

(1994) 07 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Writ Petition No. 456 of 1993

Ganesh Datt

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-07-1994

Acts Referred:

Constitution of India, 1950 — Article 174(2), 356

Citation : (1995) 1 ShimLC 173

Hon'ble Judges : V. Ratnam, C.J.; A.L. Vaidya, J

Bench : Division Bench

Advocate : K.S. Patyal, for the Appellant; P.A. Sharma, Sr. Central Government Standing Counsel for Respondent 1 and Indar Singh, General for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

V. Ratnam, C.J.—In this writ petition, the Petitioner, a voter of Shimla Legislative (Vidhan Sabha) Constituency, has prayed for the issue of Andhra Pradesh High Court writ to quash the Presidential Proclamation dated 15-12-1992, issued under Article 356 of the Constitution of India, dismissing the Government in Himachal Pradesh and ordering dissolution of the duly elected Legislative Assembly (Vidhan Sabha) of Himachal Pradesh. Though several grounds have been put forward by the Petitioner in the writ petition in opposition to the Presidential Proclamation referred to earlier, in view of the recent decision of the Supreme Court in S.R. Bommai and others Vs. Union of India and others etc. etc., , it has become unnecessary to consider, in extenso, those grounds put forward by the Petitioner in the writ petition. It would suffice to point out that in the decision of the Supreme Court, referred to earlier, the Court had occasion to consider the validity of the Presidential Proclamation impugned in the present writ petition. With reference to this, Ahmadi, J. opined that the proclamation issued and consequential actions taken against the State of Himachal Pradesh, amongst others, are not justiciable Verma, J., and Yogeshwar Dayal, J., in the

course of their judgment took the view that the Presidential Proclamation in relation to the Himachal Pradesh State is not justiciable. Sawant, J., speaking on behalf of Kuldip Singh, J., as well, while pointing out that the President had no powers to dissolve the Legislative Assembly of the State by using his powers under Sub-clause (a) of Clause (1) of Article 356, till the proclamation is approved by both the Houses of the Parliament under Clause (3) of that Article, stated that the President may have powers to only suspend the Legislative Assembly under Sub-clause (c) of Clause (1) of Article 356. However, in dealing with the proclamation dated 15-12-1992, with reference to the State of Himachal Pradesh, the view was expressed that the action taken by the President in removing the ministry and dissolving the Legislative Assembly in Himachal Pradesh, amongst others, pursuant to the said proclamation, are not unconstitutional. Ramaswamy, J. also held that the issue of Presidential Proclamation and dissolution of the Legislative Assembly of Himachal Pradesh, amongst other States, cannot be faulted. Jeevan Reddy, J. dealing with the powers of the President to dissolve the Legislative Assemblies of the States, on a consideration of the twin points of view put forward, chose to accept and agree with the first view to the effect that Clause (1) of Article 356 does empower the President to dissolve the Legislative Assemblies. Ultimately, with reference to the President's proclamation relating to Himachal Pradesh, the learned Judge upheld the validity of the proclamation on the ground that it is not un-constitutional. On a careful consideration of the views so expressed in the decision of the Supreme Court, it follows that the Presidential Proclamation impugned in this writ petition is neither un-constitutional nor justiciable. Though on this ground alone, the writ petition merits a dismissal, the learned Counsel for the Petitioner advanced two contentions. Referring to Article 174(2)(b) of the Constitution, learned Counsel submitted that in spite of the Presidential Proclamation issued, the power of dissolving the Legislative Assembly was exclusively with the Governor and the dissolution of the Himachal Pradesh (Vidhan Sabha) under the Presidential Proclamation was not in order. It is, however, not possible to accept this contention for more reasons than one. Even in the judgment of the Supreme Court referred to earlier, it had been held that the Presidential Proclamation issued with reference to Himachal Pradesh State was not unconstitutional and that the consequential actions taken, inclusive of the dissolution of the Vidhan Sabha, would be valid. Apart from this, even under the very terms of the proclamation impugned in the writ petition, it has been provided that any reference in the Constitution to the Governor-in relation to Himachal Pradesh State, in respect of which the Presidential Proclamation was issued, the reference to Governor, shall be construed as a reference to the President. From this, it would follow that if the power of dissolving normally was available to the Governor of a State under Article 174(2)(b) of the Constitution, on the issue of Presidential Proclamation under Article 356, such power could be exercised by the President. Under those circumstances, the contention put forward on behalf of the Petitioner cannot be accepted.

2. Drawing attention to the preamble of the Constitution, learned Counsel for the Petitioner next contended that by the dissolution of the Legislative Assembly in Himachal Pradesh, the very democratic foundation had been shaken and the basic structure of the Constitution had been done away with and that would justify the quashing of the Presidential Proclamation. Here again, it has to be pointed out that the dissolution of the Assemblies, consequent upon the issue of a Presidential Proclamation under Article 356(1) of the Constitution of India, is not an ordinary or normal feature. The invasion of the constitutional equilibrium by the issue of a Presidential Proclamation is an exception, intended to meet exigencies of extra-ordinary situations arising in the State, owing to the breakdown of constitutional machinery and the functioning of Government. Such situations requiring and justifying the issue of Presidential Proclamation under Article 356(1) of the Constitution, cannot be regarded as normal and in any event, the dissolution of the Legislative Assembly, consequent upon the issue of a Presidential Proclamation under Article 356(1) of the Constitution is only in the nature of a temporary feature and when the elections are held, the Legislative Assemblies again come into being, resulting in the restoration of the constitutional equilibrium. Therefore, it is not as if that a Legislature, by the issue of a Presidential Proclamation under Article 356(1) of the Constitution of India, is done away with forever, so as to say that the basic structure of the Constitution has been impaired. Under those circumstances, this contention put forward by the learned Counsel for the Petitioner, cannot also be accepted.

3. No other point was urged. The writ petition is dismissed.