the term "land regulation" as provided in the Amendment Bill of 2019 under Section 1(2), to which the respondent No. 3 replied that the same was a technical error and should be read as "land administration" instead of "land regulation". The learned Senior counsel has then highlighted that the respondent No. 2 i.e. District Council Affairs Department, had communicated a crucial fact, vide letter dated 25.08.2023, to the Law Department with the observation that Clause-2 of the 2019 Bill may be omitted, as the Principal Act of 2006, was strictly intended to provide the procedure for the nomination and election of Traditional Heads and the day to day administration of the village, but not for land administration, and also that Clause-3, which sought to equate the Myntri to a Rangbah Shnong (Headman) also needed to be omitted. Heavy emphasis has been laid by the learned Senior counsel on the aspect that when the Governor returned the Bill, it was a formal Act under the law, and not just a simply administrative exchange, which entailed and demanded that the

Bill should have gone back to the full Council to be voted upon. The Executive Committee he contends, cannot become the author of a law by deciding on its own to effect amendment.

5. It is then argued that despite the written objections by the office of the Hima of Maharam and the Law Department's recommendations, the respondents acted arbitrarily by firstly, finalizing the Act without any further consultation with the traditional authorities, and also without abiding by the prescribed legislative process. Learned Senior counsel has also pointed out that major gaps had occurred in the legislative process and further, that a Bill which was initially passed by the Council on 25.07.2019, received the Governor's assent only on 15.09.2023, after more than 4(four) years had elapsed. It has been further asserted that the manner of passing the Amendment of 2023, was selective, inasmuch as, while Clause-2 was omitted as suggested, it failed to comply with the Law Department's recommendations also to omit Clause-3. This entire process he submits, suffers from serious procedural defects, inasmuch as, the established procedure demands that a returned Bill must be tabled again before the Council for fresh discussion and approval, which however the respondents bypassed by relying solely on the earlier vote of 2019, and failed to re-table the modified Bill, which therefore renders the Amendment Act invalid and ultra vires. In this context, reference has been made to Rule-93 of the Rules

of 1951, and it is submitted that according to this Rule, in the reconsideration of Bills, returned by the Governor, the Chairman of the House is required to put the Governor's recommendations before the Council for discussion and vote in the same manner as a new Bill.

6. In support of his contentions, the learned Senior counsel had relied upon the following judgments: -

i) AIR (1960) SC 232 Para 47, 61, 78 & 79 – Art 304 (b)
Atiabari Tea Co. Ltd Vrs State of Assam & Ors.

ii) 1992 Supl. 2 SCC 651 Para 63, 65, 69, 73-75 & 186
Hillohan vrs Zachillhu & Ors.

iii) (2016) 5 SCC 1 Para 856, 857, 860-863
Supreme Court Advocates on Record & Anr. vrs. Union of India

iv) (1987) 1 SCC 378 Para 8-9
Dr. D.C. Wadhwa & Ors. vrs State of Bihar

v) (2002) 8 SCC 182 Para 29
Kaiser-I- Hind Pvt. Ltd. & Anr vrs. National Textile Corporation (Maharashtra North) Ltd. & Ors.

vi) (2025) 8 SCC 1 Para 378 & 381
State of Tamil Nadu vrs. Governor of Tamil Nadu & Anr.

7. On behalf of the respondents Nos. 3 to 7, the main contesting respondents, Mr. K. Paul, learned Senior counsel assisted by Ms. S. Khyriem, learned counsel has submitted that a challenge to the vires, can only be maintained if there is a lack of legislative competence, or if the law violates the fundamental rights, neither of which he contends has been pleaded by the petitioners, and that further 'lack of consultation' is not a

valid ground for assailing the constitutional validity of an Act. Para-3 and Para-3(1)(g) of the Sixth Schedule he submits, has vested the District Council with the power to make laws regarding appointment and succession of Chiefs and Headmen, and that this power has been exercised to which the Amendment, received the assent of the Governor. He further submits that the power to enact a law inherently includes the power to amend it. It has been further advanced that the present matter, is not a case of return by the Governor, and the same is evident from the letter dated 25.08.2023, annexed to the writ petition, wherein it has been categorically stated the observations contained were made by the Law Department of the Government of Meghalaya. As such, he contends as the Governor had not returned the Bill with a message requiring reconsideration on specific points, there was no necessity to place the returned Bill before the floor of the House for reconsideration. It is further submitted that under Rule-93 of the Rules of 1951, a Bill must be returned by the Governor with a specific message to warrant a formal reconsideration by the House, which is not so in the instant case as the return originated from the Law Department of the Government of Meghalaya. It is also contended that the District Council's legislative powers are subservient to the observations of the State Government, and though the Executive Committee chose to consider the Law Department's

recommendations, the same was a matter of discretion and does not invalidate legislative process.

8. In response to the challenge that the Amendment Act was never placed before the House for consideration, the learned Senior counsel submits that the Amendment Bill was placed before the House on 25.07.2019 during the Summer Session (23.07.2019 to 25.07.2019) and was passed by a voice vote on the same day. Further submission is that the observations acted upon, were merely regarding typographical or clerical errors and that the recommendation from the District Council Affairs Department or the Law Department is not binding on the District Council. The action of the Executive Committee in addressing these minor points he submits, does not constitute an encroachment on the legislative domain. The learned Senior counsel by referring to Articles 122 and 212 of the Constitution of India, has argued that Courts should not enquire into the validity of legislative proceedings based on procedural irregularities and that to exercise the powers under Article-226, the petitioners must demonstrate substantive illegality. In the instant case, he asserts the changes made such as correcting the term ‘Regulation’ to ‘Land Administration’ were purely clerical intended to correct an inadvertent omission, and as such no illegality exists. Learned Senior counsel has then placed a letter dated 01.09.2023, addressed to the respondent No. 2, to show the factum of incorporation of

the amendment being made under Rule-92(1) of the Rules of 1951, and re-submitted to the respondent No. 2, for necessary action, and concludes his submissions by submitting that the Bill being duly signed, having received the Governor's assent, and published in the official Gazette is a valid Act, and prays that this Court should not set aside the same over mere cosmetic procedural issues.

9. In support of his case, the learned Senior counsel has relied upon the following judgment: -

i) Raja Ram Pal v. Hon'ble Speaker, Lok Sabha (2007) 3 SCC 184 Para-360

10. On behalf of the respondents Nos. 1 & 2, Mr. A. Kumar, learned AG assisted by Mr. K.P. Bhattacharjee, learned GA has supported the submissions of the learned Senior counsel for the respondents Nos. 3 to 7, and has added that there is a presumption of validity and constitutionality of an enactment and that the law regarding the vires of an Act, is well settled and further that the same can be challenged only on two grounds i.e. lack of legislative competence and violation of fundamental rights.

The learned AG has also placed the following judgment ***In Re: Assent, Withholding or Reservation of Bills by the Governor and the President of India [2026 1 SCC 1]***, and submits that to preserve constitutional elasticity, the framers deliberately excluded rigid timelines from Articles 111 and 200. Further it is submitted that at Para-56 of the

judgment, it has been pointed that Article 163 itself points towards a set of various functions under the Constitution which are required to be done in the exclusive discretion of the Governor, and that the decision of the Governor in his discretion shall be final, and the validity of anything done shall not be called in question on the grounds that he ought or ought not to have acted in his discretion.

11. Heard learned counsel for the parties.

12. On hearing the learned counsel for the parties, this Court notes that the main issue that has arisen for consideration, is whether procedure as established under law i.e. the Rules of 1951, more particularly Rule 92 (2) and Rule 93 have been followed when the Governor's assent was obtained, and whether, the deviation of such procedure would render the statute illegal, ab initio/ultra vires. Other issues that have arisen is whether this Court has the power to exercise its jurisdiction on the law-making power of the legislature and whether assent given by the Governor, when the Bill is not placed before the House would render it invalid.

13. The sequence of events as has been discussed and narrated above, would show that the Principal Act of the Khasi Hill Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Electors of Hima Maharam, 2006, received the Governor's assent and was published on 19.12.2006. On 25.07.2019, the KHADC passed the Amendment Bill of

2019, and the same rested without any further progress or process, till 15.02.2021, when the respondent No. 2 (District Council Affairs Department) requested the respondent No. 3, (KHADC Executive Committee) to reconsider the amendment due to certain objections by the Syiemship of Maharam. The respondent No. 3, then clarified the term 'Land Regulation' to mean 'land administration' whereafter on 25.08.2023, the Law Department of the State of Meghalaya formally advised the omission of Clause-2 and Clause-3, as the Principal Act of 2006 was not intended for 'Land Administration'. The Amendment Act then received the Governor's assent on 15.09.2023, and was published on 26.09.2023, and while Clause-2 was omitted, the controversial Clauses 3 & 4, were retained. Apart from the assertion that the Amended Act constitutes a substantive violation of traditional customs, such as by reducing the traditional post of Myntri to the status of Rangbah Shnong (Headman) of Raid Saw Symper, a distinction that was not recognized under the original legislation of 2006, the main challenge however, is that the legislative procedure was violated, inasmuch as, after the Governor returned the Bill, for reconsideration, it was never re-tabled before the House for discussion or a vote.

14. At this juncture, as the matter involves a Bill which was returned for reconsideration, it would be relevant to reproduce hereinbelow

Rule 92 (2) and more pertinently Rule 93 of the ***Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951.***

> ***"92 (2) After the Bill has been signed by the Chairman, the Secretary shall send an authenticated copy to each of the following:***
>
> ***(i) To the Executive Committee for information;***
>
> ***(ii) To the Governor for information through the Secretary, District Council Affairs Department, Government of Meghalaya, if the Bill does not require the approval of the Governor being not so specified in any of the provisions of the Sixth Schedule; or***
>
> ***(iii) To the Governor for approval thereof if it is required under any provision in the Sixth Schedule to the Constitution of India.***
>
> ***"Reconsideration of Bills returned by the Governor***
>
> ***93. When a Bill which has been passed is submitted as in Rule 92 (2) (iii) and is returned by the Governor with a message to the District Council for reconsideration the point or points referred for re-consideration or the amendments recommended shall be put before the Council by the Chairman, and shall be discussed and voted upon in the same manner as amendments to a Bill and it shall be presented again to the Governor for his assent."***

15. A bare perusal of Rule 93, would show that the mandatory legislative procedure stipulated by this Rule is that when a Bill which has been passed, is returned by the Governor, with a message to the District Council for reconsideration or amendments recommended, the same shall be put before the Council by the Chairman to be discussed and voted upon, and then it shall be presented again to the Governor for his assent. In the instant

case it is seen after the Bill of 2019, did not receive the assent of the Governor, what followed was that a clarification was sought by the respondent No. 2, whereafter it was also revealed that the Law Department had also given their inputs and advice as noted earlier. The basic fact that emerges from these events, is that the Governor had returned the Bill on 25.08.2023, which constitutes a formal act as contemplated under Rule 93. This to the mind of the Court cannot be understood or taken to be a routine internal administrative exchange as sought to be made out by the respondents Nos. 3 to 7, that the Bill had not been returned by the Governor, but by the Law Department, which therefore, would not warrant the placing of the same before the House. In this scenario therefore, from a plain understanding of Rule 93, and as it had been informed by the respondent No. 2 to the respondent No. 3, vide letter dated 15.02.2021, (Annexure-8) that the Bill had not received the assent of the Governor, the amendments thereafter sought to be inserted by the Amendment Act of 2019, would in the view of this Court necessarily entail the placing of the same before the House for discussion and vote.

16. As held in the case of ***Kihoto Hillohan vrs Zachillhu & Ors.*** *(supra),* at Para-53, the criterion for determining the validity of a law is the competence of the law-making authority, which would depend on the ambit of the legislative power, and the limitations imposed therein, as also

limitations on the mode of exercise of this power. In Para-186 thereof, the entire Tenth Schedule was found to be constitutionally invalid in the absence of prior ratification in accordance with the proviso to Clause-2 of Article 368. In the case of ***Supreme Court Advocates on Record & Anr. vrs. Union of India*** *(supra)*, at Paras-856 and 857 and 860 to 863, it has also been held that if procedure is not followed, then the law to that extent will have no effect, and that a law can be challenged, if it is enacted without following the procedure laid down in the Constitution. Further this judgment, has also held that proceedings that are substantively illegal or unconstitutional as opposed to irregular, are not protected from judicial scrutiny by Article 122 (1) of the Constitution. In the case of ***Kaiser-I- Hind Pvt. Ltd. & Anr vrs. National Textile Corporation*** (supra), the Supreme Court held that granting of assent under Article 254(2), is not an exercise of legislative power of the President as contemplated under Article 123, but is part of legislative procedure, and whether procedure prescribed by the Constitution before enacting the law is followed or not, can always be looked into by the Court. These landmark cases in the considered view of the Court in the facts of the instant case, wherein the specific requirement as laid down in Rule-93 of the Rules of 1951, has not been adhered to, would surely open the impugned procedure to judicial scrutiny. The authorities relied upon by the respondents, which are general in nature and centering around arbitrariness,

Article-14 and the questioning of validity on the Bill duly signed, cannot defeat the legislative requirement of Rule 93, for not placing the Bill before the House when the facts clearly show that the Bill had been returned for reconsideration.

17. Another aspect which was brought on record by an additional affidavit by the respondents Nos. 3 to 7, as directed by the order of this Court vide order dated 05.06.2025, also would show that the respondent No. 3, by letter dated 01.09.2023, addressed to the respondent No. 2, had stated therein that the Executive Committee had agreed to the observations made by the Law Department of the Government of Meghalaya, and had incorporated same as provided under Rule 92 (1) of the Rules of 1951, and the same was resubmitted. This letter in the opinion of this Court, clearly establishes the fact that the substantial amendments which were made, were not merely clerical as contended by the respondents Nos. 3 to 7, were never placed before the Chairman of the House for discussion or vote, which is a clear transgression of the executive into the legislative domain of the Council.

18. As such, in consideration of the entire facts and circumstances therefore, and in reiteration of the observations and findings made hereinabove, The Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Electors of Hima Maharam) (Amendment) Act, 2019, (Passed by the Khasi Hills Autonomous District

Council on the 25th July, 2019) (Received the assent of the Governor on 15th September, 2023) (Published in the Gazette of Meghalaya Extraordinary issued dated 26th September, 2023) is hereby declared as ultra vires on the ground of a fatal departure from the mandatory legislative procedure prescribed by Rule 93 of the Rules of 1951.

19. The writ petition is accordingly allowed and disposed of.

(B. Bhattacharjee)
JUDGE

(H.S. Thangkhiew)
JUDGE

Meghalaya
17.11.2026
"V. Lyndem- AR-PS"

Verified
Digitally signed by: VALENTINO LYNDEM
Signed On: 17-11-2026 17:28:38 IST