
(2005) 04 PAT CK 0059
In the Patna High Court
Case No : CWJC No. 4286 of 2005

Ajoy Kumar Verma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Constitution of India, 1950 — Article 154, 356, 356(1)(c), 361

Citation : (2005) 2 PLJR 687

Hon'ble Judges : Nagendra Rai, Acting C.J.; S.N. Hussain, J

Bench : Division Bench

Advocate : In person, S.A. Narayan, S.K. Ghose, R.K. Dutta and Purnendu Singh, for the Appellant; Ravi Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the petitioner in person, the learned Advocate General appearing for the State of Bihar and Dr. Ravi Ranjan appearing for the Central Government. It is unfortunate that an officer of the rank of Deputy Inspector General of Police of the State instead of devoting his time to perform the duties is filing cases after cases in this Court on the pretext of public interest litigation. In the present case, his grievance is confined to appointment of an Advisor to the Governor after the proclamation of President's Rule in Bihar. The petitioner has come before this Court without any cause for the reasons which are best known to him.

2. Learned Advocate General raised a preliminary objection regarding the maintainability of the matter at the instance of the petitioner. Though we find force in the same but as the petitioner has argued the matter, we would like to dispose of the same on merit.

3. Under Article 356 of the Constitution of India, the President has power to issue proclamation in the situations mentioned in the said Article assuming the powers and functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other

than the Legislature of the State. It is admitted fact that the President has issued a proclamation under Article 356 of the Constitution of India on 7th March, 2005.

4. Article 356(1)(c) provides that the President may by proclamation make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State. The President in exercise of power under the aforesaid provision by Notification G.S.R. 162(E) on 7th March, 2005 directed that all the functions of the Government of the State and all the powers vested in or exercisable by the President by virtue of the said Proclamation shall be exercisable also by the Governor. The Governor of Bihar in exercise of power vested in the said notification and in exercise of power conferred upon him by Clause (1) of Article 154 of the Constitution of India issued the Bihar Rules of Business, 2005 on 11th March, 2005. It authorizes the Governor to allot the business of the Government among the Advisors. The Governor has appointed the Chief Secretary as Advisor in terms of the said Rule.

5. The grievance of the petitioner is that the President has the power to make appointment of Advisor and not the Governor of the State. It should be made clear at the first instance that under the constitutional scheme there is no provision for appointment of Advisor. According to the practice and procedure, the Advisors are appointed to assist the Governor in discharge of his duties. Once the power has been vested by the President in the Governor, the Governor is competent to appoint one or more Advisors according to the need of the administrative exigency. No doubt, if the President had appointed the Advisor, the question may arise whether in that situation the Governor will appoint the Advisor or not. That is not the situation herein because the President has not appointed the Advisor. In that view of the matter, this submission is devoid of any substance.

6. The other submission raised by the petitioner is that the order passed by the Governor is not challengeable in view of Article 361 of the Constitution of India.

7. The said submission is also devoid of any substance. Article 361 of the Constitution gives personal immunity from legal action to the President or Governor for their official acts including proceedings for contempt of Court. However, the acts of the President or the Governor, if the same are in pursuance of the constitutional power, are beyond the scrutiny of the court but where the action lies against the Government, the action of the President or the Governor is subject matter of scrutiny of the Court in order to give relief to the individual against the Government.

8. In the result, there is no merit in this application and the same is dismissed. In normal course, I would have awarded cost but taking into consideration the facts and circumstances and the fact that the point raised by the petitioner

cannot be said to be absolutely frivolous, no cost is awarded in this case.