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**(2003) 11 AP CK 0078**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 24201 of 2003**

R. Krishnaiah

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 27-11-2003

**Acts Referred:**

Constitution of India, 1950 — Article 163, 174, 174(2), 356, 356(1)

**Citation :** (2003) 6 ALD 897 : (2004) 1 ALT 178

**Hon'ble Judges :** Devinder Gupta, C.J.;G. Rohini, J

**Bench :** Division Bench

**Advocate :** S. Ramachandra Rao, for K.R. Prabhakar, for the Appellant; T. Suryakaran Reddy, SC for Central Government and A.G., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Devinder Gupta, C.J.—Sri R. Krishnaiah, President of Andhra Pradesh Backward Classes Welfare Association in this petition filed as Public Interest Litigation seeks to question the legality and validity of the decision taken by the Governor of State of Andhra Pradesh to dissolve the State Assembly and requesting the 4th respondent to continue in Office along with his colleagues in the Council of Ministers as arbitrary, illegal, unconstitutional and in violation of Articles 172 and 174 of the Constitution of India and has sought consequential direction to the appropriate authorities to ensure that the term of the State Assembly renders its full term. Along with the writ petition, miscellaneous petitions have also been filed praying that pending disposal of the writ petition the order of the Governor dissolving the Legislative Assembly be stayed, direction be issued to the first respondent, (Union of India) to exercise powers under Article 356 of the Constitution of India and to direct the 3rd respondent not to take further steps towards holding the General Elections to the Legislative Assembly.

2. The petitioner says that all the political parties are vexed with the present Government in the State and are ready to go for polls and most of them are confident that this ruling party will be voted out of power. It is not as if the

petitioner is invoking this Court's Constitutional jurisdiction on the ground that political parties are hesitant to face the Polls. The reason which appears to have prompted the petitioner in approaching the Court and claiming the reliefs sought for in the writ petition are disclosed in para 59 of the petition saying like most of the people, the petitioner feels that it is unethical, unconstitutional and illegal dissolution of a Legislative Assembly, which has the effect of depriving the legislators' rights to represent their constituencies till September, 2004.

3. At the admission stage, we heard the learned Counsel for the petitioner on the question as to whether it requires to be admitted thereby calling upon respondents to file their replies and then decide the writ petition on merits.

4. In case the grievance of the petitioner is only that for which petition is stated to have been filed that the legislators have been deprived of their right to represent their respective constituencies till expiry of full term of five years, the Writ Petition would not require elaborate order to decide it. The question is covered by the decision of a Constitution Bench of Supreme Court in State of Punjab Vs. Satya Pal Dang and Others and Baldev Parkash and Others, It was held that Article 174(2) of the Constitution enables the Governor to dissolve or prorogue the Legislature and does not indicate any restrictions on this power. This power is untrammelled by the Constitution and can be questioned only on the ground of want of good faith and abuse of the power. It was further held that neither the Legislature nor its members have any Constitutional Right to have the Legislature undissolved till the expiry of the term specified in Article 172(1) of the Constitution.

5. Learned Counsel for the petitioner, however, has made elaborate submissions that the dissolution order dated 14.11.2003 is without application of mind and without examining whether the reasons given by the Cabinet are valid or not. Dissolution is done in a mechanical and ritualistic manner and suffers from the constitutional infirmity and has to be declared as void. We also heard Mr. Ramachandra Rao, learned Senior Counsel for the petitioner, the learned Advocate-General appearing for the State of Andhra Pradesh and Mr. Surya Karan Reddy, learned Standing Counsel for 1st respondent No. 1 on the limited question as to whether it is a fit case to call upon the respondents to answer various factual allegations made in the writ petition and the necessity to decide the writ petition on merits.

6. Learned Counsel for the petitioner submitted that the dissolution of the State Assembly has been ordered by the Governor without application of mind and without critically examining even the purported reasons, therefore, the same is bad in law. According to him, the sole reason, couched in so many words, in the advice rendered by the Council of Ministers seeking dissolution, is the admitted failure on law and order front i.e., extremism whereby the Cabinet admitted that the State is held at ransom by the extremists. This is nothing but failure of constitutional breakdown and the Cabinet's failure to discharge its duty of preserving life, law and order. Either way it should not result in dissolution of

Assembly. To blame the opposition for asking the Government to start a dialogue with naxalites and blaming them for the same as a ground for seeking dissolution is utterly irrational, irrelevant and mala fide. The Governor had no material before him other than the Cabinet's resolution and the same is irrelevant and irrational in order to come to a decision that the Legislative Assembly is required to be dissolved.

7. Learned Counsel for the petitioner further urged that the grounds and the circumstances for dissolution of the State Assembly by the Governor are subject to judicial review. Where the Cabinet's reasons and grounds being utterly extraneous and irrelevant, the Court must exercise its power of judicial review. He submitted that the Cabinet's reasons and grounds are vitiated by the mala fides of the 4th respondent (Chief Minister) for political gain. In support of this submission, learned Counsel for the Petitioner would submit that to hold elections in September, 2004 was considered suicidal till recently by the political Government of the State. Now for selfish, extraneous and mala fide reasons and in abuse of constitutional power, an open attempt has been made to utilise the Government's utter failure in law and order by capitalizing the political advantage out of the unfortunate dastardly assassination attempt on the 4th respondent at Tirupathi on 1.10.2003. The 4th respondent's interest is only to perpetuate him in power and for achieving the same, he is utilising the entire State machinery, party machinery, public funds and even the constitutional openings, avenues for the selfish and collateral purpose. It is the 4th respondent alone who has planned, initiated and executed this plan of premature dissolution of State Legislative Assembly for advancing elections, which otherwise are scheduled in September, 2004, for facilitating his own selfish and extraneous reasons to perpetuate himself in power. The Cabinet cannot be permitted to abuse its advisory role and cause premature dissolution of the State Assembly for reasons beyond the Constitution. The dissolution of the State Assembly under Article 174(2), earlier than its lifetime, is at best a corrective mechanism towards proper constitutional functioning of the State machinery of the Government, It is not designed as a pressure valve facilitating a political party to gain political advantage over all others by choosing its own calendar for elections.

8. Questioning the action of the Governor on the grounds that the dissolution order is the result of non-application of mind and is utterly irrational and irrelevant, learned Counsel for the petitioner further urged that since according to the 4th respondent, there has been breakdown in the Constitutional machinery, the Governor ought to have taken action as envisaged under Article 356 of the Constitution rather to dissolve the Assembly. He further submitted that the People's mandate to take care of law and order and extremism is clear and implicit in the earlier verdict of massive majority. For the Cabinet to say that the State is held at ransom by extremists is nothing but a constitutional confession of mal-administration and bad governance apart. Government's own acceptance that the Constitutional Machinery in the State has broken down warrants action under Article 356, since the State Government by its own

showing, admits the existence of a situation that the Government of the State cannot be carried on in accordance with provisions of the Constitution.

9. On the irrationality ground, learned Counsel for the Petitioner submitted that the Chief Minister rejected the plea of a possible advancement in the conduct of elections as late as on October 8, 2003, stating the then ensuing Afro Asian Games and also the drought in the State as reasons. The drought has not disappeared. He categorically opined that there was no need to conduct elections and there was no need to advance the Assembly elections. Strangely, the reason for advancing the elections is also attributable to the drought. The prediction of failure of yet another monsoon in the coming season would be weighed as a serious set back and the Government obviously does not want to go for the polls with a dissatisfied agriculture sector. The pace gathering exercise on the welfare schemes is clearly a preparation for the election. Having decided the speed and having believed that the coming September would be inappropriate for elections for the ruling party, the Cabinet had recommended the dissolution of the Assembly and the advancement of elections.

10. In support of the mala fides on the part of respondent No. 4, it was urged that the State Government has been going over board with its announcements of sops for the people keeping the contemplated advanced elections in mind. Just because the party is in power it cannot be permitted to run havoc with the electoral process at its own whim and fancy. Even as the Government gears itself up to advice dissolution of the State Assembly, the Government has promised facilities aplenty to the citizens, which it would definitely use as its propaganda in the ensuing election. It is one thing for the Government to be committed to the larger cause of welfare and quite another to use the last few days in Government as an opportunity to garner votes. This is large-scale abuse of power and the decisions are a colourable exercise of power. It is a grand plan which amount to using the State Government and the State Assembly on the personal whims of the 4th Respondent. The past few months leading to a decision for early elections has been an open attempt to corrupt the Constitutional system. Having spent years in Office with anti people policies, the sudden change in the attitude of the Government will seriously affect the State's finances. Even that may not be a serious problem if the benefits reach out to the poor. Unfortunately the process is so focussed on gaining an unfair advantage that it seeks to even make calculations on the life of the State Assembly.

11. He further highlighted this argument urging that the various promises made by the Government since the date on which the Chief Minister escaped an attempt on his life would reveal the manner in which the Government has gone on to placate the voter with sops keeping in view the ensuing elections. The Government has suddenly exhibited a concern for the common man and has gone about rushing sops for the electorate. It has advised the dissolution of the Assembly with the hope that these announcements and the alleged sympathy wave, caused due to the attack on the life of the Chief Minister is opportune time

to hold elections. These can only be described as extraneous considerations for advising the dissolution of the Assembly whose life is till September, 2004.

12. While considering the submissions made before us, we have to keep in mind the exercise of power by the Governor under Article 163 of the Constitution and also the nature and scope of the exercise of power by the President under Article, 356 of the Constitution.

13. Under the Constitution, all the powers vested in the President must be exercised by him on the advise of the Council of Ministers responsible to the Government which scheme of the Constitution is reflected in Article 74 of the Constitution. Like Article 74, under Article 163, the Governor of a State is enjoined upon to exercise his functions on the advise of the Council of Ministers with the Chief Minister as the head to aid and advise him except with a difference that Article 163 further require that any function required to be exercised by Governor in his discretion will be exercised by him with such aid or advice. Article 163 of the Constitution reads:

163. Council of Ministers to aid and advise Governor :--(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his function except insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into by any Court

14. The power vested with the Governor either to prorogue the House of the Legislative Assembly of the State or to dissolve it is contained in Article 174 of the Constitution, which reads:

174. Sessions of the State. Legislature, prorogation and dissolution:--(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time-

(a) prorogue the House or either House;

(b) dissolve the Legislative Assembly.

15. This power is akin to the power of the President to prorogue the Houses of the Parliament or either house of the Parliament and to dissolve the House of the

People contained in Article 85 of the Constitution.

16. Though Article 163(1) of the Constitution obliges the Governor to act in accordance with the advice tendered by his Council of Ministers, excepting those matters with respect to which the Constitution requires him to exercise at his discretion and though the giving of a report under Article 356(1) is not so mentioned by the Constitution as a function to be exercised by him in his discretion, it is obvious that in the matter of the Governor reporting to the President that there has been a breakdown of the constitutional machinery must necessarily be a matter in which the Governor can possibly act according to the advice of his Council of Ministers.

17. We may make a reference on the extent and scope of judicial review on the action, under Article 356, of the President. The words "or otherwise" contained in Clause (1) of Article 356 indicate that the President may act on information received from sources otherwise than the Governor's report. It also would include report by some Union Minister or advice by Union Council of Ministers and therefore the word "shall" in Article 74(1) suggests that whether the President has or has not received a report from the Governor, the President can act under Article 356(1) only in accordance with the advice tendered by the Union Council of Ministers, and if the latter so advise, the President cannot but issue Proclamation under Article 356(1) in respect of the State concerned. Therefore, the exercise of the power by the President is conditioned with the words that if the President on receipt of report or otherwise is satisfied. It is the satisfaction of the President formed on the basis of the report of the Governor or otherwise that a situation has arisen in which Government of State cannot be carried in accordance with the provisions of the Constitution that proclamation can be issued, Because of this condition precedent of the satisfaction to be reached by the President, the question of judicial review has already been examined by the Supreme Court including the choice of discretion by the Governor as to the manner in which it is to be exercised.

18. In *Satya Pal Dang's* case (*supra*), the Constitution Bench held that the exercise of power to dissolve the State Assembly including the choice as to whether to exercise his power of prorogation or dissolution or to recommend to the President for exercise of the power under Article 356 of the Constitution belong to the arena of political expediency of his Council of Ministers so that Courts cannot interfere where the Governor has exercised his power on the advice of Council of Ministers.

19. Seven-Judge Constitution Bench in *Samsher Singh Vs. State of Punjab* and Another, , dealt with the manner of exercise of power by the President and Governor saying that the President as well as the Governor is the Constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, excepting the spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the

Constitution requires the satisfaction of the President or the Governors for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the Constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or Office under rules of business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of Minister or Officer under the rules of business is the decision of the President or the Governor.

20. In *State of Rajasthan and Others Vs. Union of India and Others*, , the precise question that had arisen before the Constitution Bench was as to the scope and ambit of the power of the President under Clause (1) of Article 356 and the circumstances in which the Court can interfere with the exercise of this power by the President. The Bench reiterated the position as regards the discretion of the Governor as to the exercise of his power of prorogation or dissolution or to recommend to the President for exercise of power under Article 356 as matters of political expediency. Majority in the aforesaid case held that even when Governor dissolves State Assembly with the Government commanding its majority on the ground suggested by the Union of India that Assembly has lost the confidence of the State electors who have returned to power another party at the Union elections, the Governor's action cannot be challenged as mala fide. It was observed that the choice between dissolution and re-election or retention of the same membership of the legislature or the Government for a certain period could be matters of political expediency and strategy under a democratic system. Quest of political power, through formation of several political parties, with different socio-economic policies and programmes and ideologies, under our system is legal. Thus the Bench observed that it cannot be said that a mere attempt to get more political power for a party, as a means of pursuing me programme of that party, as opposed to that of other parties, is constitutionally prohibited or per se illegal. There may be moral or even political objections to such course in certain circumstances. It may be urged mat States should be permitted to function undisturbed by any directions or advise by the Union Government despite their differences with it on matters of socio-economic or political policy or complexion. Rights were asserted on behalf of State legislators, as though they were legal rights to continue as legislators until the expiry of the constitutionally fixed spans of lives of their legislatures, barring cases of earlier dissolution.

21. The Bench however reiterated that it was only concerned in the said case with legal rights to dissolve and legal obstacles to such dissolution by the President and said Article 356(1) calls for an assessment of a "situation", which may embrace matters of political and executive policy and expediency. Courts

cannot interfere with these unless and until it is shown what constitutional provision the President is going to contravene or has contravened on admitted grounds of action under Article 356(1). While Article 74(2) disables the Courts from inquiring into the very existence or nature or contents of ministerial advice to the President, Article 356(5) makes it impossible for Courts to question the President's satisfaction "on any ground". Hence, Courts can only determine the validity of the action on whatever may remain for them to consider on what are admitted, on behalf of the President, to be grounds of Presidential satisfaction.

22. P.N. Bhagwati and A.C. Gupta JJ, generally agreeing with the majority view expressed by M.H. Beg C.J. observed:

The satisfaction of the President is a subjective one and cannot be tested by reference to any objective tests. It is deliberately and advisedly subjective because the matter in respect to which he is to be satisfied is of such a nature that its decision must necessarily be left to the executive branch of Government. It cannot, by its very nature, be a fit subject matter for judicial determination and hence it is left to the subjective satisfaction of the Central Government, which is best in a position to decide it. The Court cannot, in the circumstances, go into the question of correctness or adequacy of the facts and circumstances on which the satisfaction of the Central Government is based. That would be dangerous exercise for the Court, both because it is not a fit instrument for the determining a question of this kind and also because the Court would thereby usurp the function of the Central Government and in doing so, enter the "Political thicket", which it must avoid if it is to retain its legitimacy with the People, But if the satisfaction is mala fide or is based on wholly extraneous and irrelevant grounds, the Court would have jurisdiction to examine it, because in that case there would be no satisfaction of the President in regard to the matter in which he is required to be satisfied. The satisfaction of the President is a condition precedent to the exercise of power under Article 356. Clause (1) and if it can be shown that there is no satisfaction of the President at all, the exercise of the power would be constitutionally invalid, Of course by reason of Clause (5) of Article 356, the satisfaction of the President is final and conclusive and cannot be assailed on any, ground, but this immunity from attack can not apply where the challenge is not that the satisfaction is improper or unjustified, but that there is no satisfaction at all. In such a case it is not the satisfaction arrived at by the President, which is challenged, but the existence of the satisfaction itself. Of course in most cases it would be difficult, if not impossible, to challenge the exercise of power under Article 356, Clause (1) even on this limited ground, because the facts and circumstances on which the satisfaction is based would not be known, but where it is possible, the existence of the satisfaction can always be challenged on the ground that it is mala fide or based on wholly extraneous and irrelevant grounds.

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Article 174(2)(b) expressly vests the power of dissolving the legislative assembly

in the Governor even if that had to be on the advice of the Council of Ministers in the State, but the power to give such advise would automatically be taken over by the Union Government for the purposes of dissolution of the State Assembly when the President assumes Governmental powers by a Proclamation under Article 356(1). A dissolution by the President after the Proclamation would be as good as a dissolution by the Governor of a State whose powers are taken over.

23. After State of Rajasthan's case, question again arose, whether the President has unfettered power to issue proclamation under Article 356(1) of the Constitution, in the background of termination of Governments and dissolution of Legislative Assemblies in six States on different occasions and in different situations. 9-Judge Constitution Bench of the Supreme Court in S.R. Bommai and others Vs. Union of India and others etc. etc., , dealt with the point in the light of the question - is the proclamation amenable to judicial review, if yes, the scope of judicial review in this respect and the meaning to be given to the expression contained in Clause 356 i.e., "situation has arisen in which the Government of the State cannot be carried out in accordance with the provisions of the Constitution".

24. In the leading Judgment, Justice P.B. Sawant for himself and for Justice Kuldip Singh on analysis of the questions summarised their conclusions in para 91 of the report, as points I to VIII, which reads:

I. The validity of the Proclamation issued by the President under Article 356(1) is judicially reviewable to the extent of examining whether it was issued on the basis of any material at all or whether the material was relevant or whether the Proclamation was issued in the mala fide exercise of the power. When a prima facie case is made out in the challenge to the Proclamation, the burden is on the Union Government to prove that the relevant material did in fact exist, such material may be either the report of the Governor or other than the report.

II. Article 74(2) is not a bar against the scrutiny of the material on the basis of which the President had arrived at his satisfaction.

III. When the President issues Proclamation under Article 356(1), he may exercise all or any of the powers under Sub-clauses (a), (b) and (c) thereof. It is for him to decide which of the said powers he will exercise, and at what stage, taking into consideration the exigencies of the situation.

IV. Since the provisions contained in Clause (3) of Article 356 are intended to be a check on the powers of the President under Clause (1) thereof, it will not be permissible for the President to exercise powers under Sub-clauses (a), (b) and (c) of the latter clause, to take irreversible actions till at least both the Houses of Parliament have approved of the Proclamation. It is for this reason that the President will not be justified in dissolving the Legislative Assembly by using the powers of the Governor under Article 174(2)(b) read with Article 356(1)(a) till at least both the Houses of Parliament approve of the Proclamation.

V. If the Proclamation issued is held invalid, then notwithstanding the fact that it is approved by both Houses of Parliament, it will be open to the Court to restore the status quo ante to the issuance of the Proclamation and hence to restore the Legislative Assembly and the Ministry.

VI. In appropriate cases, the Court will have power by an interim injunction, to restrain the holding of fresh elections to the Legislative Assembly pending the final disposal of the challenge to the validity of the Proclamation to avoid the fait accompli and the remedy of judicial review being rendered fruitless. However, the Court will not interdict the issuance of the Proclamation or the exercise of any other power under the Proclamation.

VII. While restoring the status quo ante, it will be open for the Court to mould the relief suitably and declare as valid actions taken by the President till that date. It will also be open for Parliament and the Legislature of the State to validate the said actions of the President.

VIII. Secularism is a part of the basic structure of the Constitution, The acts of a State Government which are calculated to subvert or sabotage secularism as enshrined in our Constitution, can lawfully be deemed to give rise to a situation in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

25. Justice B.P. Jeevan Reddy and Justice S.C. Agarwal gave separate opinion that they were in broad agreement with conclusion No. VIII in the Judgment of Justice Sawant and, for reasons separately recorded, agreed with the conclusions of I, II, IV to VII, in the said Judgment of Justice Sawant, but summarised their conclusions in para 365 of the report, as follows :

(1) Article 356 of the Constitution confers a power upon the President to be exercised only where he is satisfied that a situation has arisen where the Government of a State cannot be carried on in accordance with the provisions of the Constitution. Under our Constitution, the power is really that of the Union Council of Ministers with the Prime Minister at its head. The satisfaction contemplated by the article is subjective in nature.

(2) The power conferred by Article 356 upon the President is a conditioned power. It is not an absolute power. The existence of material - which may comprise of or include the report(s) of the Governor - is a pre-condition. The satisfaction must be formed on relevant material. The recommendations of the Sarkaria Commission with respect to the exercise of power under Article 356 do merit serious consideration at the hands of all concerned.

(3) Though the power of dissolving of the Legislative Assembly can be said to be implicit in Clause (1) of Article 356, it must be held, having regard to the overall constitutional scheme that the President shall exercise it only after the Proclamation is approved by both Houses of Parliament under Clause (3) and not before. Until such approval, the President can only suspend the Legislative

Assembly by suspending the provisions of Constitution relating to the Legislative Assembly under Sub-clause (c) of Clause (1). The dissolution of Legislative Assembly is not a matter of course. It should be resorted to only where it is found necessary for achieving the purposes of the Proclamation.

(4) The Proclamation under Clause (1) can be issued only where the situation contemplated by the clause arises. In such a situation, the Government has to go. There is no room for holding that the President can take over some of the functions and powers of the State Government while keeping the State Government in office. There cannot be two Governments in one sphere.

(5)(a) Clause (3) of Article 356 is conceived as a check on the power of the President and also as a safeguard against abuse. In case both Houses of Parliament disapprove or do not approve the Proclamation, the Proclamation lapses at the end of the two-month period. In such a case, Government which was dismissed revives. The Legislative Assembly, which may have been kept in suspended animation gets reactivated. Since the Proclamation lapses - and is not retrospectively invalidated - the acts done, orders made and laws passed during the period of two months do not become illegal or void. They are, however, subject to review, repeal or modification by the Government/Legislative Assembly or other competent authority.

(b) However, if the Proclamation is approved by both the Houses within two months, the Government (which was dismissed) does not revive on the expiry of period of the Proclamation or on its revocation. Similarly, if the Legislative Assembly has been dissolved after the approval under Clause (3), the Legislative Assembly does not revive on the expiry of the period of Proclamation or on its revocation.

(6) Article 74(2) merely bars an enquiry into the question whether any, and if so, what advice was tendered by the Ministers to the President. It does not bar the Court from calling upon the Union Council of Ministers (Union of India) to disclose to the Court the material upon which the President had formed the requisite satisfaction. The material on the basis of which advice was tendered does not become part of the advice. Even if the material is looked into by or shown to the President, it does not partake the character of advice. Article 74(2) and Section 123 of the Evidence Act cover different fields. It may happen that while defending the Proclamation, the Minister or the official concerned may claim the privilege u/s 123. If and when such privilege is claimed, it will be decided on its own merits in accordance with the provisions of Section 123.

(7) The Proclamation under Article 356(1) is not immune from judicial review. The Supreme Court or the High Court can strike down the Proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds. The deletion of Clause (5) [which was introduced by the 38th (Amendment) Act] by the 44th (Amendment) Act, removes the cloud on the reviewability of the action. When called upon, the Union of India has to produce the material on the basis of

which action was taken. It cannot refuse to do so, if it seeks to defend the action. The Court will not go into the correctness of the material or its adequacy. Its enquiry is limited to see whether the material was relevant to the action. Even if part of the material is irrelevant, the Court cannot interfere so long as there is some material, which is relevant to the action taken.

(8) If the Court strikes down the Proclamation, it has the power to restore the dismissed Government to office and revive and reactivate the Legislative Assembly wherever it may have been dissolved or kept under suspension. In such a case, the Court has the power to declare that acts done, orders passed and laws made during the period the Proclamation was in force shall remain unaffected and be treated as valid. Such declaration, however, shall not preclude the Government/Legislative Assembly or other competent authority to review, repeal or modify such acts, orders and laws.

26. Justice S. Ratnavel Pandan gave his separate opinion while agreeing on points I, II and IV to VIII in the judgment of P.B. Sawant, J, but so far as reasoning and other conclusions are concerned agreed with the judgment of B.P. Jeevan Reddy speaking for himself and S.C, Agarwal, J.

27. Justice Varma speaking for himself and Yogeshwar Dayal, J., in his separate opinion stated that there was no dispute that the Proclamation issued under Article 356 is subject to judicial review but the question is confined essentially to the scope of judicial review or the area of justiciability in that sphere. He opined that the area of justiciability is narrow in view of the nature of the power and wide discretion, which inheres its exercise and thus held that the decision in State of Rajasthan (*supra*) does not require reconsideration.

28. Justice Ahmadi in his separate opinion agreed with the view expressed in Justice Sawant's Judgment as regards extent of the power of judicial review available in relation to Proclamation issued under Article 356 of the Constitution that it can be challenged on limited grounds that the action is mala fide or ultra vires of Article 356 and also found himself in agreement with the observations made by Justice Ramaswamy in his separate opinion that before exercise of Court's jurisdiction sufficient caution shall be administered and unless a strong and cogent prima facie case is made out, the executive must not be called upon to answer the charge since no quia timet action would be permissible in such cases, in view of the limited scope of judicial review.

29. Justice Ramaswamy in his separate opinion in para 195 of the report opined that the decision can be tested on the ground of legal mala fides, or high irrationality in the exercise of the discretion to issue Presidential Proclamation. Therefore, the satisfaction reached by the President for issuing the Proclamation under Article 356 must be tested only on those grounds of unconstitutionality, but not on the grounds that the material which enabled him to reach the satisfaction was not sufficient or inadequate. The traditional parameters of judicial review, therefore, cannot be extended to the area of exceptional and

extraordinary powers exercised under Article 356. The doctrine of proportionality cannot be extended to the power exercised under Article 356. The ultimate appeal over the action of the President is to the electorate and judicial self-restraint is called in aid, in which event the faith of the people in the efficacy of the judicial review would be strengthened and the judicial remedy becomes meaningful.

30. In the instant case, the Governor acted on the advise of the Council of Ministers. The advise was rendered by a resolution taken at the proceedings of the 1001st Meeting of the Council of Ministers held on 14.11.2003, which reads:

The Telugu Desam Government has been earnestly working for the all round development of Andhra Pradesh. In a major departure from conventional approaches, the Government defined a Vision 2020 spelling out the long-term aspirations, strategies and approaches for the State's development. As a result of the sincere efforts of the Government, the State has witnessed rapid progress on all fronts. Tangible gains have been made in tackling the endemic problems of poverty, illiteracy and backwardness. Andhra Pradesh has emerged as an international role model for many of its public policies. A major initiative has been taken to reinvent governance in the State by transforming the Government to make it simple, moral, accountable, responsive and transparent. The Government has genuine efforts to empower citizens through decentralisation of powers to local bodies and self-help groups, and through its flagship Janmabhoomi programme.

Against this backdrop of economic progress and all-round development, the State has had to contend with the mounting problems of extremism and a highly negative opposition. Extremism is adversely affecting investments into the State and negating the efforts of the Government to create opportunities for employment and a better life for the people of Andhra Pradesh. This is creating an atmosphere that is not conducive to industrialisation and economic progress of the State. Extremists of different hues and persuasions have been resorting to violence in order to derail the State's progress and destroy democratic institutions. They realise that the concerted efforts of the Government to improve the condition of the weaker sections, and address genuine grievances of the public, will not only render them irrelevant but threaten their very survival. The recent attack on the Chief Minister reflects the sense of growing desperation among the extremists at losing their ideological fig leaf of social and economic exploitation.

The opposition on its part has been playing an extremely opportunistic role by failing to take a clear stand on the issue of extremism. By urging the Government to hold talks with elements who have no respect for or faith in democracy, the opposition has been overtly encouraging extremism.

If the State has to develop, it has to effectively address and counter extremism, violence and crime are antithetical to development. No development is possible if

the State is held hostage to extremist violence.

We believe that the time has come to tackle extremism head on. If the State has to realise its true potential and achieve its true destiny of greatness, it has to counter extremism with courage and fortitude. We have no time to lose. Unless the issue of extremism is made the central issue of our time, and countered effectively and decisively, the State cannot move to a higher trajectory of growth and development. It is for this reason that despite commanding the complete confidence, trust and support of the people of Andhra Pradesh, the present Government feels it necessary to go to the public on the issue of extremism. It is important that a clear message is delivered by the people of this State, rejecting extremism and violence. Unless the people of the State unite and courageously express themselves individually and collectively against the politics of extremism and violence, the future of the State will be in peril. The Telugu Desam Government is willing to sacrifice its remaining term in Office in order to discharge its responsibility to the people of the State, by seeking a mandate from them rejecting extremism in the most clear and categorical manner.

In view of the grave threat posed to the Development of the State, by extremism, the Council of Ministers hereby resolves to recommend to the Governor of Andhra Pradesh to dissolve the Legislative Assembly under Article 174(2)(b) of the Constitution of India so as to enable early elections to be held and the people's will to be asserted.

31. This resolution of the Council of Ministers was handed over by the Chief Minister to the Governor along with his covering letter stating:

You are kindly aware that the present Telugu Desam Government has been earnestly working for the all-round development of Andhra Pradesh. However, extremism poses a serious threat to the State's development. It has become important therefore to go before the people and seek a clear mandate on the issue of extremist violence in the State. Unless extremism is countered in a clear and decisive manner, it will not be possible to develop Andhra Pradesh in keeping with the aspirations of the people. The opportunistic approach of the opposition in condoning extremist violence and urging talks with elements having no faith in democracy also needs to be exposed. Though the present Government enjoys the full confidence and support of the people of Andhra Pradesh, it is willing to sacrifice its remaining term in office in order to counter extremism through democratic means.

I enclose herewith a resolution of the Council of Ministers recommending dissolution of the House so that elections can be held and the will of the people against extremism can be clearly asserted.

32. The Governor considering the advice of the Council of Ministers recommending dissolution of the Assembly and on due consideration proceeded to dissolve it in exercise of his powers conferred on him under Article 174(2)(b) of the Constitution and requested the Chief Minister along with his colleagues in

the Council of Ministers to continue as Caretaker Government.

33. The petitioner has challenged the action of the Governor on the ground of mala fides. Mala fides are alleged only against Respondent No. 4 and are not alleged against the Council of Ministers or against the Governor personally. Neither the Council of Ministers nor the Governor for that reason have been impleaded as parties to the Writ Petition. On this point we are of the view that it is not Respondent No. 4 who rendered his separate or personal advice to the Governor and it is also not the case of the petitioners that the Governor has acted on the personal advice of Respondent No. 4. The case of the petitioners is that the Governor has acted on the advice of the Council of Ministers. Respondent No. 4 himself is not the Council of Ministers. He is only a part of the Council of Ministers. The resolution advising the Governor is a collective resolution passed unanimously by the Council of Ministers. Thus, it is a collective advice of the Council of Ministers. In the absence of any mala fides on the part of the Council of Ministers, who alone have tendered their advice to the Governor for dissolution of the Assembly and when the Governor has acted on such collective and unanimous advice of the Council of Ministers, it will be a futile exercise for us even to consider the allegations of mala fides levelled by the petitioner against Respondent No. 4. The decision of the Governor thus cannot be faulted with on this ground.

34. The next question - whether the decision of the Governor accepting the advice of the Council of the Ministers in dissolving the Legislative Assembly is vitiated due to non-application of mind or on the ground that the reasons contained in the advice of the Council of Ministers are extraneous and irrelevant or that the Governor ought not to have proceeded to accept the advice by dissolving the Legislative Assembly but ought to have exercised his discretion by sending a report to the President to exercise his power under Article 356 of the Constitution by issuing necessary proclamation that a situation had arisen in which Government of State cannot be carried out in accordance with the provisions of the Constitution.

35. In S.R. Bommai's case, majority opined that Clause (2) of Article 174 is not a bar against scrutiny of the material on the basis of which the President had arrived at his satisfaction. Accordingly, it was urged that Clause (3) of Article 163 will not be a bar against scrutiny of the material on the basis of which Governor had arrived at his satisfaction.

36. Again we have to keep in mind that recording of satisfaction by the Governor on the advice of Council of Ministers in order to dissolve the Legislative Assembly is not a condition precedent. Governor has to act on the advice of the Council of Ministers. What was the advice given by the Council of Ministers to the Governor is contained in the resolution, as quoted above, copy of which has been produced by the petitioner and apparently there is no other material before the Governor. Governor acted on the advice of the Council of Ministers and it is also not disputed by the petitioner that the Governor so acted. The reason for rendering

advice are manifold that in the backdrop of economic progress and all-round development, the State has had to contend with the mounting problems of extremism and highly negative opposition. Extremism is, adversely affecting investments into the State and there were circumstances leading to the conclusion that there is a sense of growing desperation among the extremists at losing their ideological fig leaf of social and economic exploitation and in case the State has to develop, it has to effectively address and counter extremism with courage and fortitude. The party in power was willing to sacrifice the remaining term of Office thereby seeking a mandate from the people rejecting extremism.

37. While exercising its power of judicial review of an action like the one under challenge, the Court will no doubt start with the presumption that it was validly taken but the Court will not and it should not hesitate to interfere if the invalidity or unconstitutionality of the action is clearly made out. Refusal to interfere in such a case would amount to abdication of the duty cast upon the Court.

38. The Governor acts on the aid and advice of the State Council of Ministers and not in his personal capacity. Having regard to the fact that this is a high constitutional power exercised by the highest constitutional functionary of the State, it may not be appropriate to adopt the same tests that are applicable in the case of action taken by a statutory or an administrative authority. Without trying to be exhaustive, we can say that if the action is found to be mala fide or is found to be based wholly on extraneous and/or irrelevant grounds, it is liable to be struck down, as indicated by a majority of learned Judges in the State of Rajasthan's and S.R. Bommai's cases supra. The Court cannot question the truth or correctness of the material. It will also not go into the adequacy of the material. It will also not substitute its own opinion for that of the Governor. Even some of the material on which the action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action. The ground of mala fides takes in inter alia situations where the action is found to be a clear case of abuse of power, or what is sometimes called fraud on power - cases where this power is invoked for achieving oblique ends.

39. It is necessary to reiterate that the Court must be conscious, while examining the validity of such an action on the part of the Governor that it is a power vested in the highest constitutional functionary of the State. The Court will not lightly presume abuse or misuse. The Court would, as it should, tread warily, making allowance for the fact that the Governor and his Council of Ministers are the best judges of the situation, that they alone are in possession of information and material- sensitive in nature sometimes -and that the Constitution has trusted their judgment in the matter. - As such the Court will not and is not expected to go into the correctness of the material or its adequacy or inadequacy in arriving at the decision. Enquiry is limited to see whether the material was relevant to the action or irrelevant. The Court will not interfere so long as there is some material, which is relevant to the action.

40. Therefore, it is not a case where there was no material before the Governor. There was material before him in the form of a resolution being the advice of the Council of Ministers. It is also the petitioner's case that mounting problem of extremism leading to numerous incidents is a well known fact of which judicial notice can be taken. With the help of newspaper cuttings and other reports produced on record, learned Counsel for the petitioner tried to project before us the gravity of the situation. Figures and other data as regards the, number of naxals killed in encounters, allegedly by police, and police personnel killed in encounters while combating extremism etc., were brought to our notice. As such, it cannot be said that there was no material before the Governor when he acted on the advice of the Council of Ministers. The reasons stated in support of the recommendation made by the Council of Ministers in their advice to the Governor cannot be said to be extraneous or irrelevant. The reasons are very much relevant. Stating that these are the reasons on the basis of which the party in power was prepared to sacrifice remaining period in office and would seek mandate from the public that whether they would like to support the party in power in its effort to tackle extremism head on or would like to support the opposition which in the view of the Council of Ministers was allegedly "overtly encouraging extremism", the advice was tendered. It was this material before the Governor, in the shape of resolution of the Council of Ministers, which led to the Governor exercising his discretion to dissolve the Legislative Assembly. We cannot go into the question about the correctness of the material or that whether it was sufficient or not to enable the Governor to take his decision. The Governor has to act on the said material and has to exercise his own discretion. The Governor accepted the advice of the Council of Ministers on the basis of the material contained in the resolution. Sufficiency of the material being beyond the Court's jurisdiction, on the touchstone of the principles laid down in *Bommai's* case *supra*, it will not be a case of judicial review on the ground of non-application of mind or on the ground that reasons contained in the advice of the Council of Ministers are extraneous and irrelevant.

41. Extent of judicial review also cannot be extended to such an extreme extent as is sought to be extended by learned Counsel for the petitioner in his submission that inability of the Government in power to tackle the problem of naxalism effectively itself is an admission of the fact that there has been breakdown in the Constitutional Machinery to such an extent which was sufficient for--the Governor to have sent his report to the President for exercising his powers under Clause (1) of Article 356 rather than exercising his discretion to dissolve the Legislative Assembly under Article 174. Court cannot form its own opinion and substitute with that of the Governor. As to in what manner the Governor ought to have exercised his discretion or ought not to have exercised his discretion, when recommendation was made and advice was tendered by the Council of Ministers for dissolution of the Legislative Assembly, is a question, which is in the absolute discretion of the Governor and there cannot be a judicial review thereon.

42. The President under Article 155 appoints the Governor of a State. He is indeed a part of the Government of the State. The executive power of the State is vested in him and is exercised by him directly or through Officers subordinate to him in accordance with the provisions of the Constitution i.e., Article 154. All executive action of the Government of a State are expressed to be taken in the name of the Governor, except a few functions, which he is required to exercise in his discretion. He has to exercise his powers with the aid and advice of the Council of Ministers with the Chief Minister at its head (Article 163), He takes the oath, prescribed by Article 159, to preserve, protect and defend the Constitution and the laws to the best of his ability. It is this obligation which requires him to report to the President on the commissions and omissions of the Government of his State which according to him are creating or have created a situation where the Government of the State cannot be carried on in accordance with the provisions of the Constitution. In fact, it would be a case of his reporting against his own Government but this may be a case of his wearing two hats, one as the head of the State Government and the other as the holder of an independent Constitutional Office, whose duty it is to preserve, protect and defend the Constitution. In *Shamsher Singh's case supra* this position was reiterated that since the Governor cannot himself take any action of the nature contemplated by Article 356(1), he reports the matter to the President and it is for the President to be satisfied -whether on the basis of the said report or on the basis of any other information, which he may receive otherwise - that situation of the nature contemplated by Article 356 has arisen.

43. The Sarkaria Commission was appointed to look into and report on Centre and State relations. It considered inter alia the manner in which this power has been exercised over the years and made certain recommendations designed to prevent its misuse. The Commission was headed by a distinguished Judge of the Supreme Court. The Commission made its report after an elaborate and exhaustive study of all relevant aspects. The Government of India has not accepted the report so far. In *Bommai's case*, Justice Jeevan Reddy observed that the opinions of Sarkaria Commission are certainly entitled to great weight notwithstanding the fact that it has not so far been accepted and quoted various passages from the report in support his judgment. In para 6-3-23 the Sarkaria Commission observed that though the words "a Government of the State cannot be carried on in accordance with the provisions of the Constitution" are of wide amplitude, each and every breach and infraction of constitutional provision, irrespective of its significance, extent and effect, couldn't be treated as constituting failure of constitutional machinery. The Commission said Article 356, provides remedy for a situation where there has been an actual breakdown of the constitutional machinery of the State. Any abuse or misuse of this drastic power, said the Commission, damages the fabric of the Constitution.

44. In *State of Rajasthan's case* it was observed that under our system, quest of political power, through formation of several political parties, with different socio-economic policies and programmes and ideologies, is legal. Hence, it cannot be

said that a mere attempt to get more political power for a party, as a means of pursuing the programme of that party, as opposed to that of other parties, is constitutionally prohibited or per se illegal. There may be moral or even political objections to the choice exercised by the President on the advice of the Union Council of Ministers, on receipt of report of the Governor of the State between dissolution and re-election or retention of the same membership of the Legislature or the Government for a certain period in certain circumstances. Such could be matters of political expediency and strategy under a democratic system. Article 163(3) disables Courts from inquiring into the very existence or nature or contents of ministerial advice to the Governor and thus bars judicial review so far as the advice given by the Ministers is concerned. It does not bar scrutiny of the material on the basis of which the advice is given. The Courts are not interested in either the advice given by the Council of Ministers to the Governor or the reasons for such advice. The Courts are, however, justified in probing as to whether there was any material on the basis of which the advice was given, and whether it was relevant for such advice and the Governor could have acted on it. Hence when the Courts undertake an enquiry into the existence of such material, the prohibition contained in Article 163(3) does not negate their right to know about the factual existence of any such material. The Governor on the basis of material has exercised discretion, which is relevant and germane to the action taken by him. It cannot be said that material was totally irrelevant or extraneous, nor it was demonstrated before us to be so. The Governor having exercised his discretion in accordance with the provisions of Article 163 read with Article 174, it will not be open for the Courts to substitute their opinion for that of the Governor and held that Governor ought to have taken a different course of action as suggested on behalf of the petitioner by submitting a report to the President under Article 356(1) of the Constitution. We find no force in the said submission also.

45. In view of the aforementioned discussion it is hardly a case of judicial interference and for that reason to admit the writ petition and call upon the respondents to answer the petition allegations. The writ petition, therefore, stands rejected.