

(2004) 02 AHC CK 0072
In the Allahabad High Court
Case No : Writ Petition No.879 of 2004

Devendra Nath Tripathi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-02-2004

Acts Referred:

Constitution of India, 1950 — Article 74(2), 83

Citation : (2004) 02 AHC CK 0072

Hon'ble Judges : Tarun Chatterjee, CJ and Rakesh Sharma, J

Final Decision : Dismissed

Judgement

1. By consent of the parties, this writ application is treated as on day's list and is taken up for hearing/final disposal.
2. We have heard learned counsel for the parties and have perused entire materials available on the record.
3. Thirteenth Lok Sabha was dissolved by a proclamation issued by the President of India on 6th February, 2004 on the basis of the advice of the Council of Ministers headed by the Prime Minister of India, it is no disputed that the Cabinet had taken a decision and advised for dissolution of Thirteenth Lok Sabha on the basis of which the President of India has issued a proclamation on 6th February, 2004 dissolving Thirteenth Lok Sabha. It is this proclamation of the President of India dated 6th February, 2004 by which Thirteenth Lok Sabha was dissolved is now under challenge before us.
4. The only ground on which the learned counsel for the writ petitioner urged is that this Court should held that such proclamation is arbitrary, illegal and invalid in law, as each and every voter is entitled to know the reasons for issuance of such proclamation.
5. Considering the facts and circumstances of the instant case, in our view, this submission of the learned counsel for the writ petitioner is not, at all, acceptable. Article 74 of the Constitution of India confers power on the Council of Ministers to

aid and advise the President. As noted hereinafter, the Proclamation issued by the President of India was on the advice of Council of Ministers. Article 74(2) of the Constitution of India clearly says that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired into in any court. Article 83 of the Constitution of India also provides that House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House. However, the Proviso to Article 83(2) of the Constitution of India also says that the said period of five years may be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate. A power has also been conferred on the President of India to dissolve the House of the People.

6. From a perusal of the provisions enumerated in Articles 74 and 83 and particularly in Article 74(2) of the Constitution of India, it is thus clear that the question of giving directions on the respondent to give reasons for issuance of such proclamation by the President of India cannot arise, at all, as Article 74 of the Constitution clearly confers such power only on the Council of Ministers particularly, on the Hon"ble Prime Minister, who shall act in the exercise of such power, i.e. to say individually no one is entitled to approach the court for the purpose of giving directions to the respondent to give reasons for issuance of proclamation by the President of India.

7. Such being the position, this Public Interest Litigation lacks merit and is liable to be dismissed.

8. Accordingly, this Public Interest Litigation is dismissed. There will be no order as to costs.

(Petition dismissed)