



DECISIONS FROM THE CHAIR  
IN THE

ASSAM LEGISLATIVE ASSEMBLY

( OCTOBER 1971 TO DECEMBER 1971 )

1973

RESEARCH AND REFERENCE SECTION  
ASSAM LEGISLATIVE ASSEMBLY SECRETARIAT  
DISPUR

1. The Commission on the Administration of Justice  
has been established to study the present  
and future needs of the judicial system  
and to recommend ways to improve it.

2. The Commission will report to the President  
and the Congress within six months.

3. The Commission will be headed by Chief Justice  
Warren and will include representatives of  
the executive, legislative, and judicial  
branches of government.

4. The Commission will also include representatives  
of the public and the legal profession.

5. The Commission will hold public hearings  
and will receive suggestions from judges,  
lawyers, and laymen.

6. The Commission will also study the  
organization and administration of the  
courts and the qualifications of judges.

7. The Commission will also study the  
methods of selecting judges and the  
methods of disciplining judges.

## FOREWORD

This collection of Decisions from the chair in the Assam Legislative Assembly covers the period from October, 1971 to December, 1971. It includes rulings by Shri Mohi Kanta Das, M. A., B. L., the Speaker, Assam Legislative Assembly.

**DISPUR:**  
The 11th August, 1973.

**P. D. Barua,**  
Secretary,  
Legislative Assembly, Assam.

APPENDIX

This collection of resolutions from the annual sessions of the  
Legislative Assembly covers the period from 1871 to 1891.  
It includes resolutions by the House of Representatives and the  
Senate, and resolutions of the Legislative Assembly.

U. S. GOVERNMENT

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WASHINGTON

1891

U. S. GOVERNMENT

## ADJOURNMENT MOTION

### **Hunger-strike and demonstration staged by the Teachers of non deficit Aided H. E. School and some workers of certain printing presses of Gauhati in front of the Assembly Building**

On 27th October, 1971 Hon. Members (1) Shri Hiralal Patwary, (2) Shri Dulal Chandra Barua, and Shri Ramesh Mohan Kouli, (3) Shri Gaurisankar Bhattacharyya and (4) Shri Promode Chandra Gogoi raised Adjournment Motions to discuss the situation arising out of hunger strike and demonstration in front of the Assembly Building by teachers of non-deficit Aided High English Schools and some workers of certain printing presses of Gauhati. Shri Mahendra Mohan Choudhury, Chief Minister in his statement informed the House about steps taken by Government on the questions raised in the motions. Next day, i.e., on 28th October, 1971 the Speaker ruled:

"Yesterday, Hon'ble Members, Sarbashri Gaurisankar Bhattacharyya, Dulal Chandra Barua, Ramesh Mohan Kouli, Promode Chandra Gogoi tabled adjournment motions for discussing the situation arising out of the hunger strikes resorted to by members of the All Assam Non-deficit High School Teachers Association and members of a large number of trade Unions of Gauhati with a view to draw the attention of the Government to their various grievances. There was discussion for and against the admissibility of the motion.

The Chief Minister, in his elaborate statement, opposing the motion, gave the House to understand what steps had taken for the redress of the grievances of the Non-deficit High School Teachers Association. He also referred to the problems of the workers arising out of the closure of Peco Printing Works, Natun Assamiya and other Industries of the State and explained the position of the Government with regard to the possible steps he proposes to take. He on suggestion by some members of the House agreed to meet the members of the Aided High School Teachers Association as well as the Industrial workers.

I understand, he met them and discussed with them their various problems and the strike was called off. In view of the facts stated above, the motion has become infructuous and I disallow it.

## COMPLAINT OF BREACH OF PRIVILEGE

### **Unpleasant behaviour of a Minister towards a Nurse.**

On 26th October, 1971 Shri Dulal Chandra Barua, M. L. A. gave a notice under Rule 301 to raise discussion on a matter relating to unpleasant behaviour of an hon'ble Minister of State

towards a Nurse in certain hospital at Silchar. On an assurance from the Chief Minister that the matter would be enquired into and reported to the House, the discussion of the matter was kept in abeyance. During the time when the matter was seized of the House, the hon'ble Minister Shri Jagannath Sinha issued a statement in a weekly 'Azad' which was published on 27th October, 1971 in utter violation of the convention. Thereafter, the hon'ble member moved a motion of breach of Privilege against the Minister. On 9th November, 1971 the Speaker ruled the motion as out of order as there was no case of breach of privilege. The full text of Chair's ruling is as follows :

"On the 26th October, 1971 Shri Dulal Chandra Barua raised a question under Rule 301 regarding the misbehaviour by a Minister of State to a nurse serving in Silchar Civil Hospital in a drunken mood on 5th October last at 10 P. M. and that the action of the Minister brought disgrace to the House and also to the Ministry. As such, the Chief Minister should make an enquiry into the matter and inform the House about the result of the enquiry. The Chief Minister assured the House that he would enquire into the matter and inform the House the result of enquiry during the session. Shri Barua while moving a privilege motion on 26th November 1971 submitted that the Minister of State, Shri Jagannath Sinha issued a statement which was published in a weekly from Silchar, viz., 'Azad' dated 27th October 1971 under the caption ভিত্তিহীন অভিযোগের প্রতিবাদ wherein he tried to deny the allegations. He further submitted that the matter was still pending before the House for disposal. The statement of the Minister has definitely caused a breach of privilege of the House.

Shri Gaurisankar Bhattacharyya also while participating in the discussion spoke in support of the admissibility of the Motion. The Hon'ble Shri Debeswar Sarma, Shri Sailen Medhi, Shri Giasuddin Ahmed participated in the discussion. The Minister for Parliamentary Affairs opposed the motion and stated that statement of the Minister referred only to a news-item published in a local paper of Silchar under the caption "ভিত্তিহীন অভিযোগের প্রতিবাদ" and not to any proceedings of the Assembly. He further submitted that Hon'ble Shri Dulal Chandra Barua while speaking on his notice under Rule 301 did not mention the name of any Minister. Moreover, 'Azad' did not mention the name of any on 27th October, 1971. It is not mentioned when Shri Jagannath Sinha gave the interview to the paper. Only publication is dated 27th October, 1971. In the interview Shri Jagannath Sinha was contradicting a report which had come out in the daily 'Sapath' dated 19th October, 1971. When something like character assassination came out against anybody, he or she was surely justified in contradicting such a report. So the statement of the State Minister did not constitute a breach of privilege of the House, and as such the motion was inad-

missible. The Chief Minister submitted that in the statement of the Minister, there was no reference to any proceedings of the House. But it was only in reference to the allegations published in a newspaper of Silchar regarding the behaviour of the State Minister. He was justified in contradicting such a defamatory report. So, it did not constitute a breach of the House. So the motion was inadmissible.

Now the question is whether the action of the Minister has constituted a breach of privilege to the House. In this connection, I looked into the matter and found as follows:

On 19th October, 1971, a news-item under the caption *ভিত্তিহীন অভিযোগের প্রতিবাদ* was published in a local paper of Silchar viz. 'Sapath' containing certain allegations regarding misbehaviour by a Minister of State to a Nurse of the Silchar Medical College Hospital. This was long before the date when a similar matter was raised before the House by Shri Dulal Chandra Barua on 26th October, 1971. When the attention of the State Minister of Industries, Shri Jagannath Singha, was drawn to the allegations made in the news-item, the State Minister stated that the allegations published in the news-item are baseless. He further stated, although in the news-item the name of the Minister has not been mentioned he was the said Minister. Then, the State Minister stated certain facts clarifying his position. It may be mentioned in this connection that the 'Azad' is a weekly paper. The statement of the Minister was published on 27th October, 1971. It has not been mentioned therein when the statement was made. The news-item in 'Sapath' was published on 19th October. The contradiction was published on 27th October. It is nowhere stated that the Minister made the statement on 27th. The Minister was present in the House on 26th and the matter was published at Silchar on 27th October. So, it is difficult to hold from records that he made the statement on 27th October.

Again I find from the statement of the Minister that he referred only to the allegations appearing in the paper and not to any proceedings of the House regarding the allegations made in connection with a notice under the Rule 301 on 26th October, 1971.

It is the usual practice that when such a report concerning the Ministry or a Minister is published in any newspaper, the Government or the Minister issues statement either contradicting the report or clarifying their position. So when the State Minister contradicted the allegations published in the news-item and clarified the position, I think, there can be no objection.



In view of the facts stated above, I hold that the action of the Minister does not constitute a breach of privilege of the House. So, I am constrained to disallow the motion.

## COMPLAINT OF BREACH OF PRIVILEGE

### Incorrect Statement by Minister

On 8th November, 1971, Shri Dulal Chandra Barua, M. L. A. gave a notice of breach of Privilege alleged to have been committed by Shri K. P. Tripathi, erstwhile Minister in Charge of power (Electricity), Mines & Minerals and the present Minister in-charge of Finance & Labour to the House by giving incorrect statement while replying to a Calling Attention Notice given by Shri Tarapada Bhattacharjee, *ex-* M. L. A. on 30th December, 1965 regarding functioning of Metre Factory of Assam State Electricity Board, Shillong and in his reply also to a discussion on Annual Financial Statement of Assam State Electricity Board. There was a short discussion on the complaint. The Speaker gave his ruling as follows :

"Yesterday, Shri Dulal Chandra Barua gave notice of a privilege motion under Rule 158 and 159 of the Rules of Procedure and Conduct of Business in Assam Legislative Assembly against Shri K. P. Tripathi, Finance Minister, erstwhile in-charge of Power and Electricity and Labour. While moving the motion he alleged that in 1965 while replying to a calling attention notice given by Shri Tarapada Bhattacharjee on 30th December, 1965 and in his reply also to a discussion on Annual Financial statement of Assam State Electricity Board in the 12th Session of the Assam Legislative Assembly after 3rd General Election, he made statements about the successful and perfect planning and best product of the Metre Factory with various misleading arguments. But his arguments were proved to be false in Enquiry Commission Report of the Assam Electricity Board at page 30, para 6(a) and (b) placed before the House. So the Minister committed a breach of privilege of the House by giving false and misleading statements. While moving the motion to-day he quoted relevant portions of the proceedings of the House and submitted that the Minister was guilty of suppression of material facts from the House and made incorrect statements which were lies. He quoted from Enquiry Commission Report to substantiate his point.

Shri Tripathi submitted that what he stated was based on the report submitted by the State Electricity Board. He denied to have made any false statement. Times have changed. What the Commission has reported as regards the Metre Factory, the Government have challenged the findings and given its own views. Moreover, the matter was not of recent occurrence.

Now, the question is whether the alleged incorrect statements or suppression of facts constituted a breach of privilege of the House. It has been held in various rulings of the Hon'ble Speaker, Lok Sabha that for incorrect statements made by a Minister, there can be no breach of privilege of the House unless they are proved to be deliberate lies.

I may be permitted to quote from Mr. Kaul's Practice and Procedure of Parliament at page 216—"Incorrect statements made by a Minister cannot make any basis for a breach of privilege. It is only a deliberate lie, if it can be substantiated that would certainly bring the offence within the meaning of a breach of privilege. Other lapses, other instances do not come under the category because every day we find that Ministers make their statements in which they made mistakes and which they correct afterwards.

In this particular case, the statement of the Minister has been sought to be shown as incorrect with reference to the findings of the State Electricity Board Commission Report. But the findings of this report have been challenged by the Government in their statement placed before the House. So, the findings of the Commission have been disputed.

In this connection, I would like to observe that interpretation or expression of opinion in regard to certain issues which may differ from others cannot constitute a breach of privilege of the House. Again, when the findings of the Commission have been disputed, there can be no breach of privilege of the House for disputed facts. The Minister has been charged with suppression of material facts misleading the House. The Minister has explained to show that there was no suppression of material facts. As regards suppression of material facts there are various rulings that for mere omission or suppression of facts there can be no breach of privilege of the House unless it misleads the House. I do not find here anything stated by the Minister which has misled the House.

In view of the facts stated above, I hold that there is no breach of privilege and so I am constrained to hold that the complaint is out of order.

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#### POINT OF ORDER

#### **Question on separate Administrative setup for N. F. F. A.**

On 25th October, 1971 Shri Gaurisankar Bhattacharyya, M.L.A raised a point of order for giving consent to the proposal of the govt. of India without taking the people of the State and the

Home into confidence on the starred question put by Shri Maneswar Boro, M. L. A. relating to the separate administrative set up for N. E. F. A. The Speaker ruled out the point of order. The full text of the Chair's ruling is as follows:—

"On 25th October, 1971 in reply to the Starred Question No. 4 put by Hon'ble Member Shri Maneswar Boro, the Chief Minister stated that the Government had given consent to the proposal of the Government of India for the establishment of separate democratic setups in Mizo Hills district and NEFA. In this connection, Hon'ble Member, Shri Gaurisankar Bhattacharyya raised a point of order to the effect that NEFA being a part and parcel of Assam under paragraph 20 of the Sixth Schedule of the Constitution, the Government should not have given consent to the proposal of the Government of India for the establishment of separate administrative set up in NEFA without taking the people of the State and the House into confidence. He further, stated that the Governor administers the tribal areas specified in part (A) and part (B) of the table shown in the Sixth Schedule, on the advice of the Ministry and the Legislature. So the action of the Government is unconstitutional, undemocratic and disrespectful to the Legislature. Hon'ble Sarbashri Debeswar Sarma, Dulal Chandra Barua, Promode Chandra Gogoi, Sailen Medhi participated in the discussion and supported the contention of Shri Bhattacharyya.

The Chief Minister in his reply stated that though under the Constitution NEFA is a part of Assam, its administration is separate. Before 1950, service cadre of Assam and NEFA was the same. But since 1950 service cadre of Assam and NEFA became separate. Service cadre of NEFA was brought under Indian Frontier Service cadre. Administration of NEFA is carried on by the Governor as the Agent of the President. Since, then, the administration of NEFA ceased to be the subject-matter of Assam Legislature. Nor the administration of NEFA is carried on by the Governor on the advice of the Ministry. He further, stated that in pursuance of the agitation of the people of NEFA for having a democratic set up in the region, a Commission was constituted by the Government of India for the consideration of the demand of the people of NEFA. Late Dying Iring was the Chairman of the Commission. On the recommendation of the commission, the Government of India decided to amend the Constitution and to establish a separate democratic set up for the administration of NEFA. To this, the Government of Assam gave consent. In all such matters, the Ministry first takes the decision. Thereafter, decision is placed before the House. The House may accept it or reject it. The appropriate Bill, proposing amendment of the Constitution with regard to the administration of NEFA will be placed before the Assembly and Hon'ble Members will have enough opportunity for expression of their views. So the Ministry has not done anything undemocratic, unconstitutional and offending against the rights and privileges of the House.

Now the questions are :—

(1) Whether action of the Ministry in giving consent to amendment of the Constitution for the formation of separate democratic set up for the administration of NEFA (and Mizo Hills District) without consulting the Assam Legislature is unconstitutional ?

(2) Whether the action of the Government offended against the rights and privileges of the House ?

With regards to the above questions, I may be permitted to submit as follows :—

The Tribal Areas under the Sixth Schedule to the Constitution have been described in para 20 of the said Schedule. Part "B" under para 20 contains North East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills district and Mishmi Hills District. Part "A" contains, (1) U.K. & J. Hills District, (2) The Mizo Hills District, (3) The North Cachar Hills, (4) The Garo Hills District, (5) The Mikir Hills. Under 18(2) of the Sixth Schedule, the administration of Part "B" is to be carried on by the President through the Governor of Assam as his Agent and thereof were Union Territory specified in that Article. It will therefore, follow that in so far as the administration of NEFA is concerned, the State Government of Assam has very little to do. The Governor discharged his functions in the matter of such administration not on the advice of the Council of Ministers but as an Agent of the President and really the administration lies with the President of India as in the case of Union Territories. Under Art. 163 of the Constitution, the Governor is to exercise his function under the advice of the Council of Ministers of the State of Assam unless he is required to exercise his functions in his own discretion. Sub-para 3 of para 18 of the Sixth Schedule clearly lays down that in the discharge of his functions under sub-para (2) of para 18 as the Agent of the President, the Governor shall act in his discretion. In that view, the Council of Ministers of the State of Assam cannot advise the Governor in the discharge of his functions in respect of NEFA from part of Assam. So far as the administration of NEFA is concerned it has no administrative connection with the State. The State Government of Assam or the State Legislature has nothing to do in the administration of NEFA, as under par 18 the Governor in his discretion is to discharge his function as an Agent of the President.

It is however, seen that in setting up the Agency Council for toning up the administration of NEFA, the Government of India consulted the State Government and the State Government gave consent to such a set up. I think, the Government did nothing unconstitutional in giving such a consent.

But since NEFA, Mizo Hills District and other Tribal Areas form part of Assam whenever any of these areas are sought to be normally separated from the State under Art 3 of the Constitution, the Bill containing such proposal is to be referred by the President to the Legislature of the State affected by such proposal for expression of views before its introduction in the Parliament, within the time specified in the reference. The Legislature and its Members sitting in the Legislature shall have the right to express its views on the Bill. If, however, the Government of India held any consultation with the State Government about it before the Bill was prepared and the State Government gives its opinion or consent without consulting the Legislature, I think, the action of the Government does not violate any provision of the Constitution nor does it effect the rights and privileges of the House or its Members.

It may be mentioned in this connection that no new privilege other than those of the House of Commons on 26th January, 1950 can be claimed and I do not find any such privilege of the House or its Members for prior consultation in such matters.

In view of the fact that the action of the Government does not infringe any provision of the Constitution nor does it affect the rights and privileges of the House to discuss the provisions of the Bill whenever it comes before the House, I would like to hold that the action of the Government is neither unconstitutional nor does it offend against any rights and privileges of the House.

With these observations I hold the point of order to be out of order.

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#### POINT OF ORDER

#### **Discussion on the draft scheme north Eastern Council**

On 6th November, 1971, during the discussion on the draft scheme of North Eastern Council, Shri Giasuddin Ahmed, M.L.A. raised a point of order:—

Shri Gasuddin Ahmed: Mr. Speaker, Sir I want to raise a point of order. I do not like to speak on the scheme, because all the hon'ble members have covered all the points. My point of order is this that this draft scheme of North Eastern Council is illegal, it is unconstitutional; in other words it is against the Constitution of India, because while we entered into this august House, we had to take an oath. Here "I, A. B., having been elected (or nominated) a member of Legislative Assembly (or Legisla-

tive Council), swear the name of God or solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter." This is the oath we have taken and we must note it anything that goes against the provision of the Constitution, we cannot do. So far as this scheme is concerned, there is no provision in the Constitution of India for establishing such a Council, the draft of which has been placed before us. Without first amending the Constitution we cannot even discuss a scheme like this in this House. As the hon'ble Chief Minister has placed this scheme, he had done it illegally, against the Constitution of India. So this should be ruled out outright.

The Chair ruled :—

"Hon'ble Members may raise a point of order so far as the interpretation of the Rules and Procedure of this House are concerned. This question does not come under the purview of point of order. Regarding a point of order concerning the Constitution, I am not competent to decide. There is a proper forum for it. If any individual member wants to do so he will take recourse to the proper forum."