

(1997) 11 MAD CK 0006
In the Madras High Court

R. Parthasarathy		APPELLANT
	Vs	
The Union of India (UOI)		RESPONDENT

Date of Decision : 06-11-1997

Acts Referred:

Citation : (1998) 1 MLJ 675

Hon'ble Judges : E. Padmanabhan, J

Bench : Division Bench

Judgement

E. Padmanabhan, J.—The petitioner, a party in person has filed the present writ petition, a public interest litigation praying for the issue of a

writ of declaration declaring the order/actions dated 20.4.1997 of the President of India in appointing Shri I.K. Gujral as Prime Minister as

unconstitutional and null and void ab initio and further direct or order for holding the twelfth general elections immediately.

2. In fact the petitioner in person took pains and argued the matter. Being a public interest litigation, this Court also heard the writ petitioner in

detail. It would be, not only essential, but also in the fitness of things to incorporate the material portion of the affidavit instead of summarizing the

averments.

3. The petitioner took this Court through the contents of the affidavit and it is sufficient to set out the material portions of the affidavit, which read

thus:

I say that I am aggrieved that the President of India has sabotaged and scuttled the Constitutional prerogative cum right of myself and the people of

India to choose once again our Prime Minister and constitute a Government based on our judgment and also in accordance with and in

consequence of our ruling stamped earlier by way of the "conditional mandate" offered in the last, that is, eleventh general elections, the condition

of that verdict was that the single largest party chosen by us should govern for at least one year or as long as they could prolong and after that the

parties must come back to us for a fresh mandate which will be given by us based on our judgment and evaluation of their conduct and

performance rendered during and upto that period, I am also further aggrieved by the presidential decision dated 20.4.1997 in having appointed

Thiru I.K. Gujral as Prime Minister and installed a ministry of United Front under his Prime Ministership with the outside support of the Congress

(I) Party, since the three reasons furnished by the President based on which he had arrived at his above decision are erroneous and

unconstitutional. The Congress (I) party withdrew its support to the United Front Government so formed on 31.3.1997 and informed the President

accordingly. Thereupon, the President directed Shri Deve Gowda to seek the confidence of the House of People on or before 11.4.1997. The

United Front Government sought and lost the confidence of the House of People on 11.4.1997, as a result of which the United Front Government

resigned. The Congress (I) Party once again intriguingly came forward to support the Government to be formed by the United Front from outside.

The President of India based on unsound reasoning and unconstitutional manner asked the very same confidence lacking united Front to form the

Government and accordingly a United Front Government was installed on 21.4.1997. This is an unconstitutional Government notwithstanding the

improper confidence given by the Parliament subsequently.

It is the formation and continuation of this United Front Government, that is the subjectmatter of controversy of this petition and I hereby aver that

the President ought to have ordered for a fresh mid term elections instead of installing a second Government of the United Front in the saddle of

power and this writ petition seeks the same.

The Constitution of India envisages, approves and provides for three kinds of mandatory verdict given by people in any election. The first one, let

us call it a "liberal verdict", offers majority of twothirds" member strength of Parliament to a single party or combination or parties formed before

the elections, which provides extraordinary and liberal powers to the Government

formed out of that verdict. The second one, a "limited verdict", provides simple majority of just in excess of the level of 50% strength of the Parliament, which provides only limited powers to the so formed Government. The third one, let it be called "conditional verdict" gives a single party or a combination of parties, such a combination having been formed before the elections, the largest number at less than 50% level stated above, which provides a minority Government to prolong as long as it can and return for a fresh verdict any time after one year. Obviously, such a minority Government is being kept under probation for at least one year and after watching, evaluating and judging its performance as well as the performance of other parties a suitable verdict will be returned by the people in the fresh elections that will follow. The third kind of "conditional verdict" was given in the last eleventh elections. But contrary to this orderly scheme, not only the single largest party, namely, the Bharathiya Janata Party was not allowed to govern for at least one year but the unconstitutionally formed United Front Government which could not carry on was not also directed to approach the people for a fresh mandate. Further that confidence-lost conglomeration has been allowed to continue to govern on some pretext or other. This is highly unconstitutional. A fresh midterms poll is therefore warranted.

It is highly unconstitutional to permit a conglomeration consisting of assortment of parties called United Front which lost the confidence of the House of People to form the Government once again soon afterwards.

It is highly unconstitutional ab initio to allow the 13 to 16 parties to flock together under the name and style of United Front and further to allow this combine to form Government with the support of Congress (I) Party, since such an arrangement is unknown to people before they elected their preferred parties and/or representatives. This unauthorised alliance is meant purely to grab power. Permitting such a procedure or process of forming coalition after the election leads to unconstitutional and unfair consequences and practises like horse trading, intimidation etc. This is violently against Part IV-A of the Constitution. The country, the political system, the Constitution and the people can expect no responsible Government from parties who have not even five per cent strength of Lok Sabha, but had four to five constitutional ministerial posts. The largest

single party or combination of parties selected by the people alone sought to have been allowed to continue to govern with a condition to return to people for a fresh verdict as soon as they could not carry on but in any event only any time after one year which is the pragmatic and prudent as well as the constitutional scheme aid solution in situations like this. Therefore, the President must have ordered a fresh election on 11.4.1997. But the coalition and its support parties and the President have prevented this. This is highly unconstitutional. The Hon"ble Court is duty bound to direct or order for a fresh election.

In connection with his decision to invite the defeated United Front parties to form Government once again, the President of India had by way of

explanation (copy of the communique dated 20.4.1997 published in the Hindu is enclosed) informed the people of India following three reasons

which weighed with him for arriving at the impugned unconstitutional decision.

(i) In view of the leader of the congress party in Parliament having declared that party's support to the formation of a Government by a new leader of the United Front.

(ii) In view of the Bharathiya Janatha Party's indication about its not being in a position to form a Government, and

(iii) On balance of consideration relevant to national interest (namely) the advisability at this Juncture, on refraining from a midterm poll so soon

after general election held in 1996.

... The appointment of the Prime Minister and the choice made regarding the party to form the Government automatically carries with it and

conveys thereby the confidence of the House of People in as much as the office of the President itself is part and parcel of House. The appointment

is valid enough to keep the incumbent in office for one year and after that the House can decide the matter if and when it so desires. On the other

hand, the strange procedure of stipulating the seeking of confidence of the House of people soon after the formation of Government will totally

prevent the establishment of minority Government of India. This is fundamentally against Democratic Parliamentary system of governance. Under

such unconstitutional procedure followed by the President naturally the largest single party namely the Bharathiya Janatha Party declined to form

Government. This offers only spurious support to the Presidential decision or

action.

The crucial question is what is meant by "so soon" by the President. While the Constitution has been meticulous in stipulating the upper time limit

for holding elections (even during emergency) it has in its wisdom thought fit not to prescribe any lower limit. It has to be taken that it has left to the

nation to develop a healthy convention in this regard. Though literally no time need not elapse between two elections, still since may constitutional

experts and the Constitution of many countries are in favour of holding the subsequent election after one year, this widely accepted norm can be

followed in India. As one year period was before the consideration of the President he ought to have considered it and holding of midterm

elections ought not to have been rejected by him. Since all the three reasons are neither sound nor are in accordance with Constitutional practices

the Presidential decision in not ordering a fresh general election but instead of ordering the installation of defeated and unauthorised coalition party

in power is unconstitutional.

4. According to the petitioner, the very appointment of Prime Minister by the President is prima facie unconstitutional, void ab initio besides if it is

permitted it would defeat the very constitutional provisions.

5. In this respect, the petitioner referred to Articles 74, 75 of the Constitution and contended that the very appointment of Thiru I.K. Gujral as

Prime Minister has to be quashed and the action of the President has to be declared as unconstitutional, and consequently, directions have to be

issued directing the Union to hold fresh general elections immediately.

6. The petitioner also placed reliance on the decisions reported in Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee,

Malkapur, , Dinesh Chandra v. Chaudhury Charan Singh AIR 1980 Del. 114 Madan Murari Verma Vs. Choudhuri Charan Singh and Another, ,

His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, and the text book "Cabinet Government", Chapter II Choice of Prime

Minister by Dr. Ivor Jennings".

7. this Court is referring to. a few of the citations, while holding that the other citations may not have any relevance to the points in issue.

8. Article 52 of the Constitution provides that there shall be a President of India. Article 53 of the Constitution provides that the executive power

of the Union shall be vested in the President and shall be exercised by him either directly or by officers subordinate to him in accordance with the provisions under the Constitution.

9. Article 54 provides for Election of President and Article 55 provides the manner of election of President. In terms of Article 56 of the Constitution, the President shall hold office for a term of five years from the date on which he enters upon his office. Article 58 of the Constitution prescribed the qualifications for election as President. A person who holds or who has held office as President is also eligible for reelection to that office.

10. Article 74 of the Constitution provides that there shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.

11. Proviso to Article 74 of the Constitution also provides that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration. 12. Article 75 of the Constitution, which is relevant for the purpose of the present writ petition reads thus:

(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advise of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period

cease to be a Minister. (6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and until

Parliament so determines, shall be as specified in the second Schedule.

13. In making choice of Prime Minister, the President of India has to act in his own discretion and while doing so, it is primordial to assess as to who will command or get confidence of Parliament.

14. In this respect it is essential to refer to the judgment reported in Madan Murari Verma Vs. Choudhuri Charan Singh and Another, , wherein

Sabyasachi Mukarji, J. (as he then was) has held thus:

Therefore, in the event that has happened since the resignation of Shri Morarji Desai as Prime Minister being the leader of the Janatha

Parliamentary Party and the recommendation of the leader of the opposition that the respondent No. 1 should be asked to form the Government,

in my opinion, the President of India in the facts and circumstances of this case legally and constitutionally was justified in calling upon the

respondent No. 1 to form the Ministry as he did. Whether he was politically so justified or not is not a matter for this Court to determine. this

Court cannot sit in judgment on the political assessment of the President. For that, in a democratic country he is answerable at the bar of the

popular verdict. The question No. 1 must therefore be decided in favour of the respondents in view of the authorities noted and in view of the

convention so far followed and recognized.

15. U.N.A. Rao Vs. Smt. Indira Gandhi, , while considering Article 75 of the Constitution vis-a-vis Article 74, Sikri, C.J., observed as follows:

Now comes the crucial clause three of Article 75. The appellant urged that the House of People having been dissolved this clause cannot be

complied with. According to him it follows from the provisions of this clause that it was contemplated that on the dissolution of the House of

People, the Prime Minister and the other ministers must resign or be dismissed by the President and the President must carry on the

Government as best as he can with the aid of the services. As we have shown above, Article 74(1) is mandatory and, therefore, the President

cannot exercise the executive power without the aid and advice of the council of Ministers. We must then harmonise the provisions of Article 75(3)

with Article 74(1) and Article 75(2) Article 75(3) brings into existence what is usually called "Responsible Government". In other words, the

Council of Ministers must enjoy the confidence of the House of People. While the House of people is not dissolved under Article 85(2)(b), Article

75(3) has full operation. But, when it is dissolved, the Council of Ministers cannot naturally enjoy the confidence of the House of People. Nobody

has said that the Council of Ministers does not enjoy the confidence of the House of People when it is prorogued. In the context, therefore, this

clause must be read as meaning that Article 75(3) only applies when the House of People does not stand dissolved or prorogued. We are not

concerned with the case where dissolution of the House of People takes place under Article 83(2) on the expiration of the period of five years

prescribed therein, for Parliament has provided for that contingency in Section 14 of the Representation of the People Act, 1951.

16. It is to be pointed out that political questions are unjusticiable, while interpretation of the Constitution involved in answering such questions

would be justiciable.

17. In this respect, a Division Bench of the Delhi High Court in AIR 1980 Del. 114 upheld the action of the President as proper and further held

that it is entirely constitutional and unobjectionable, the Division Bench has further held thus;

The scheme of the Government under the Constitution is its division into three parts, namely the executive, the legislature and the judiciary. It is not

without significance that the constitution of the legislature and their powers. The reason is that the President heading the executive is elected for a

certain term of years. The Parliamentary Executive, namely the Council of Ministers, also has a life which may be longer than the life of any

particular Lok Sabha. This is why Article 74 says that there shall be a Council of Ministers to aid and advice the President. That President and the

Council of Ministers precede in time the legislature in the process of Government is shown by the order in which the clauses of Article 75 are

arranged. Under Clause (1) the Prime Minister is appointed by the President first and the other Ministers subsequently on the advice of the Prime

Minister. The council of Ministers thus comes into being to aid and advice the President. The Government is thus constituted. Under Clause (2) the

Ministers shall hold office during the pleasure of the President. This only shows that the President is elected for a fixed term and the theoretically

has the power to dismiss a Minister. But this power would be exercised by the President only in the context of the other clauses of Article 75.

18. With respect to the second contention that was raised before the said Division Bench that it is only after a member of the Lok Sabha secures

the vote of confidence, he could be appointed as a Prime Minister or a Minister by the President, it has been held thus:

Since the decision as to which member of the Lok Sabha should be invited to form the Government has to be taken by the President, it is only the

constitutional convention which has to be respected by him in the choice of such a person. There may be a difference of opinion as to who was the

person best placed to succeed in getting a vote of confidence in the Lok Sabha. Such a difference of opinion is possible in the working of

conventions and, therefore, of constitutional law to some extent. As I.C. Wheare has said it is the association of law with convention within the

constitutional structure which is among its essential characteristics (statute of Westminster and Dominion Status, 5th Edn. P. 4). As observed by

Marshall and Moodie, it is also the reason "why it is impossible to settle constitutional disputes merely by reference to the state of law" (some

problems of the Constitution P. 31). Our finding on contention No. 2 is that legal status of the new Government was according to the convention

and also the Constitution so that its advice could be accepted by the President in respect of the prorogation of the House.

19. In the recent pronouncement of the Apex Court in S.P. Anand Vs. H.D. Deve Gowda and others, , the scope of Article 75 was the

subjectmatter of further consideration and the Apex Court has held thus:

Now Article 75(1) envisages a Council of Ministers with the Prime Minister at the hand to aid and advice the President, and the latter is expected

to act in accordance with such advice but if he has any reservations he may require the council of Ministers to reconsider such advice. Thus, the

President has to act in accordance with the advice of the Council of Ministers as a body and not go by the advice of any single individual. Only a

person who, the President thinks, commands the confidence of the Lok Sabha would be appointed the Prime Minister who in turn would choose

the other Ministers. The Council of Minister's is made collectively responsible to the House of the People, The form of the oath prescribed in the

Third schedule under Article 75(4) is the same for the Prime Minister as well as a Minister. In other words, the Constitution does not draw any

distinction between the Prime Minister and any other Minister in this behalf. This is not to say that the Prime Minister does not enjoy a special status; he does as the head of the Council of Ministers but the responsibility of the Council of Ministers to the House of the People is collective.

Besides, the caption of Article 75 as a whole is "other provisions as to Ministers". No separate provision is to be found dealing with the appointment of the Prime Minister as such. Therefore, even though the Prime Minister is appointed by the President after he is chosen by such manner of members of the House of the People as would ensure that he has the confidence of the House and would be able to command the support of the majority and the Ministers are appointed on the advice of the Prime Minister, the entire Council of Ministers is made collectively responsible to the House and that ensures the smooth functioning of the democratic machinery. If any Minister does not agree with the majority decision of the Council of Ministers, his option is to resign or accept the majority decision. If he does not, the Prime Minister would drop him from his cabinet and thus ensure collective responsibility. Therefore, even though a Prime Minister is not a member of either House of Parliament, once he is appointed he becomes answerable to the House and so also his Ministers and the principle of collective responsibility governs the democratic process. Even if a person is not a member of the House, if he has the support and confidence of the House, he can be chosen to head the council of Ministers without violating the norms of democracy and the requirement of being accountable to the House would ensure the smooth functioning of the democratic process.

20. A Full Bench of this Court in *S. Ramaswami alias Cho v. Union of India* 1984 WL.R. (Supp.) 1 had occasion to consider the question as to whether the appointment of Prime Minister could be questioned in a court of law and whether a writ of quo warranto could be issued. Ismail, J. while speaking for the Full Bench, after analysing the entire case law on the subject, has held thus:

It is against the background of the guidelines laid down in the above decisions, we propose to consider the arguments advanced on behalf of the petitioner in the former writ petition. Mr. Parasaran principally relied on Article 75 of the Constitution and the democratic character of the

Government established by the Constitution. Article 75(1) of the Constitution states that the Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. According to Clause (2) of that Article, the Ministers shall hold office during the pleasure of the President, Article 75(3) states; "The council of Ministers shall be collectively responsible to the House of the People. " Under Article 75(5), a Minister, who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister. The contention urged on behalf of the petitioner is that the fundamental postulate of the executive wing of the Government as contemplated in the Constitution is a responsible Government, namely, a Government enjoying the confidence and support of the Lok Sabha and that is sought to be assured by Article 75(3) of the Constitution and that in this case the appointment of Shri Charan Singh as Prime Minister and his continuance as Prime Minister of the Caretaker Government are in violation of the said Article 75(3) of the Constitution. Strictly from a legal point of view, Article 75(1) which states that the Prime Minister shall be appointed by the President does not state as to who can be appointed as Prime Minister. It is in this context the question of convention arises. According to Mr. Parasaran, if Article 75(1) is read with 75(3) it becomes clear that the person who could be appointed as Prime Minister must be one who is enjoying the confidence of the majority of the members of the House of the People, that is Lok Sabha and that is the basic postulate of the responsible and democratic Government. Consequently, according to the learned Counsel, Shri Charan Singh should have been called upon to establish his majority support in the Lok Sabha before he was appointed as Prime Minister, that in this case even when he was so called upon to establish his majority support, without facing the House and winning its support and confidence Shri Charan Singh resigned from his Prime Ministership thereby showing that he did not have the support of the majority of the members of Lok Sabha and mat therefore his appointment and continuance are in violation of not only the specific provision in the Constitution of not only the specific provision in the Constitution, but also the basic postulate underlying the democratic Government enshrined in the Constitution.

... Thus it will be seen that even. in the unwritten Constitution of England, the Sovereign is given a certain amount of discretion in the choice of the

Prime Minister, because at the time when the previous Government had resigned, there will be no cabinet to really advice the Sovereign whose

advice will be binding on the Sovereign.

In this particular case, after Shri Morarji Desai resigned from the office of Prime Ministership, naturally the President had to choose another person

for appointment as Prime Minister. All that could be said with reference to Articles 75(1) and 75(3) of the Constitution is that the President must

appoint a person, who, in his opinion, will be able to command or acquire the majority support of the member of the Lok Sabha, as the Prime

Minister. In the Present case, all that the petitioner in W.P. No. 3671 of 1979 has alleged in the affidavit filed in support of his writ petition is that

the reason for such invitation as found in the newspapers is that he enjoyed the support of more members of the Lok Sabha than the other

contender Shri Morarji Desai"". Nowhere the petitioner has stated that on 28th July, 1979 when Shri Charan Singh was appointed as Prime

Minister. It was established that he did not enjoy the majority support of the members of the Lok Sabha. The position as explained in the text

books referred to above will show that if no person enjoying the majority support of the House is available. the sovereign and in our country, the

President can call upon the person who happens to be the leader of the largest party in the House to form a cabinet. Therefore, from the pleadings

themselves there is no case by the petitioner that on 28th July, 1979 when Shri Charan Singh was appointed as Prime Minister, it was established

that he did not have the majority support or that he was not the leader of the largest single party or combination of parties in the House of the

People.

21. Thus, in terms of Article 75, the Prime Minister has been appointed by the President and in making choice of the Prime Minister, the President

of India has to act in his own discretion, which discretion being a political decision taken by the President cannot be challenged before this Court at

all, nor it could be the subject matter of judicial review under Article 226 of the Constitution.

22. Further, in terms of Article 361 of the Constitution, no court can compel the

President to exercise any power or to perform any duty, nor a court can compel him to forbear from exercising the power or performing the duties and the President is not amenable to writs or directions issued by any court. Hence, the decision taken by the President in terms of Article 75(1) of the Constitution is not justiciable.

23. Whether the President was politically so justified or not a matter for this Court to determine and this Court cannot sit in judgment on the political assessment of the President. Continuance of Mr. Gujral as Prime Minister and his cabinet is a democratic country of ours, is subject to his commanding majority or such support and he is answerable to the Parliament and to the popular verdict.

24. The appointment of Mr. Gujral as Prime Minister and his cabinet being a minority is invalid, cannot also be the subjectmatter of consideration in a writ under Article 226 of the Constitution, as it ultimately revolves around the majority either by a single party or by support of various other parties or by support of another independent party, which stands outside the cabinet and comes forward to support the cabinet in question, cannot also be the subjectmatter of judicial review.

25. It cannot be assumed that only a cabinet, which commands majority or full support alone can form cabinet or continue the Government. By the time the writ petition came to be filed and taken up for consideration, it has been established that Mr. Gujral, who has been appointed as Prime Minister by the President and who had taken oath on 21.4.1997 had also faced the Parliament and had secured a vote of confidence.

26. The later events also, after the swearing Thiru I.K. Gujral had established a commanding majority or acquired the majority support and at any rate, the decision of the President cannot be called in question under Article 226 of the Constitution.

27. The above facts are not disputed by the petitioner himself. For all the above reasons, this Court, while considering the contentions raised by the writ petitioner, party in person, holds that there are no merits in this writ petition and it is dismissed accordingly.