

Transferred Case (Civil) No. 169 of 2006

Bimolangshu Roy v. State of Assam

2017 SCC OnLine SC 813

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(BEFORE J. CHELAMESWAR, R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.)

Bimolangshu Roy (Dead) Through LRs Petitioners

v.

State of Assam & Another Respondents

Transferred Case (Civil) No. 169 of 2006

Decided on July 26, 2017

The Judgment of the Court was delivered by

J. CHELAMESWAR, J.:— Transferred Case (Civil) No. 169 of 2006 arises out of Writ Petition, PIL NO. 30/2005 on the file of the High Court of Gauhati. The vires of Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004 (hereafter THE ACT) is questioned in the writ petition.

2. Brief facts of the case are as follows:

On 1.1.2004 the Constitution 91st Amendment Bill, 2003 was passed by both the Houses of Parliament. This Bill after the assent of the President became an Act with modifications made to Articles 75 and 164 of the Constitution. This Act *inter-alia* provides under Article 164(1A)¹ that the size of the Council of Ministers in the State should not exceed 15% of the total strength of the Assembly.

3. At the time of the coming into force of the 91st Constitutional Amendment Act, 2003, the strength of the Council of Ministers in the State of Assam was at 36 out of a total 126 members, amounting to 28.57% of the strength of the Legislative Assembly. In view of the mandate contained in Article 164(1A) the strength of the Council of Ministers was to be brought down to 19 to be consistent with the ceiling of 15% imposed by Article 164(1A).

4. On 3.11.2004, the Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Ordinance, 2004 was promulgated. On 29.12.2004 THE ACT was passed and published in the Official Gazette of the State of Assam. We may briefly refer to the crucial provisions of the Act;

5. Section 2(c) of the Act defines Parliamentary Secretary as follows:—

“‘Parliamentary Secretary’ means a Member of the Assam Legislative Assembly appointed as the Parliamentary Secretary under this Act by the Chief Minister.”

Section 3 stipulates;

“The Chief Minister may, having regard to the circumstances and the need of the situation, at any time appoint such number of Parliamentary Secretaries and assign to each of them such duties and functions as he may deem fit and proper.”

6. Section 4 declares that Parliamentary Secretary should be of the rank and status of a Minister of State and exercise such powers, discharge such functions and perform such duties as may be assigned to him by the Chief Minister.²

7. Section 7 deals with the salary and allowances of the Parliamentary Secretary.³

8. Writ Petition (PIL) No. 30/2005 was filed on 13.04.2005 in the Hon'ble High

Court of Gauhati challenging the constitutional validity of THE ACT. On 24.01.2006, the High Court of Gauhati adjourned the hearing of the said PIL in light of similar matters involving the same questions of law which had come up for hearing in this Court in SLP No. 22038 of 2005 (*State of Himachal Pradesh v. Citizen Rights Protection Forum*).

9. On 30.05.2005, Eight Parliamentary Secretaries were appointed in exercise of the power under THE ACT and they took oath of office, but were not assigned any ministry.

10. On 21.08.2006, this Court has allowed the Transfer Petition (C) No. 433 of 2006 filed by the Petitioners under Article 139A of the Constitution. The transferred case is registered as Transferred Case (Civil) No. 169 of 2005.⁴

11. The case of the petitioners is that:

- (i) The legislature of State of Assam does not have competence to enact THE ACT;
- (ii) THE ACT is violative of the constitutional mandate under Article 164 (1A)⁵ which stipulates an upper limit of 15% as the strength of the Council of Ministers;
- (iii) That THE ACT is intended to over-reach the mandate of the Constitution Amendment Act and hence a fraud upon constitution;
- (iv) Responsible government is a basic feature of the Constitution and THE ACT is violative of the basic structure of the Constitution.

12. The Respondent's case is that,

- i. That the State of Assam has the legislative competence to make the impugned legislation under Entry 39 of the List II of the 7th Schedule to the Constitution;
- ii. That the functions of Parliamentary Secretary under THE ACT are different from the functions of a Minister and therefore neither the principle of collective responsibility nor the mandate of the Constitution under the Constitution 91st Amendment is violated.
- iii. The question of violation of 'basic structure' of the Constitution cannot arise in the context of a legislation. The doctrine is confined only to the Constitutional amendments.

13. The following issues arise out of the above rival submissions:

- I. Whether the Legislature of Assam is competent to make THE ACT?
- II. Whether the creation of the office of Parliamentary Secretary would amount to a violation of the constitutionally prescribed upper limit of 15% on the total number of Council of Ministers?
- III. Whether the concept of a 'Responsible Government' envisaged under various provisions of the Constitution is in any way violated by the impugned enactment and therefore unconstitutional as being violative of the basic structure of the Constitution.
- IV. Whether the theory of basic structure could be invoked at all to invalidate an enactment which is otherwise not inconsistent with the text of the Constitution.

14. In our opinion, if the answer to any one of the first two issues is in favour of the petitioner, the other two issues need not be examined.

THE COMPETENCE OF THE STATE OF ASSAM TO PASS THE ACT:

15. Elaborating the 1st submission, the Petitioners argued that the Political Executive (both national and state level) is the creation of the Constitution itself. Articles 74(1)⁶, 75(1)⁷, 163(1)⁸ and 164(1)⁹ of the Constitution create the offices of the Prime Minister, Chief Minister and other Ministers respectively. The framers of the Constitution were aware of the different offices in vogue (such as Parliamentary Secretaries, Deputy Ministers etc) in various parliamentary democracies but chose to make provisions for only the office of 'Minister'.¹⁰ The word 'shall' in these articles

indicates that no other office of the political executive can be created by legislation either of the Parliament or State legislature.

16. In support of their submission, the petitioners relied upon the judgment in the case of **Cauvery Water Disputes**¹¹. This Court while dealing with the Inter-State Water Disputes Act, 1956, held that the said legislation did not fall within the ambit of the Entry 56 of the Union List, this Court opined so because of the presence of Article 262 of the Constitution which is dedicated to the question of inter-state water disputes. The petitioners placed reliance on para 62 of the said judgment:

"It cannot be disputed that the Act, viz., the Inter-State Water Disputes Act, 1956 is not a legislation under Entry 56. In the first instance Entry 56 speaks of regulation and development of inter-State rivers and river valleys and does not relate to the disputes between the riparian States with regard to the same and adjudication thereof. Secondly, and even assuming that the expression "regulation and development" would in its width, include resolution of disputes arising therefrom and a provision for adjudicating them, the Act does not make the declaration required by Entry 56. This is obviously not an accidental omission but a deliberate disregard of the Entry since it is not applicable to the subject-matter of the legislation. Thirdly, no Entry in either of the three Lists refers specifically to the adjudication of disputes with regard to inter-State river waters."¹²

and argued that the presence of provisions dedicated to the creation of a Political Executive oust the competence of the state legislature to make THE ACT and various entries relied upon by the State cannot be construed to authorise the creation of the position of Parliamentary Secretaries.

17. Dealing with the submission of the State of Assam that Entry 39 of the List-II of the 7th Schedule read with Article 246(3) authorises the making of THE ACT the petitioners submitted that:

Entry 39¹³ of the State List (List II), speaks of powers, privileges and immunities of the Legislative Assembly and the members of the committees of the legislative assembly and similarly of the legislative council - if there is one. The latter part of the entry refers to enforcement of attendance of persons before committees of the legislature. There is not even the slightest indication in the text of the Entry that it authorises the creation of offices other than those specified in the Entry. The impugned Act neither describes the power of the members of the legislative assembly nor the committees nor their immunities. Instead, the ACT creates offices and makes stipulations regarding the rank, status and functions of Parliamentary Secretaries. Entry 39 corresponds to Article 194 of the Constitution, which deals with the powers, privileges and the immunities of the House of legislatures and of the members and committees thereof. Article 194(3) authorises the State legislature to prescribe by law, the powers, privileges and the immunities of the members and the committees of a House of such Legislature but does not make any mention of the authority to create new offices.

18. On the other hand, the respondents argued that Entry 39 of List II of the Seventh Schedule indicates the field of legislation regarding the powers, privileges, and immunities of the house of legislatures. It should not be read in a "narrow restricted sense" and the words occurring in the entry must be interpreted as extending and including all ancillary and subsidiary matters which can be comprehended in it. Since a Parliamentary Secretary is a member of the legislative assembly, it would be within the competence of the State legislature to make the ACT.

19. The stand of the State of Assam is reflected in a reply affidavit on behalf of the State in I.A. No. 1 of 2007 in Transferred Case (Civil) No. 169 of 2006. Relevant portion of the affidavit reads as follows:—

"It is submitted that it is well settled that legislative entries should be given the broadest possible interpretation and cannot be read in a restrictive manner. Entry 39 covers "powers, privileges and immunities of the members" of a Legislative Assembly. This Hon'ble Court has, on various occasions, held that the Legislative entries "should not be read in a narrow or pedantic sense but must be given their fullest meaning and the widest amplitude and be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them." It has also observed that "the cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction, according to the ordinary meaning of the words in entry, must be put upon them." [*Gujarat University v. Krishna Ranganath* 1963 Supp (1) SCR 112; *Express Hotels (P) Ltd. v. State of Gujarat* (1989) 3 SCC 677; *R.S. Rekchand Mohata Spinning and Weaving Mills Ltd. v. State of Maharashtra* (1997) 6 SCC 12; *ITC Ltd. v. Agricultural Produce Market Committee* (2002) 9 SCC 232]. Since a Parliamentary Secretary is a Member of the Legislative Assembly, it would be within the competence of the State Legislature to enact laws providing for the creation of the post of Parliamentary Secretary. In this view of the matter, it is reiterated that the impugned Act is clearly within the competence of the State Legislature."

20. In our opinion, the State of Assam's reliance on the various extracts from the judgments of this Court is out of the context, ignoring an important caveat contained in the very extract relied upon by the State i.e. "each general word should be held to extend to all ancillary and subsidiary matters which can **fairly and reasonably be said to be comprehended in it**".¹⁴

21. However, the more accurate legal position is expounded in *Union of India v. Shah Goverdhan L. Kabra Teachers' College*, (2002) 8 SCC 228 at para 6:

"In view of the rival submissions at the Bar, the question that arises for consideration is whether the impugned legislation can be held to be a law dealing with coordinated development of education system within Entry 66 of List I of the Seventh Schedule or it is a law dealing with the service conditions of an employee under the State Government. The power to legislate is engrafted under Article 246 of the Constitution and the various entries for the three lists of the Seventh Schedule are the "fields of legislation". The different entries being legislative heads are all of enabling character and are designed to define and delimit the respective areas of legislative competence of the Union and the State Legislatures. They neither impose any restrictions on the legislative power nor prescribe any duty for exercise of the legislative power in any particular manner. It has been a cardinal principle of construction that the language of the entries should be given the widest scope of which their meaning is fairly capable and while interpreting an entry of any list it would not be reasonable to import any limitation therein. **The rule of widest construction, however, would not enable the legislature to make a law relating to a matter which has no rational connection with the subject-matter of an entry. When the vires of enactment is challenged, their court primarily presumes the constitutionality of the statute by putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude and the substance of the legislation will have to be looked into. The court sometimes is duty-bound to guard against extending the meaning of the words beyond their reasonable connotation in anxiety to preserve the power of the legislature.**

22. The jurisprudential basis for the "rule of widest construction" is the hallowed

belief that a Constitution is drafted with an eye on future providing a continuing framework for exercise of governmental power. Therefore, it must be elastic enough to meet new social, political and historical realities often unimagined by the framers of the Constitution¹⁵.

23. Chief Justice Marshall's celebrated statement in **McCulloch case**¹⁶ that "... we must never forget that it is a constitution we are expounding" is the starting point. It was a statement made in the context of the interpretation of Article I of the US Constitution which declares the authority of "the Congress" to perform various functions enumerated in sub-sections (1) to (17) of Section 8 and under sub-Section (18) "to make all laws necessary and proper to carrying into execution of the powers vested in the Congress by the preceding 17 sub-sections."

24. The question that arose for consideration in **McCulloch case** was whether "the Congress" could establish a bank by its legislation. None of the "enumerated powers" in **Article 1, Section 8** contain any mention of the power to establish a bank or create a corporation. It was argued that (i) Congress could only legislate w.r.t. the matter expressly enumerated in Section 8 and make only those laws which are "indispensable and without which the power would be nugatory", (ii) that the word "necessary" occurring in sub-section (18) "excludes the choice of means and leaves to Congress in each case that only which is most direct and single".

25. Repelling the above submissions Marshall declared that to provide in the Constitution minute details of every aspect of governance would make the Constitution a very prolix document similar to a legal code. By the nature of the instrument it only contains "the great outlines of the power and important objects sought to be achieved."¹⁷ The submission that the expression "necessary" in sub-section (18) has a limited import was rejected.¹⁸

26. About 100 years later the Privy Council in *James v. Commonwealth of Australia*, (1936) AC 578 observed that a "Constitution must not be construed in any narrow and pedantic sense" (See Lord Wright at Page 614).

27. Relying on the above-mentioned celebrated statements, the Federal Court in the case of *Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938*, (1939) 1 FCR 18, Gwyer, CJ observed that "I conceive that a broad and liberal spirit should inspire those whose duty it is to interpret it; but I do not imply by this that they are free to stretch or pervert the language of the enactment in the interests of any legal or constitutional theory, or even for the purpose of supplying omissions or of correcting supposed errors."

28. The authority to make law flows not only from an express grant of power by the Constitution to a legislative body but also by virtue of implications flowing from the context of the Constitution is well settled by the various decisions of the Supreme Court of America in the context of American Constitution. A principle which is too well settled in all the jurisdictions where a written Constitution exists. The US Supreme Court also recognised that the Congress would have the authority to legislate with reference to certain matters because of the fact that such authority is inherent in the nature of the sovereignty. The doctrine of inherent powers was propounded by Justice Sutherland in the context of the role of the American Government in handling foreign affairs and the limitations thereon.¹⁹

29. In substance, the power to make the legislation flows from various sources: (1) express text of the Constitution; (2) by implication from the scheme of the Constitution; and (3) as an incident of sovereignty.

30. Unlike the American Constitution, we chose to adopt a Constitution which regulates and structures not only the authority of the federal government but also the components of the Federation (States and now²⁰ even the local bodies). Coming to the

question of the authority of the legislatures (Federal and State) we are of the opinion that analysis adopted by the US Supreme Court is equally good for our Constitution with appropriate modifications, because there are areas where the two Constitutions differ substantially.

31. However, the principle that the power to legislate under the Indian Constitution can flow from various sources is recognised by this Court in *Synthetic and Chemicals Ltd. v. State of U.P.*, (1990) 1 SCC 109 at para 67 that "... The power to legislate is given by Article 246 and other Articles of the Constitution"²¹ - a reiteration of the principle that the power to legislate does not flow from a single Article of the Constitution.

32. Article 246²² is one of the sources of authority to legislate under the Constitution of India. It declares that Parliament and the legislatures of the various states have the "power to make laws with respect to any of the matters enumerated" in each of the three lists contained in the Seventh Schedule. It also makes clear that the power of the Parliament is exclusive with respect to List I and that of the State Legislature with respect to List II. List III indicates various fields over which both the Parliament as well as the State legislatures would have authority to legislate concurrently subject of course to the discipline of Article 254.

33. Apart from declaration contained in Article 246, there are various other Articles of the Constitution which confer authority to legislate either on the Parliament or on a State legislature, as the case may be in various circumstances. For example, Article 3 authorises the Parliament to make a law either creating a new State or extinguishing an existing State. Such a power is exclusively conferred on the Parliament.

34. Article 326²³ while declaring a right of every citizen who is not less than 18 years of age to register as a voter at any election to the House of the People or to the legislative assembly of a State, authorises the appropriate legislature to disqualify any such citizen to be a voter on any one of the grounds specified under Article 326 by making a law. The authority to make such a law obviously flows directly from the text of Article 326 but not from Article 246. See also Articles 2, 3, 11, 15(5), 22(7), 32(3), 33, 34, 59(3), 70, 71(3), 98(2). The Articles mentioned above are only illustrative but not exhaustive of the category.

35. It must be remembered that this Court repeatedly held²⁴ that the entries in the various lists of the Seventh Schedule are not sources of the legislative power but are only indicative of the fields w.r.t. which the appropriate legislature is competent to legislate.

36. The task of this Court in identifying the scope of an entry in the Lists contained in the Seventh Schedule is not easy. While examining the scope of the entries this Court must necessarily keep in mind the scheme of the Constitution relevant in the context of the Entry in question.

37. A broad pattern can be identified from the scheme of the three lists, the salient features of which are (i) Fields of legislation perceived to be of importance for sustaining the federation, are exclusively assigned to the Parliament, (ii) State legislatures are assigned only specified fields of legislation unlike the US Constitution, (iii) Residuary legislative power is conferred in the Parliament; (iv) taxing entries are distinct from the general entries²⁵, and (v) List III does not contain a taxing entry,

38. At the same time, it can also be noticed that there is no logical uniformity in the scheme of the three lists contained in the Seventh Schedule.

(a) Power to legislate is conferred by some of the Articles by an express grant either on the Parliament or the State Legislature to make laws with reference to certain matters specified in each of those Articles but there is no corresponding entry in the corresponding list indicating the field of such legislation.

For example, under Article 3 the Parliament is competent to create or extinguish a State. There is no entry in the List I of the Seventh Schedule indicating that the Parliament could make a law with regard to the creation of a new State or the extinguishment of an existing State.

(b) On the other hand, with reference to some of the powers conferred expressly by the text of the Constitution, there is also a corresponding entry in the List. Entries 38, 39 and 40 in List II fall in this category.

39. Article 248²⁶ and Entry 97 in the List I in our considered opinion virtually render most of the remaining Entries of List I superfluous, except Entries, such as 52 and 54. By these entries, (which form the exception) the framers of the Constitution carved out certain areas of legislation which otherwise are exclusively within the domain of the competence of the state legislatures. By virtue of the enumeration in Entry 24²⁷ of List II, industries would be a subject matter falling exclusively within competence of the State legislation. However, Entry 52²⁸ of List I indicates that the Parliament would be competent to legislate with respect to 'industries', "the control of which by the Union of India is declared by the Parliament to be expedient in the public interest". Similarly, regulation and development of mines and minerals would be a matter which is exclusively within the competence of the State legislature under Entry 23²⁹ of List II but for Entry 54³⁰ of List I. We would like to mention here that notwithstanding the general stipulations contained in Article 246 regarding the competence of the Parliament and the state legislatures with respect to the various fields of legislation, Articles 249³¹, 250³² and 252³³ contain provisions which enable the Parliament to legislate with respect to any matter enumerated in List II in the exigencies specified in those Articles. The Scheme of Entries, such as 52 and 54 and the corresponding Entries in the List-II in our opinion is nothing but another instance of special arrangement akin to the one made in Articles 249, 250 and 252. Perhaps, incorporation of another Article stipulating that the Parliament would be competent to legislate with reference to the fields of legislation contained in Entries 23 and 24 whenever Parliament declared that it would be "expedient in public interest" to legislate upon those topics would have achieved the purpose. We may not be understood as sitting in judgment over the wisdom of framers of the Constitution. We are only pointing out the possibility of achieving results sought to be achieved by Entries 52 and 54 by adopting another model of drafting. Such a model is already resorted to by the framers of the Constitution in making provisions of Articles 249 and 250 etc.

40. Our endeavour is only to demonstrate that a great deal of examination of the scheme of the entire Constitution is essential while interpreting the scope of each of the Entries contained in the three Lists of the Seventh Schedule and no rule which has a universal application with regard to the interpretation of all entries in the 7th Schedule can be postulated. The statement of Chief Justice Gwyer that a broad and liberal spirit should inspire those whose duty is to interpret the Constitution and the legislative entries should not be read in a narrow or pedantic sense, cannot be understood as a *sutra* valid for all times and in all circumstances. We have already noticed that this court on more than one occasion cautioned about the perils of placing a construction on the expressions contained in the various Entries in the three Lists of Seventh Schedule as taking within their sweep, matters that have no rational connection with the subject matter of the Entry. The caution sounded by Justice Venkatachaliah in *Shah Goverdhan L. Kabra Teachers' College* (supra) that:

"... the court sometimes is duty-bound to guard against extending the meaning of the words beyond their reasonable connotation ...".

is a constitutional imperative.

41. The doctrine of “widest construction” propounded by Marshall was in the context of the substantive provisions of the Constitution which are the sources of power to legislate and stipulate the areas with respect to which “the Congress” shall have the “legislative power” but not in the context of something like an entry in the 7th Schedule of our Constitution which is not a source of power but only indicative of the field of legislation. Though words and expressions employed in the Constitution must receive widest possible construction, we believe that the principle must be applied with some degree of caution when it comes to the examination of the amplitude of the legislative Entries. There must be some distinction between a provision of the Constitution which confers power to legislate (source of power) and an Entry in one of the 3 lists of the 7th Schedule which are not sources of power but are only indicative of the fields of legislation. Any construction which would run counter to the scheme of the Constitution relevant in the context must be avoided.

42. As rightly pointed out by the petitioners, the existence of a dedicated article in the Constitution authorizing the making of law on a particular topic would certainly eliminate the possibility of the existence of the legislative authority to legislate in Article 246 read with any Entry in the Seventh Schedule indicating a field of legislation which appears to be closely associated with the topic dealt with by the dedicated article. For example even if the Constitution were not to contain Entries 38, 39, 40 in List II the State Legislatures would still be competent to make laws w.r.t. the topics indicated in those 3 entries, because of the authority contained in Articles 164(5), 186, 194, 195 etc. Therefore, to place a construction on those entries which would have the effect of enabling the concerned legislative body to make a law not within the contemplation of the said Articles would be plainly repugnant to the scheme of the Constitution.

43. Cauvery Water Disputes³⁴ may not be an exact authority for the proposition of law advanced by the petitioners. But the logical extension of the principle enunciated in **Cauvery** would certainly support the case of the petitioners.

44. To understand the principle laid down in **Cauvery**, we need to examine the factual background of the case and the issue (relevant) that arose therefrom.

45. There has been a long standing dispute between the States of Karnataka and Tamil Nadu with regard to their respective rights to the water of river Cauvery. For the resolution of the said dispute, a tribunal was constituted by a notification dated 2nd June 1990 of the Government of India in exercise of the power under the Inter State Water Disputes Act, 1956. On an interlocutory application filed by the State of Tamil Nadu, by an order dated 25th June 1991, the tribunal gave certain directions³⁵ to the State of Karnataka. Thereupon, the State of Karnataka issued an ordinance nullifying the directions of the tribunal referred to above. The President of India by a reference under Article 143³⁶ of the Constitution sought the opinion of this Court regarding the constitutionality of the ordinance.

46. The State of Karnataka argued that the ordinance in question fell exclusively within the field of legislation assigned to the States by Article 246(3) read with Entry 17 of List II. In the absence of any law made by the Parliament dealing with the subject matter of the content of the ordinance in question, the authority of the legislature of Karnataka remained unencumbered.

47. While examining the said submission, this Court had to examine - whether the Inter State Water Disputes Act, 1956 made by the Parliament was a law made in exercise of the authority of the Parliament under Article 246(1)³⁷ read with Entry 56³⁸ of List I of the Seventh Schedule? This Court reached a conclusion that the Inter State Water Disputes Act, 1956 is not a legislation referable to Entry 56 of List I. It also took note of the fact that none of the Entries in Seventh Schedule mentioned the topic of

adjudication of disputes relating to inter State waters and Article 262³⁹ of the Constitution specifically provides for such adjudication.

"62. It cannot be disputed that the Act, viz., the Inter-State Water Disputes Act, 1956 is not a legislation under Entry 56. In the first instance, Entry 56 speaks of regulation and development of inter-State rivers and river valleys and does not relate to the disputes between the riparian States with regard to the same and adjudication thereof. Secondly, and even assuming that the expression "regulation and development" would in its width, include resolution of disputes arising therefrom and a provision for adjudicating them, the Act does not make the declaration required by Entry 56. This is obviously not an accidental omission but a deliberate disregard of the entry since it is not applicable to the subject matter of the legislation. Thirdly, no entry in any of the three lists refers specifically to the adjudication of disputes with regard to inter-State river waters.

63. The reason why none of the Entries in the Seventh Schedule mention the topic of adjudication of disputes relating to the inter-State river waters is not far to seek. Article 262 of the Constitution specifically provides for such adjudication. ..."

67. ... Since the subject of adjudication of the said disputes is taken care of specifically and exclusively by Article 262, **by necessary implication the subject stands excluded from the field covered by Entries 56 and 17**. It is not, therefore, permissible either for the Parliament under Entry 56 or for a State legislature under Entry 17 to enact a legislation providing for adjudication of the said disputes or in any manner affecting or interfering with the adjudication or adjudicatory process of the machinery for adjudication established by law under Article 262. ..."

48. The ordinance was found to be beyond the legislative competence of the State of Karnataka. Because of the existence of a dedicated article empowering the Parliament to make laws for the adjudication of inter-State water disputes the subject stood by implication excluded from the field covered under Entries 56 or 17 and the ordinance in substance had the effect of interfering with "adjudication process of the machinery for adjudication established by law under Article 262".

49. The distinction between the scheme of Article 262 Entry 56 of List I and Entry 17 of List II and the scheme of Article 194⁴⁰ and Entry 39⁴¹ of List II is this that in the case of inter-State water disputes neither of the abovementioned two Entries make any mention of the adjudication of water disputes and only Article 262 deals with the topic. In the case on hand, the relevant portion of the text of Article 194(3) and Entry 39 of List are almost identical and speak about the "powers, privileges and immunities" of the House, its members and Committees.

50. The question therefore is - whether the text of Article 194(3) and Entry 39 is wide enough to authorise the legislature to make THE ACT?

51. In view of the fact that the text of both Article 194(3) and the relevant portion of Entry 39 are substantially similar, the meaning of the clause "the powers, privileges and the immunities of a House of the Legislature of a State and of the members of a House of such Legislature" must be examined.

52. In ascertaining the meaning of the clause, the scheme of Article 194 and the setting in which the said clause is placed is relevant. Article 194 occurs in Chapter III of Part VI of the Constitution which deals with the States. Chapter II of Part VI deals with the State Executive. Chapter III deals with the State Legislature. Various articles of Chapter III provide for establishment of a legislature (either unicameral or bicameral), the composition of such legislative bodies, the qualifications for membership of the legislative bodies and their durations, the offices of the legislature and their powers and responsibilities and all other allied matters.

53. Article 194 deals exclusively with the powers and privileges of the legislature.

its members and committees thereof. While clause declares that there shall be freedom of speech in the Legislature subject to the limitations enumerated therein, clause (2) provides immunity in favour of the members of the Legislature from any legal proceedings in any court for anything said or any vote given by such members in the Legislature or any Committees etc. Sub-clause (3) deals with the powers, privileges and immunities of a House of the Legislature and its members with respect to matters other than the ones covered under clauses (1) and (2).

54. Thus, it can be seen from the scheme of Article 194 that it does not expressly authorise the State Legislature to create offices such as the one in question. On the other hand, Article 178⁴² speaks about the offices of Speaker and Deputy Speaker. Article 179⁴³ deals with the vacation of those offices or resignations of incumbents of those offices whereas Article 182⁴⁴ and 183⁴⁵ deal with the Chairman and Deputy Chairman of the Legislative Council wherever the Council exists. In our opinion, the most crucial article in this Chapter is Article 187⁴⁶ which makes stipulations even with reference to the secretarial staff of the Legislature. On the face of such elaborate and explicit constitutional arrangement with respect to the Legislature and the various offices connected with the legislature and matters incidental to them to read the authority to create new offices by legislation would be a wholly irrational way of construing the scope of Article 194(3) and Entry 39 of List II. Such a construction would be enabling the legislature to make a law which has no rational connection with the subject matter of the entry. "The powers, privileges and immunities" contemplated by Article 194(3) and Entry 39 are those of the legislators qua legislators.

55. For the above-mentioned reasons, we are of the opinion that the Legislature of Assam lacks the competence to make the impugned Act. In view of the above conclusion, we do not see it necessary to examine the various other issues identified by us earlier in this judgment. The Writ Petition is allowed. The impugned Act is declared unconstitutional.

¹ Article 164(1A). The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than twelve;

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.

² Section 4 - A Parliamentary Secretary shall be of the rank and status of a Minister of State and shall exercise such powers, discharge such functions and perform such duties as may be assigned to him by the Chief Minister by way of a notification published in the official Gazette.

³ Section 7. A Parliamentary Secretary shall be entitled to such salary and allowances as are admissible to a Minister of State under the Assam Ministers, Ministers of State and Deputy Ministers Salaries and Allowances Act, 1958.

⁴ On 08/05/2007 the Petitioners moved an interlocutory application (I.A. No. 1/2007) in the Supreme Court in order to stay the operation of the Act.

⁵ Article 164. (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor: Provided that in the States of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.