

(1989) 08 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 7899 of 1989

S.R. Bommai and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 04-08-1989

Acts Referred:

Constitution of India, 1950 — Article 131, 174 (2) (b), 32, 356, 74 (2)
Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection)
Rules, 1986 — Rule 3

Citation : AIR 1990 Kar 5 : (1989) ILR (Kar) 2425

Hon'ble Judges : Prem Chand Jain, C.J.; N. Venkatachala, J.; K. Shivashankar Bhat, J

Bench : Full Bench

Advocate : A.K. Subbaiah and B.T. Parthasarathy, Soli Sorabjee and H. Subramanya Jois, for the Appellant; K. Parasaran, Attorney General for India, C. Shivappa, Advocate General Karnataka, for the Respondent

Judgement

This Judgment has been overruled by : S.R. Bommai and others Vs. Union of India and others etc. etc., AIR 1994 SC 1918 : (1994) 2 JT 215 : (1994) 2 SCALE 37 : (1994) 3 SCC 1 : (1994) 2 SCR 644

Prem Chand Jain, C.J.—Sri S. R. Bommai and others have filed this writ petition under Article 226 of the Constitution of India calling in question the legality and Constitutional validity of the Presidential proclamation dated 21-4-1989 (Annexure L).

2. In order to appreciate the controversy, certain salient features of the case (except the allegations of mala fides made against respondent 3 the Governor, which were not pressed), may be noticed :-

Sri S. R. Bommai, the first petitioner, was functioning as the Chief Minister of the State of Karnataka, and the other three petitioners were members in his Council of Ministers on the date of the impugned proclamation. Before the dissolution of the State Assembly, when Janata Party had formed the Government, the party

wise strength of members in the Assembly was as follows:

(a) Janatha 139 (b) Congress 66 (c) C.P.M. 2 (d) C.P.I. 4 (e) B.J.P. 2 (f) Independents 8 (g) M.E.S. 3 (h) Nominated 1 _____ Total 225

It is averred that Sri Ramakrishna Hegde was elected as the Leader of the Janata Party and was sworn in as the Chief Minister in March, 1985. On 10-8-1988, Sri Ramakrishna Hegde resigned and the first petitioner was elected as the Leader of the Janata Legislature Party and was sworn in as the Chief Minister of the State on 13-8-1988. In the month of September, 1988, Janata Party and Lok Dal (B) merged resulting in the formation of Janata Dal. Consequent upon that formation, the Janata Legislature Party met and endorsed the merger of the Janata Party with Lok Dal (B) and thus forming a new party namely Janata Dal, unanimously. The Speaker was informed by the first petitioner about the merger as required under Rule 3 of the Karnataka Legislative Assembly, Disqualification of Members on grounds of defection, Rules, 1986. By a Notification dated 1-2-1989 (Annexure A), the Speaker recognised the group of 111 members of the Legislative Assembly as Janata Dal Legislators and the first petitioner as the Leader of their party. 7 independent members of the Legislative Assembly addressed letters supporting the first petitioner's leadership.

A Joint Session of the Karnataka Legislative Assembly and the Legislative Council, convened on 15-2-1989, was addressed by the Governor of Karnataka. In the same session, a Motion of thanks was also passed. Thereafter, the Budget Session of the Assembly being summoned on 17-3-1989, vote-on-ac-count for six months was passed in that Session.

It is further averred that on 15-4-1989 the Ministry was expanded by inducting into it 13 members thereby raising the total strength of the Council of Ministers to 34. This caused some dissatisfaction amongst the members of the Janata Dal.

On 17-4-1989, one Sri Kalyana Rao Molakeri who was with Sri H. D. Devc Gowda all along, but had joined Janata Dal and supported the first petitioner, defected and presented a letter to the Governor purporting to withdraw his support to the Janata Dal Government headed by the first petitioner. On 18-4-1989 he again met the Governor and presented 19 letters purported to have been signed by 17 Janata Dal legislators, 1 Associate independent member and 1 B.J.P. member, which were to the same effect. The Governor called the Secretary of the Karnataka Legislature and sought clarification on the genuineness of the signatures of the legislators. The Secretary submitted his opinion stating that the signatures on the said letters appeared to be of those who had signed the same. The Governor, however, did not inform the first petitioner about those letters at all.

The petitioner further aver that on 19-4-1989 itself the Governor sent his report to the President of India, copy of which is attached as Annexure G to the writ petition, which reads:--

"The Janata Party came into power in March, 1985. Shri Ramakrishna Hegde was elected as leader and became the Chief Minister. I took charge as Governor on 26-2-1988. By that time there were serious dissensions in the Janata Party one led by Shri Deve Gowda and another by Shri R. K. Hegde. There were charges and counter charges. The dissensions became open in the s to the Legislative Council and Rajya Sabha in 1988. Some members were elected to the Legislative Council supported by Shri Deve Gowda defeating the official candidates. This led to the resignation of Shri Deve Gowda. Later on Shri R. K. Hegde had to resign on the telephone tapping episode. Thereafter, there was an election for the new leader. Shri S. R. Bommai was elected as the new leader and took office as Chief Minister on 13-8-1988. On 14-8-1988, 12 Ministers were added including Shri Deve Gowda. Subsequently, in the wake of formation of Janata Dal there was a split in the Janata Party. Out of 139 MLAs, 112 MLAs including Speaker formed as Janata Dal and the remaining 27 MLAs remained in Janata Party led by Shri Deve Gowda. Consequently, Shri H. D. Deve Gowda resigned as Minister on 21-1-1989. During the formation of the Janata Dal it is said several members were lured to join Janata Dal from the Janata Party adopting some unethical methods. On 1-2-1989 the Speaker gave official recognition to the Janata Dal in the Assembly. On that date the party position in the Assembly existed as under :

1) Janata Dal	111	2) Congress (I)	65	3) Janata Party	27	4) Independents	8	5) C.P.I.	4	6) M.E.S.	3	7) C.P.I.(M)	2	8) B.J.P.	2	9) Speaker	1	10) Vacant	2
_____ Total 225 _____																			

2.7 Independents had pledged their support to Janata Dal led by Shri S. R. Bommai. The first expansion took place on 14-8-1988 with 12 Ministers, The second expansion took place on 13-3-1989, and 10 Ministers were added to the Council of Ministers. On 15-4-1989 again the Ministry was further expanded with 13 Ministers bringing the total strength to 34. A day prior to the last expansion i.e., on 15-4-1989 a lot of dissatisfaction and unrest was reported to have been expressed by a number of Janata Dal Members mainly due to their non-inclusion in the Ministry. 18 members of the Janata Dal in the Assembly and one member of the BJP have written to me that they are withdrawing their support to the Janata Dal Ministry headed by Shri S. R. Bommai. I got the signatures verified by the Secretary Legislature and he has reported after verifying their signatures with reference to the registers maintained in the Legislature Secretariat that the signatures of the members of the assembly who have written to me appear to have been signed by the respective members. This has reduced the strength of the Janata Dal from 118 (including 7 independent MLAs) to a minority. The Council of Ministers headed by Sri S. R, Bommai does not therefore, command a majority in the House. It is not appropriate under the Constitution to have the State administered by an Executive consisting of Council of Ministers, who do not command the majority in the House.

3. I am satisfied that in the circumstances now prevailing in the State a

constitution has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. I am also satisfied that there is no other party which is in a position to form the Government. Hence, I recommend to take action immediately under Article 356 of the Constitution of India and make a proclamation to assume to yourself all the functions of the Government of the State and also dissolve the Assembly of the State in accordance with the provisions of Article 174(2)(b) of the Constitution."

It is said that on 20-4-1989, 7 legislators out of those who had submitted their letters to the Governor wanted to urge that their respective signatures on them had been obtained by misrepresenting and misleading them and therefore they desired to reaffirm their support to the first petitioner, and the letters addressed by them in that regard to the Governor are immediately presented to the Governor by Sri B. Rachaiah, President of Janata Dal, and Smt. Leeladevi R. Prasad, Secretary, Legislature Party. On the same day (20-4-1989), it is also said that the State Cabinet met and decided to convene the legislative Assembly Session on 27-4-1989. The first petitioner and the Law Minister Prof. A. Lakshmisagar (third petitioner), it is further said, met the Governor on 20-4-1989 and informed him about the summoning of the Assembly Session, besides orally explaining to him the Constitutional provisions, judicial pronouncements and the recommendations of the Sarkaria Commission, in pointing out to him that the support to the Chief Minister should be tested on the floor of the Assembly where first petitioner was prepared to prove his majority. The first petitioner appears to have expressed his preparedness to propound the Assembly Session if so desired by the Governor. He is said to have sent a telex message as well, to the President of India. The Governor, it is stated, assured the first petitioner in the presence of the third petitioner that he would look into all aspects of the matter. However, another report was sent by the Governor to the President of India, which is also marked as Annexure G, which reads: --

"In continuation of my letter No. PSG/89 dated 19-4-1989, I am further to state that today Sri B. Rachaiah, Minister and President, Karnataka Janata Dal, and Smt. Leeladevi Prasad Secretary, Karnataka Janata Dal Legislature Party, handed over letters purportedly written by 7 MLAs that they had written earlier to me withdrawing their support to the Government headed by Sri S. R. Bommai under mistaken notion and were now requesting that no action need be taken on the letters submitted by them earlier. None of these 7 legislators has denied having written to me earlier withdrawing their support to the Government headed by Sri S. R. Bommai but in fact they have confirmed having written to me earlier withdrawing their support to the Ministry headed by Sri S. R. Bommai. It is evident from the letters now handed over to me by Shri Rachaiah and Smt. Leeladevi Prasad that the MLAs who had withdrawn their support to the Government headed by Sri S. R. Bommai are being pressurised. It is also reported that horse-trading is going on and the atmosphere is getting vitiated. I have already acted on the letters submitted by 19 MLAs earlier having satisfied myself that the Government headed by Sri S. R. Bommai did not continue to

enjoy the majority in the State Assembly. From the goings on, I strongly feel that the atmosphere is likely to be further vitiated by more horse-trading. I request you to take action on my earlier letter dated 19-4-1989."

Again on 21-4-1989 an effort is said to have been made to impress upon the Governor that the ruling Ministry continued to enjoy the confidence of the House and the majority support and the strength it had, could in fact be demonstrated on the floor of the House in the session on 27-4-1989 or even earlier to the date of the session by proposing it. Notwithstanding the said appeals made to the Governor and the President, it is said that on the evening of Friday the 21st of April, 1989 the impugned proclamation bringing about dissolution of the Assembly and imposing President's Rule was published. The material portion of the said proclamation (Annexure L), for facility of reference is reproduced :--

NOTIFICATION

New Delhi, Dated April 21, 1989. G.S.R. 460(E):-- The following Proclamation by the President is published for general information: --

Whereas, I, R. Venkataraman, President of India, have received a report from the Governor of the State of Karnataka and after considering the report and other information received by me, I am satisfied that a situation has arisen in which the Government of that State cannot be carried on in accordance with the provisions of the Constitution of India (hereinafter referred to as "the Constitution");

Now, therefore, in exercise of the powers conferred by Article 356 of the Constitution and of all other powers enabling me in that behalf, I hereby proclaim that I -

(a) assume to myself as President of India all functions of the Government of the said State and all powers vested in or exercisable by the Governor of that State;

(b) declare that the powers of the legislature of the said State shall be exercisable by or under the authority of Parliament; and

(c) make the following incidental and consequential provisions which appear to me to be necessary or desirable for giving effect to the objects of this Proclamation, namely :--

.....

....."

The petitioners have challenged the aforesaid Proclamation and have prayed for the following reliefs:--

"(a) Declare the Presidential Proclamation Dated 21-4-1989 produced with the petition as Annexure L as unconstitutional, null, void etc.,

(b) Issue a Writ of Mandamus or any other appropriate writ, order or direction,

quashing the proclamation-and the order dated 21-4-1989 appended to Annexure L, and further restraining the first respondent and its delegates, agents etc. From giving effect in any manner to the said proclamation and order; and

(c) Issue a Writ of Mandamus directing respondents Nos. 1 and 2 to permit the functioning of the Legislative Assembly of the State of Karnataka as elected in the General Elections held on 5-3-1985 thereby restoring the status quo ante prior to the date of the Presidential Proclamation; and

(d) Pass such other orders as this Hon"ble Court may deem fit and proper in the totality of the circumstances of the case, in the interest of justice and equity."

3. This writ petition came up for preliminary hearing before a learned single Judge of this Court who, by his orders dated 27-4-1989 and 30-5-1989, after issuing Rule, referred the petition to a Division Bench for disposal. Thereafter the matter came up before a Division Bench and ultimately it was decided that this petition be heard by a Special Bench and that is how we are seized of the matter.

4. The petition was not supported by a proper and legal affidavit. The petitioners were granted time to file an appropriate affidavit, which has now been filed.

5. The petitioner had filed I.A. VI praying for a direction to the respondents to produce the following documents at the time of final hearing :

"(1) The entire file relating to the submission of a memorandum by Smt. K.S. Nagarathamma and Shri T. N. Narasimha Murthy referred to in the letter dated 28-1-89 addressed by the third respondent to the first petitioner including the third respondent's reply as per Annexure B to the writ petition (to be produced by respondents 2 and 3).

(2) The entire file relating to the notification in No. V/11013/89-CSR dated 21-4-89 issued by the first respondent as per Annexure L (to be produced by respondents)."

This application being not pressed, was dismissed as such by our order dated 6-7-1989.

6. Separate written statements have been filed on behalf of respondents Nos. 1 and 2. In the statement of objections filed on behalf of the Union of India it is urged by way of preliminary objection that the decision of the President of India based on the report of the Governor and other information brought to his notice, is not justiciable. On merits, it is urged that the report of the Governor cannot be challenged or attacked in writ proceedings. It is stated that since the Governor in submitting a report under Art. 356 of the Constitution does not act on the aid and advice of the Council of Ministers, the State Government will not be in a position to defend the action of the Governor. It is also slated that the 2nd proviso to Art. 361(1) of the Constitution not being attracted to situations where the Governor under the Constitution acts in his discretion and not on the aid and advice of the Council of Ministers, the Governor is immune from any Court

proceedings under Art. 361 of the Constitution and cannot be made a party to any proceeding. It is also pleaded that as the report of the Governor would not be open to challenge, the proclamation under Art. 356 cannot be brought under challenge, and similarly as the decision of the President is based both on the report of the Governor and on other information the proclamation is not open to challenge inasmuch as: (a) the report of the Governor cannot be challenged in view of Art. 361 of the Constitution and (b) the other information before the President cannot be brought before the Court in view of the mandate of Art. 74 of the Constitution. It is further pleaded that the decision taken in issuing proclamation under Art. 356 of the Constitution is arrived at by the President on the recommendation of the Council of Ministers, which advice as contemplated by Art. 74 cannot be enquired into by any Court, and in view of the aid and advice tendered by the Council of Ministers and the report of the Governor and the other information on the basis of which the President has issued the proclamation under Art. 356 of the Constitution, the proclamation cannot be made the subject-matter of any proceedings before the Court. It is also pleaded that the proclamation issued on 21-4-1989 was laid before each House of Parliament as required under the provisions of Art. 356(3) of the Constitution and was approved after due deliberations by resolutions of both Houses of Parliament. In view of all this, it is urged that the writ petition filed by the petitioners challenging the legality and/or the validity of the said Presidential Proclamation and Order is not maintainable.

7. The second respondent in his short affidavit, has asserted that the Governor took into consideration the overall facts and circumstances prevailing in the State and thereafter submitted a report and that therefore the proclamation issued by the President in the circumstances of the case is perfectly valid.

8. It was contended by Mr. Soli Sorabjee, Senior Advocate, learned Counsel for the petitioners, that the power exercisable under Art. 356(1) of the Constitution is neither unlimited nor unfettered; that for the exercise of that power the existence of jurisdictional prerequisite that the Government or the administration of the State could not be carried on in accordance with the provisions of the Constitution, is essential; and that for the exercise of that power subjective satisfaction of an objective reality is a sine qua non. In order to show as to when this power was intended to be exercised, the learned counsel referred to the Constituent Assembly Debates (Vol. 9, Page 177) wherein Dr. B. R. Ambedkar has said thus:--

"In regard to the general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the provinces. In fact I share the sentiments expressed by my honourable friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called

into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President who is endowed with these powers will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article. It is only in those circumstances he would resort to this article. I do not think we could then say that these articles were imported in vain or that the President had acted wantonly."

Mr. Soli Sorabji also referred to Sarkaria Commission Report which, on this aspect of the matter, has stated that the exercise of power under Art. 356 of the Constitution must be limited to rectifying "failure of the Constitutional machinery in the State". The learned counsel further drew our attention to the illustrations of improper invoking of Art. 356 of the Constitution of India, in the Commission's Report particular emphasis being laid on the following:--

"(i) A situation of maladministration in a State when a duly constituted Ministry enjoying majority support in the Assembly, is in office. Imposition of President's Rule in such a situation will be extraneous to the purpose for which the power under Art. 356 has been conferred. It was made indubitably clear by the Constitution framers that this power is not meant to be exercised for the purpose of securing good government.

(ii) When a Ministry resigns or is dismissed on losing its majority support in the Assembly and the Governor recommends, imposition of President's rule without exploring the possibility of installing an alternative government enjoying such support or ordering fresh elections.

(iii) Where, despite the advice of a duly constituted Ministry which has not been defeated on the floor of the House, the Governor declines to dissolve the Assembly and without giving the Ministry an opportunity to demonstrate its majority support through the "floor test", recommends its supersession and imposition of President's rule merely on his subjective assessment that the Ministry no longer commands the confidence of the Assembly.

.....

.....

(vi) The use of the power under Art. 356 will be improper if, in the illustrations given in the preceding paragraphs 6.4.10, 6.4.11 and 6.4.12, the President gives no prior warning or opportunity to the State Government to correct itself. Such a warning can be dispensed with only in cases of extreme urgency where failure on the part of the Union to take immediate action, under Art. 356, will lead to disastrous consequences.

.....

.....

(viii) The use of this power to sort out internal differences or intra-party problems of the ruling party would not be constitutionally correct."

9. Adverting to the facts of the case on hand the learned counsel contended that before submitting his report recommending for the dissolution of the Assembly the Governor acted with desperate haste inasmuch as on admitted facts there was no demonstrable breakdown of the State Government's machinery. Having taken us through the reports of the Governor, the learned counsel submitted that the Governor did not allow the first petitioner to prove his majority on the floor of the House when admitting the Assembly Session had been summoned for 27th February 1989 to demonstrate successfully his majority, and did not even explore the possibility of an alternative Government being formed, and that without resorting to the floor test which was imperative before making a recommendation he (Governor) had completely circumvented the Anti Defection law. It was his submission that the impugned proclamation based obviously on Convenor's reports which were perverse and founded on wholly irrelevant materials, is liable to be struck down by this Court in exercise of its jurisdiction under Art. 226 of the Constitution. Mr. Soli Sorabjee besides referring to some other judicial pronouncements to which we shall advert later, placed reliance on the leading and authoritative judgment of the Supreme Court on the subject rendered in *State of Rajasthan and Others Vs. Union of India and Others*, .

10. On the other hand, according to the learned Attorney General there were two aspects of the matter viz. (i) justiciability and the parameters within which (he court can examine the matter, and (ii) merits. It was argued by the learned Attorney General that the satisfaction of the President being made deliberately subjective, cannot be tested by reference to objective tests and that the sufficiency of the grounds on which the order was based was beyond judicial scrutiny. On the question of justiciability, the learned Attorney General very fairly conceded that if the Government states that action was taken on a specified ground and that that ground falls completely outside the scope of Art. 356 of the Constitution, the Court would have jurisdiction to interfere or if the Government's own disclosure reveals that extraneous or collateral purposes are sought to be achieved then again, the court can interfere; but if the grounds disclosed have relevance or reasonable or rational nexus to the satisfaction reached under Art. 356 of the Constitution, then the sufficiency or otherwise of the grounds on which the impugned action was based cannot be gone into.

11. The learned Attorney General further contended that if what is disclosed is not the only ground and if all the grounds are not before the Court, the Court will have no power to ask for the disclosure of the undisclosed grounds, nor has it the power to interfere with the impugned action by reason of such non-disclosure. The learned Attorney General emphasised that the decision under Art.

356(1) of the Constitution to issue a proclamation being largely a political judgment based on diverse and varied factors, such a decision cannot be regarded as one based on "judicially discoverable and manageable standards" and further, if the facts disclosed lie in the field or an area purely of a political nature, it would in fact be prohibited field or area for the Court even to enter.

12. The extent to which interference, by Court, with a decision under Art. 356(1) of the Constitution was permissible, the learned Attorney General, as well, relied upon the Supreme Court judgment in *State of Rajasthan and Others Vs. Union of India and Others*, , inviting our attention, in particular, to paras 28,34,75 and 83 in the judgment of Beg C. J. and paras 127, 146, 169, 177 and 208 in the judgments of Chandrachud, J. Bhagwati, J. Goswamy, J. Untwalia, J. and Fazal Ali, respectively, on the point that the decision of issuing a proclamation is largely a political judgment and is not based on "judicially discoverable and manageable standards", the learned Attorney General referred to paras 143 and 144 and paras 177 and 179 in the judgments of Bhagwati, J. and Untwalia J. respectively.

13. In the light of the arguments of learned counsel for the parties, the first question which calls for our consideration and decision is, whether the proclamation issued under Art. 356(1) of the Constitution is justiciable, and if so, to what extent?

Though arguments addressed by learned counsel on the said question, to begin with, were wide ranging, yet ultimately there was a near unanimity among them as to the answer to the question inasmuch as the learned counsel for the parties were agreed that the proclamation is justiciable in the sense that its validity could be gone into by the Court to see if the proclamation satisfied the constitutional requirement.

The basic judgment on the subject is *State of Rajasthan and Others Vs. Union of India and Others*, which dealt with several suits and writ petitions filed in the Supreme Court apprehending dissolution of the State Assemblies by the President in exercise of his powers under Art. 356(1) of the Constitution. Though those suits and writ petitions in which injunctive reliefs were sought against the Union of India from taking action under Art. 356 of the Constitution on the basis of a letter written by the then Home Minister Sri Charan Singh and certain speech made by the then Law Minister Sri Shanti Bhushan, were held to be not maintainable, yet the Supreme Court has expressed itself on all important aspects of Art. 356(1) of the Constitution and the manner of exercise of the power thereunder. The observations made by the learned Chief Justice and other learned Judges on various important aspects of Art.356(1) read thus:--

Beg, C. J.

"75. Whenever the exercise of power to issue a proclamation under Art. 356(1) of the Constitution has been challenged in a High Court it has been held that sufficiency of grounds on which the order is based could not be questioned.

Some of the dicta found there seem to lay down that the exercise of power to issue proclamations is not justiciable at all under any circumstances. This Court has not gone so far as that. If it is actually stated on behalf of the Union Government that an action was taken on a particular ground which really falls completely outside the purview of Art. 356(1), the proclamation will be vitiated, not because the satisfaction was challenged or called in question on any ground but because it was admitted to be on matters outside Art. 356(1)."

Chandrachud, J.

"124..... so long as the reasons, if any are disclosed, given for the action proposed or taken, bear a reasonable nexus with the exercise of the particular power, the satisfaction of the President must be treated as conclusive. It will then not be open to judicial scrutiny. If, however, the reasons given are wholly extraneous to the formation of the satisfaction, the proclamation would be open to the attack that it is vitiated by legal mala fides."

Bhagwati & A. C. Gupta, JJ.

"141 And lastly, the power conferred on the President, that is, the Central Government, being a limited power, its exercise would, within the narrow minimal area which we shall indicate later, be subject to judicial reviewability. These are the safeguards which must allay the apprehension that the Central Government may act wantonly or capriciously in issuing a proclamation under Art. 356, Cl.(1) by passing and ignoring the two Houses of Parliament.

143 It will, therefore, be seen that merely because a question has a political colour, the Court cannot fold its hands in despair and declare Judicial hands off. So long as question arises whether an authority under the Constitution has acted within the limits of its power or exceeds it, it can certainly be decided by the court. Indeed it would be its constitutional obligation to do so Where there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the court to intervene. Let it not be forgotten, that to this Court as much as to other branches of Government, is committed the conservation and furtherance of democratic values. The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the Court.

Goswami, J.

"170. I am not prepared to say that this Court, which is the last recourse for the oppressed and the bewildered, will, for good, refuse to consider when there may be sufficient materials to establish that a proclamation under Art. 356(1) is tainted with mala fides"

Untwalia, J.

"178. I, however, must hasten to add that I cannot persuade myself to subscribe to the view that under no circumstances an order of proclamation made by the President under Art. 356 can be challenged in a court of law"

Fazal Ali, J.

"208We must, however, hasten to add that this does not mean that the Central Government has a free licence to pass any arbitrary or despotic order or to clothe it with a blanket power to do anything it likes against the well established legal norms or principles of political ethics. Such an arbitrary or naked action in a suitable case may amount to a fraud on the Constitution and destroy the very roots of the power exercised. In fact the Additional Solicitor General candidly contended that if the action under Art. 356 is absolutely and demonstrably absurd or perverse or self-evidently mala fide and there is total absence of any nexus whatsoever between the action taken and the scope and object of Art. 356, judicial intervention may be available in such a case....."

After stating that there is a prohibited area for the Courts to enter, still a situation may arise where the jurisdiction of the Court was not ousted. Untwalia, J. in para 179 has observed thus :

"But then, what did I mean by saying that a situation may arise in a given case where the jurisdiction of the Court is not completely ousted? I mean this. If, without entering into the prohibited area, remaining on the fence, almost on the face of the impugned order or the threatened action of the President it is reasonably possible to say that in the eye of law it is no order or action as it is in flagrant violation of the very words of a particular Article, justifying the conclusion that the order is ultra vires, wholly illegal or passed mala fide, in such a situation it will be tantamount in law to be no order at all. Then this Court is not powerless to interfere with such an order and may, rather, must, strike it down. But it is incompetent and hazardous for the Court to draw such conclusions by investigation of facts by entering into the prohibited area. It would be equally untenable to say that the Court would be powerless to strike down the order, if on its face, or, if I may put it, by going round the circumstance of the prohibited area, the Court finds the order as a mere pretence or a colourable exercise of the extraordinary powers given under certain Articles of the Constitution. In a given case it may be possible to conclude that it is a fraud on the exercise of the power....."

14. Mr. Soli Sorabjee sought sustenance for his attack directed against the impugned proclamation within the bounds stated above and as interpreted by him.

15. Apart from the observations in State of Rajasthan and Others Vs. Union of India and Others, extracted above, there are a few more observations which deal with the peripheries or limitations of judicial scrutiny, and they read :--

Beg, C. J.

"29. The choice between a dissolution and re-election or a 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. 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

34 In so far as Art. 356(1) 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 Art. 356(1) for, while Art. 74(2) disables Courts from inquiring into the very existence or nature or contents of ministerial advice to the President, Art. 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"

37..... Whether a particular view or proposed action, in a particular situation amounts to enforcing or subverting the Constitution thus becomes a highly controversial political issue on which the letter of the Constitution tends to be relegated to the background.

73 it could not possibly be asserted that procuring the dissolution of a State Legislative Assembly, with the object of gaining a political victory, is, in itself, an extraneous object which could not fall at all under Art. 356 of the Constitution The sufficiency or adequacy of the grounds for action under Art. 356(1) of the Constitution is quite another matter. We do not think that we can go into that at all here.

82 Such discretion is governed by a large element of policy which is not amenable to the jurisdiction of courts except in cases of patent or indubitable mala fides or excess of power. Its exercise rests on materials which are not examinable by Courts. Indeed it is difficult to imagine how the grounds of section (satisfaction?) under Art. 356(1) could be examined when Article 74(2) lays down that the question whether any, and if so, what advice was tendered by the Ministers to the President, shall not be inquired into in any Court.

83 Nevertheless, if all the grounds of action taken under Art. 356(1) of the Constitution are disclosed to the public by the Union Government and its own disclosure of grounds reveals that a constitutionally or legally prohibited or extraneous or collateral purpose is sought to be achieved by a proclamation under Art. 356 of the Constitution, this Court will not shirk its duty to act in the manner in which the law may then oblige it to act. But, when we find that allegations made in the complaints and in the petitions before us relate, in substance, only to the sufficiency of the grounds of action under Art. 356(1) of the Constitution and go no further, we cannot proceed further with the consideration of the complaints under Art. 131 or the petitions under Art. 32 of the

Constitution."

Chandrachud, J.

"125 These grounds cannot with any show of reason be dismissed as bearing no rational nexus with the necessity for issuing a proclamation with a view to dissolving the Legislative Assemblies of the nine States.

126. Probing at any greater depth into the reasons given by the Home Minister is to enter a field from which Judges must scrupulously keep away. That field is reserved for the politician and the Courts must avoid trespassing into it. That is not always an easy task because the line of demarcation that separates the functions of this Court from those of the Government tend to become blurred, when constitutional problems raise issues concerning the high policies of the executive. In the United States, de Tocqueville noted as early as in 1832 that sooner or later every political question becomes a judicial question. Leo Pfeffer therefore thought that though when the Supreme Court decided constitutional questions it had the trappings of a court of law, "it is supreme but it is not really a court". "This Honourable Court" by Leo Pfeffer, Indian Reprint 1967, p. 7. This is a warning well worth remembering but it must not deter the courts from discharging their functions if they find that a constitutional power meant to be exercised for preserving democracy is being used for destroying it. The Home Minister's letter is clearly and indubitably on the safe side of the line and I see no justification either for questioning the bona fides of the case made out by him in the letter or for doubting the authenticity of the facts stated therein. As said by Justice Harlan F. Stone in his oft-quoted dissenting opinion: "Courts are not the only agents of Government that must be assumed to have capacity to govern". *United States v. Butler* (1935) 297 US 1 87.

127. I need not therefore enter into the question whether the Government of India has reasons apart from those stated in the Home Minister's letter for advising the President to issue the proclamation. If they have, so far so good. They may not choose to disclose them but if they do, as they have done now, they cannot prevent a judicial scrutiny thereof for the limited purpose of seeing whether the reasons bear any rational nexus with the action proposed."

Bhagwati & A. C. Gupta, JJ.

"141. It must be remembered that merely because power may sometime be abused, it is no ground for denying the existence of the power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief. In the last analysis, a great deal must depend on the wisdom and honesty, integrity and character of those who are in charge of administration and the existence of enlightened and alert public opinion.

143. Every constitutional question concerns the allocation and exercise of governmental power and no constitutional question can therefore fail to be

political. A constitution is a matter of purest politics, a structure of power

144. But one thing is certain that 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 (sic-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 Art. 356, Cl. (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 Cl. (5) of Art. 356 the satisfaction of the President is final and conclusive and cannot be assailed on any ground, but, this immunity from attack cannot 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

It must of course be conceded that in most cases it would be difficult, if not impossible, to challenge the exercise of power under Article 356, Cl. (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"

(Underlining is ours)

Fazal Ali, J.

"203 It is, however, sufficient to indicate here that an order passed under Art. 356 is immune from judicial scrutiny and unless it is shown that the President has been guided by extraneous considerations it cannot be examined by the Courts.

206..... It is true that if the opinion of the Central Government was based on extraneous or irrelevant materials or it was guided by purely personal considerations or ulterior motives, the Court could have held such an action to be mala fide and struck it down"

16. By referring to Art. 74(2) of the Constitution, the Supreme Court held in State of Rajasthan and Others Vs. Union of India and Others, that the satisfaction of the President being based on the advice of the Council of Ministers, it will be impermissible for the Court to enquire into the basis of the satisfaction arrived at under Art. 356 of the Constitution unless the basis for the satisfaction is voluntarily disclosed to the Court by the Union Government. It is precisely this context in which the learned Judges of the Supreme Court came to observe that the constitutional validity of the proclamation issued under Art. 356(1) of the Constitution would be judged only from the disclosed reasons, and, if the reasons are not disclosed, court would be helpless to scrutinise such validity. While dealing with this aspect, Mr. Soli Sorabjee addressed elaborate

arguments in his endeavour to substantiate his stand that Art. 74(2) of the Constitution does not bar the disclosure of such of those materials which are independent of the advice though the advice itself might have been based on such material. According to Mr. Soli Sorabjee the protection against revelation afforded by Article 74(2), cannot extend to such of the material like information obtained by the Union Government from or through different individuals or agencies. In this regard, strong reliance was placed on the observations of Bhagwati, J. in *S.P. Gupta Vs. President of India and Others*, which read as under :

"This is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Art. 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest."

This aspect of the matter, however, need not detain us here as it has to be considered at a later stage.

17. For a proper appreciation of the arguments of the learned counsel addressed respecting the validity of impugned proclamation, the ratio of the decision in *State of Rajasthan and Others Vs. Union of India and Others*, may be stated thus:--

(i) Proclamation issued under Art. 356(1) of the Constitution is not wholly outside the pale of judicial scrutiny.

(ii) The satisfaction of the President under Art, 356(1), which is a condition precedent for issue of proclamation, should be a real and genuine satisfaction based on relevant facts and circumstances.

(iii) Though the satisfaction to be reached under Art. 356(1) may be subjective, if such satisfaction reached was on the basis of material or the reasons which had no nexus to the satisfaction envisaged in Art. 356 or if the materials disclosed or reasons given are wholly extraneous to the formation of such satisfaction, the proclamation itself would be unconstitutional.

(iv) The scope of judicial scrutiny shall be, confined to an examination whether the disclosed reasons bear any rational nexus to the action proposed or proclamation issued. However, courts may examine as to whether the proclamation was based on a satisfaction which was mala fide for any reason (subject to the limitations inherent in the power as to the materials from which inference of mala fide can be derived). Only if the satisfaction is mala fide or is

based on wholly extraneous and irrelevant grounds, the Courts would have jurisdiction to examine it, because, only in such a situation the stated satisfaction of the President would not be a satisfaction in the constitutional sense under Art. 356.

18. From the said principles which have been derived at by the Supreme Court in Rajasthan case dehors Cl. (5) of Art. 356 as it then stood it becomes quite evident that the proclamation made under Art. 356 of the Constitution is justiciable and that the Courts could look into the materials or the reasons disclosed for issuing the proclamation, to find out whether those materials or reasons were wholly extraneous to the formation of the satisfaction and had no rational nexus at all to the satisfaction reached under Art. 356 of the Constitution.

19. It may be observed here that learned counsel for the petitioners very fairly did not attribute any personal motivation or bias or mala fides to the Governor or the Council of Ministers at the Centre. It was, on the other hand, only legal mala fides which was made the basis of attack by Mr, Soli Sorabjee by contending that the Presidential satisfaction did not bear any rational nexus to the satisfaction arrived at in issuing the impugned proclamation under Art. 356.

20. The Presidential Proclamation, which has been reproduced in the earlier part of this judgment, says that the President's satisfaction was founded on consideration of (i) the report of the Governor, and (ii) other information. The copies of the reports sent by the Governor have been produced by the petitioners, and those reports are admitted to be true copies of the originals, even by the first respondent. Therefore, out of the two sources of material which led to the satisfaction under Art. 356, one is disclosed. The question whether the other ground or source of material which is not disclosed was irrelevant or whether its non-disclosure would attract the presumption of irrelevancy, shall be adverted to after considering the disclosed material in the Governor's report and finding whether what was contained therein had rational nexus to the satisfaction reached under Art. 356 or was wholly extraneous to it.

21. What is it that the Governor's report contains may now be looked into. Governor's two reports (Annexure-G) if analysed, would show that they contain facts, inferences drawn and the conclusions reached by him on the basis of those facts, they being:--

FACTS:

(i) Serious dissensions cropping up in Janta Party, a Legislature Party, while it had formed the Government in the State and was running it, on account of factions, one led by Sri R. K. Hegde and another led by Sri Deve Gowda. Such dissensions having come to the surface in the elections held to the Legislative Council and Rajya Sabha in 1988.

(ii) Sri R. K. Hegde who was the leader of Janta Legislature Party running the Government tendering his resignation as Chief-Minister and giving up his

leadership of Janta Legislature Party on account of a telephone tapping episode --: in his place Sri S. R. Bommai having been elected as the Leader of Janta Legislature Party, forming the Government and becoming Chief Minister on 13-8-1988.

(iii) a split in the Janta Party occurring and out of 139 MLAs in Janta Legislature Party 27 MLAs continuing as Janta Party MLAs but other 112 MLAs (including the Speaker) becoming Janta Dal MLAs and forming a Legislature Party (group) supported by 7 independent MLAs in the House, there being in all in that party or group 119 MLAs. Position of MLAs with reference to party wise strength in the Assembly as on 1-2-1989 being:

1. Janata Dal 111
2. Congress (1) 65
3. Janata Party 27
4. Independents 8
5. CPI 4
6. MES 3
7. CPI(M) 2
8. B.J.P. 1
9. Speaker 1
10. Vacant 2

Total

225

(iv) Letters of 18 MLAs of Janata Dal and 1 MLA of B.J.P. being written to Governor withdrawing their support to Janata Dal Ministry headed by Sri S. R. Bommai -- with the loss of support of the said MLAs, Janata Dal Party (group) of 118 being reduced to a minority (obviously to 100) and Council of Ministers headed by Sri Bommai not commanding therefore a majority in the House.

(v) 7 MLAs' letters submitted through Sri Rachaiah and Smt. Leeladevi Prasad not to take action on their previous letters of withdrawal of support to the Ministry headed by Sri Bommai.

INFERENCES:

- (i) That the party (group) running the Government is reduced to a minority.
- (ii) That no other party is in a position to form the Government.
- (iii) That 7 MLAs from whom Sri Rachaiah and Smt. Leeladevi Prasad had received letters, must have been pressurised.

(iv) That horse-trading is going on.

(v) That not taking action as recommended in the first report was likely to further vitiate the atmosphere.

CONCLUSION :

A situation has arisen in the State in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

22. In the instant case, the first source i.e. the report of the Governor, and not the second source "otherwise", is available. We have now to see what that "report" which is envisaged in Art. 356(1) should contain.

Before embarking on that enquiry, it may be appropriate to note the meaning of the word "report". Oxford English Dictionary, Vol. 8, p. 474, gives the meaning of "report" as "an account brought by one person to another esp. of some matter specially investigated", "a formal statement of the results of an investigation or of any matter on which definite information is required, made by some person or body instructed or required to do so", "to relate, narrate, tell, give an account of (a fact, event etc.)". According to Aiyar's Judicial Dictionary, 10th Edn. p. 882, the word "report" has reference to "a formal report or some such report as the trustee may be required to make under the provisions of an Act.

Concept of a "report" is not unfamiliar to us when we refer to newspaper report, law reports, Commission report or report of a subordinate to a superior. Similarly, we are familiar with the concept of an "opinion" when we refer to various kinds of expert opinions like valuer's opinion, assessor's opinion, opinion formed by the commissioner as to certain state of affairs on the actual state of affairs found by him. In such cases, though it is the opinion, yet the same would be preceded by or coupled with the actual state of facts from which the opinion is derived.

With this background, the distinction between a report and an opinion has necessarily to be noted in the context, of Art. 356 of the Constitution. Governor's report envisaged under Art. 356(1), therefore, has to necessarily contain the facts reflecting the situation which has arisen in the State and the inferences drawn and conclusions reached by him on those facts. As could be seen from Art. 356(1), the satisfaction required thereunder is that of the President i.e. the Council of Ministers, and not that of a Governor. Art. 356(1) enables the President to depend or rely on material got from two sources for arriving at the requisite satisfaction, such sources being (i) the report of the Governor, and (ii) otherwise. Thus under Art. 356(1) the President has to be satisfied on the basis of the report received from the Governor or otherwise, that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The satisfaction of the President should be the result of comprehending in his own way the facts and circumstances relevant to the subjective satisfaction. Satisfaction is to be of the President and the President alone. President means the Council of Ministers.

23. Therefore, the Governor's report should essentially contain the material facts and circumstances which are relevant to assess the situation leading to the particular satisfaction. In case the report of the Governor does not disclose relevant material facts but only his own opinion and the assessment of the situation, expression of satisfaction by the President will be a satisfaction dehors the relevant material facts. In other words, it will be factually an expression of the satisfaction of the Governor, by the President as his own, instead of expressing his own satisfaction. If, so the satisfaction, existence of which is a condition precedent for the exercise of power under Art. 356, will be lacking in reality, resulting in the proclamation being unconstitutional. However, if the report of the Governor discloses the relevant material facts along with his own assessment of the situation, consideration of the said report by the President would necessarily include consideration and appreciation of the relevant material facts by the President. The President's satisfaction may coincide with that of the Governor, but such coincidence will not render Presidential satisfaction illusory or non-existent one. The satisfaction arrived at by the President based on the report of the Governor, which contained "relevant material facts, cannot be held unconstitutional.

24. The Governor occupies an exalted position at the helm of the State constitutional set up. It will be too much to doubt the statement of facts stated in his report to the President especially when no personal motive for sending wrong facts/report to the President has been shown to exist in the Governor's report. The dignity of this high constitutional office of Governor attributes to the office a strong unbiased character and a sober objectivity, and these qualities would normally be reflected in all the actions; of the person occupying the office. Therefore, the facts narrated in the Governor's report may straightway be accepted by the President as revealing the true and correct position of the situation, and the President may assess the situation from those facts. This observation of ours is made in the context of an argument that the report of the Governor does not disclose any evidence as to the alleged existence of certain facts. The President has every right or reason to accept those facts as found in the report of the Governor, or, in a particular case the President may seek a further report as to those material facts. Choice to proceed to assess the facts given in the report of the Governor without further enquiry of any sort, entirely rests with the President.

25. With this approach in mind, we have to consider the report of the Governor to be whether (i) it is a report of facts and the factual situation relevant to an action under Art. 356, or (ii) it is merely an opinion of the Governor without the relevant material facts necessary for the President to arrive at a satisfaction or the report comprised of the relevant material facts and the Governor's Opinion based on his assessment of the situation.

26. On giving our thoughtful consideration, we find that the facts stated in the two reports, are not, only relevant but have close nexus and proximity to the

constitutional requirement of Art. 356. The factual situation in the State that the present Ministry has ceased to enjoy majority support in the House, coupled with the fact stated that none is in a position to form a stable Ministry Shaving such a majority support, cannot be regarded as wholly irrelevant or having no nexus or proximity to the requisite satisfaction preceding the exercise of power under Art. 356 of the Constitution. As a matter of fact, there cannot be more relevant and dominant facts than the facts stated in the Governor's report.

27. From the tenor of the arguments of Mr. Soli Sorabjee, we find that the entire effort was to show that mere withdrawal of the support by some MLAs could not, by itself, lead to a conclusion that there has been a loss of majority as the majority is to be proved on the floor of the House. According to the learned Counsel, the legislators belonging to other parties might have supported the ruling party or even those legislators who had withdrawn their support, for the fear of being disqualified in view of the Anti-Defection law, might have again supported the ruling party. The learned counsel also submitted that assembly session had been convened for 27th April, 1989 and the first petitioner, had repeatedly asked for a floor test where he would have been able to prove his majority, that the first petitioner was even prepared to prepone the Assembly session and that convening of the Session being a vital material was not taken into consideration by the President while forming his subjective satisfaction. Mr. Soli Sorabjee also contended that the statement of the Governor, "I am also satisfied that there is no other party which is in a position to form the Government" is not only conjectural but is an opinion which is vague, perverse and without any foundation.

In our view, both the submissions of the learned counsel are not tenable. Regarding loss of majority, the Governor has stated all the material facts on which he has based his opinion. On the facts stated, there can be no gainsaying that the Janata Dal as a ruling party had lost absolute majority. We are not concerned as to what might have happened if floor test had taken place, as the fact remains that when the reports were made, on the material facts stated therein the ruling party did not enjoy the confidence of the majority of the legislators in the House. We are not oblivious of the fact that a Ministry may be formed by a party which is not a party having majority of members of the House as its members, as it would be sufficient if the said Ministry is supported by majority members in the House. However, in the instant case, the position is entirely different as factually on withdrawal of the support by 19 legislators the party in power had lost majority in the House consisting of 225 legislators and there is no material to show that legislators from other parties were lending their support. Recourse to floor test was neither compulsory nor obligatory on the part of the Governor under the Constitution or other law, before sending a report to the President on the withdrawal of support of 19 MLAs by means of letters which were admittedly sent to the Governor in that regard. Likewise we were not shown nor are we able to find any provision in the Constitution or elsewhere which makes it obligatory or compulsory for the Governor to test the veracity of

support to the ruling party by having recourse to floor test as a prerequisite for sending up a recommendation to the President for exercise of his power under Art. 356(1). We are also unable to agree with the contention of Mr. Soli Sorabjee based on Tenth Schedule for the same reasons though we would be dealing in detail this aspect in the later part of this judgment.

However, these aspects highlighted by the learned counsel cannot be held as an instance of legal mala fides on the part of the Governor in sending his report for taking action under Art. 356. The argument of the learned counsel ignores the position of law that legal mala fides which vitiate the impugned proclamation should be attributable to the President or the Union Council of Ministers who in reality exercise the power under Art. 356(1). Hence, in our view, sending up a report by the Governor to the President invoking exercise of his power under Art. 356(1) cannot be a ground for holding that the impugned proclamation is one which is tainted with legal mala fides. In view of all these facts, as earlier observed, the material referred to by the Governor on this aspect was relevant and had rational nexus with the Constitutional provision.

28. Coming to the second facet of the contention of Mr. Soli Sorabjee, we find that the criticism levelled is that the inference drawn by the Governor that there is no other party which is in a position to form the Government, is not only vague but factually incorrect and hence the President had no relevant material to arrive at his satisfaction for proclamation issued by him.

The aforesaid contention again is without any merit for the reasons: (i) that the Governor formed the said satisfaction which can necessarily be the result of his own impressions. Narration of events in no way advances the case of satisfaction because the very satisfaction of the Governor is an integral part of the material relevant fact. It may also be that the Governor would have met several MLAs and enquired of them. But what transpired between them cannot be a matter of record. In the context where the Governor's personal bona fides are not in question, his satisfaction expressed is to be assumed as part of the relevant material facts in the sense that the very satisfaction stated therein comprehends within itself the idea of all the other necessary factors, (ii) the report of 19th April, 1989 has to be read with the second report of 20th April, 1989 wherein "atmosphere getting vitiated" and "horse-trading" were referred. "Pressurization of MLAs", "Horse-trading" and "vitiating atmosphere" referred to in the report necessarily indicate the existence of facts for the satisfaction that no other party was in a position to form the Government in accordance with the Constitution: The report could have been more explicit and, not adopting such a course by itself cannot nullify the essence of the report. If the President had any reason to doubt the veracity of those statements it was for him to seek a clarification or further report. However, if the President chose to accept the statement of the Governor as to the satisfaction that none else was in a position to form the Government it is because the President found it to be a sufficient arid acceptable statement as to the existence of factual situation. This statement in para 3 of the

first report may also be weighed and understood in the background of the principle that in case the existing Ministry was found to have lost the majority in the House, it is left to the discretion of the Governor to call upon someone else to form the Ministry, whom he thinks is in a position to command majority in the House. Further, absolutely no material has been placed before us to show that any other party or individual staked his or her claim to form a stable Ministry; rather, throughout, the petitioners' case has been that the existing Ministry headed by Sri S. R. Bommai continued to enjoy the support of the majority in the House. This premise was held to be not correct for which material facts were given in both the reports made by the Governor.

29. It may be emphasised that a person holding majority does not require time to prove that majority. Instead of telling the Governor that he would prove majority on the floor of the House, the Chief Minister could have as well obtained the signatures of 113 MLAs and placed before the Governor to demonstrate his strength. Moreover, the second report of the Governor also conveys certain material facts; some of the MLAs who withdrew their support to Sri S. R. Bommai wrote again withdrawing the earlier letters with oscillation and ficklemindedness. Fluctuating loyalties leading to unhealthy practice are pointed out in the report. The democratic culture was being vulgarised. Vitiating of the atmosphere was felt by the Governor. In the context of the prevailing situation the Governor was certainly entitled to report to the President the aforesaid facts. We, are therefore, of the firm view that the two reports of the Governor conveyed to the President the essential and relevant facts from which the President could assess the situation for an action under Art. 356 of the Constitution.

30. Another major attack levelled against the reports of the Governor by Mr. Soli Sorabjee was that nowhere in the report's it is stated that the State Government cannot be carried on in accordance with the Constitution. In other words, there is no material on the record to show that there has been Constitutional breakdown of the machinery in the State. In support of his argument the learned counsel drew our attention to the statement in the report which reads:

"It is not appropriate under the circumstances to have the State administered by an Executive consisting of Council of Ministers who do not command the majority in the House."

What was sought to be argued by the learned counsel was to say that it is not appropriate is quite different from saying that there is a constitutional breakdown, and as the Governor only feels that it is not appropriate, there was no legal justification for taking the impugned action.

Again we find ourselves unable to agree with Mr. Soli Sorabjee. The words "it is not appropriate under the circumstances" have to be understood in the context of the report, especially the next sentence, so as to convey the meaning that the Executive which does not command the support of the majority in the House

cannot administer the. State in accordance with the Constitution. "Inappropriateness" stated here is referable to the meaning "is not in accordance with law". Reference to any dictionary would show that "appropriateness" and "compatibility" are interchangeable and, therefore, when something is said to be not appropriate it conveys the meaning that it is not compatible or not in accordance with law. Hence the statement of the Governor in this sentence clearly asserts his understanding of the true principle that an Executive having no majority support in the Legislature, if carries on the Government, will be administering the State not in accordance with the Constitution.

31. In view of the aforesaid discussion, we find no escape from the conclusion that the grounds stated and material supplied in the reports of the Governor are neither irrelevant nor vague, that the reasons disclosed bear a reasonable nexus with the exercise of the particular power and hence the satisfaction of the President must be treated as conclusive, and that there is no scope at all for a finding that the action of the President is in flagrant violation of the very words of Art. 356(1).

32. Mr. Soli Sorabjee also contended that the factors like the alleged "unethical methods adopted during the formation of Janata Dal" "expansion of cabinet", "horse-trading" and "atmosphere getting vitiated" are not only vague but have no nexus at all with the question of failure of Constitutional machinery. The learned counsel also laid great stress by contending that the Governor by acting upon the letters given by 19 legislators had circumvented the Anti Defection legislation, the primary aim of which is to discourage the toppling game by legislators by changing their loyalties, and by acting upon those letters the legislators were permitted, in substance, to play the game of toppling the ruling Ministry without incurring the consequences of Anti-Defection law because, if these legislators had withdrawn their support in the House and voted against the Ministry, they would have incurred disqualification under Anti-Defection Law. Reliance upon these letters is contrary to the underlying purpose and the essence of Anti-Defection legislation and therefore illegitimate and prohibited. The learned counsel buttressed his arguments by contending that if the floor test had been held the legislators who had written letters might have changed their mind for several valid reasons eg. (i) change in the style of functioning of leadership, (ii) change in the leadership, (iii) realisation for maintaining party unity, (iv) unwillingness to incur disqualification under Anti-Defection legislation and (v) not giving a pretext for imposition of President's Rule. In support of the contention that the floor test has always been recognised as the legitimate and relevant method, Sri Soli Sorabjee relied on the judgment of the Orissa High Court in *Bijayananda Patnaik and Others Vs. President of India and Others*, Sarkaria Commission Report page 173 para 6.5.01, the judgment of Gauhati High Court in *Vamuzov. Union of India*, (1988) 2 Gauhati LJ 468 at p. 483, Report of the Committee of Governors dated 1-10-1971, pages 208, 209, 210, 217-219, 221-219, 221- 223 and 234, and Address by Speaker of Lok Sabha on the occasion of Speakers' Conference on 16-7-1970 paras 13 and 14.

33. In our view, the aforesaid contentions/ points urged by the learned counsel do not in any way destroy the effect of the two material grounds on the basis of which the subjective satisfaction was arrived at by the President. The Governor honestly and truly has stated all the facts. They are not vague at all and are narrative in nature. What was happening in the State, the Governor has disclosed in the report. The Governor was assessing whether the first petitioner was commanding majority and he (Governor) was entitled to take into consideration the behaviour of the MLAs one way or the other.

It is expected that a Government to be effective should not only command a majority in the House but should also be backed by the majority members outside the house so that the Government would not be under a perennial pressure of being dislodged whenever the House meets again.

We have gone through the judgments of the Orissa and Gauhati High Courts mentioned above and find that the same are distinguishable. In *Bijayananda Patnaik and Others Vs. President of India and Others*, the main fact was that the Leader of the Opposition who had shown his majority in the House was not tailed upon to form the Ministry not because he had no majority but because the Governor expected that the majority might fall at any moment and there may be no stable Ministry, and on this aspect G. K. Misra, C.J. observed that the Governor is not concerned whether the Ministry could be stable in future. If the Ministry which would have been formed by the Leader of the Opposition would have fallen afterwards, the Governor would have been justified to recommend for the President's Rule if at that time no other person was in a position to form an alternative Ministry by having majority support. But, in the instant case, the position is entirely different as at the initial stage itself the Governor has in unequivocal terms stated in his report that he is also satisfied that there is no other party which is in a position to form the Government.

Coming to the case of *Vamuzo*, (1988(2) Gauhati LJ 468) the facts are :

"Hokishe Sema formed the Government in 1987. Chishi attempted to bring down and destabilize the Government. To achieve that end he offered money and lured the separated group of 13 to step out from the ruling party. The Governor called the episode "incredible lack of political morality and complete disregard of the wishes of the electorates on the part of the break way congressmen". That none of them therefore had ever expressed any grievances to the Chief Minister at any time in the past. The 13 persons are kept under forcible confinement by K. L. Chishi and Vamuzo. The split of the party is not true. It is obvious that what may be called a political group of the darkest hue has been stated in his absence contrary to the, noble Naga character and democratic traditions". The recognition by the Speaker was done in haste. The entire incident manifests political horse trading and machinations. He added there is proof that they are the group of 13 persons have not separated from the ruling party voluntarily"

If we look at those facts, again we find that there is absolutely no similarity of

the aforesaid facts to the two material facts in the case on hand. In the said case, as found on those facts, the Governor was held to have exceeded his jurisdiction and the facts stated therein were found to be irrelevant to the provisions of Art. 356(1), by the Gauhati High Court.

So far as Sarkada Commission Report, the report of the Committee of Governors and the Address of the Speaker of Lok Sabha are concerned, the views expressed therein are really commendable and it is expected that wherever any such drastic action, like the exercise of power under Art. 356(1), is taken, it should be ensured that the subjective satisfaction of the President is not based on any irrelevant, irrational or perverse ground. But, in the view we have taken on the facts of this case, the views expressed in those reports are of no assistance to the petitioners. Moreover these recommendations are to alter the existing laws, which implies that till these recommendations are moulded into constitutionally enforceable norms the existing law would prevail.

34. Mr. Soli Sorabjee had made pointed reference to the Tenth Schedule i.e. Anti Defection Law, for bringing home his point that the factum of the withdrawal of the support by 19 legislators was wholly irrelevant. This argument was advanced to prove his point that in the context of Anti Defection Legislation, floor test was the most relevant, legitimate and surest method to determine whether the Council of Ministers headed by Sri S.R. Bommai commanded the majority in the House or not. We are afraid, we are unable to agree with this submission of the learned counsel. The introduction of Tenth Schedule in the Constitution has not in any way affected the exercise of power under Art. 356 nor has it amended Art. 356 in any manner. The amending body which inserted the Tenth Schedule to the Constitution had before it several decisions (specially the State of Rajasthan and Others Vs. Union of India and Others, as to the scope of Art. 356. There is a presumption that the law-making body was aware of the existing interpretation given by the Supreme Court on a provision of law or of a Constitutional provision. If the said Constitutional provision (Art. 356) was untouched while adding a new schedule to the Constitution elsewhere without reference to the existing provision (Art. 356), we have to presume that the existing interpretation of the said provision continues to govern the situation. It is not possible to hold that the interpretation given to Art. 356 in Rajasthan Case, if continued to govern it, would destroy the efficacy of the Tenth Schedule. Tenth Schedule to the Constitution is applicable to the transaction of business inside the House of Legislature. The anti defection activity outside the House is not penalised in any manner by Tenth Schedule. Concept of the failure of the Constitutional machinery of the Government is not confined to the loss of majority by a ministry in the House; it may be due to several reasons. Therefore, if meeting of the Legislature, was contemplated as a mandatory requirement preceding a report of the Governor for an action under Art. 356 and floor test was impliedly made the sole and exclusive test to judge the stability of the Ministry (after the Tenth Schedule was added to the Constitution), the Tenth Schedule would have been suitably worded, or Art. 356 would have been altered.

35. This brings us to another important topic on which elaborate arguments were advanced in the alternative by Mr. Soli Sorabjee. The precise contention raised by him was that in the event this Court holds that the report of the Governor contains relevant considerations, then also the satisfaction arrived at by the President cannot be sustained because it has been vitiated by other irrelevant considerations not disclosed to the Court by the Union Government. The impugned proclamation indicates that the satisfaction of the President was based on the Governor's report and other information. This "other information" which has not been disclosed may be perverse", motivated and irrelevant to the issue and capable of destroying the valid material disclosed in the report of the Governor. Therefore the learned counsel contended that the Government should have disclosed the "other information" so that the Court would have been satisfied about its relevance to the point in issue. The learned counsel buttressed his argument by contending that if the subjective satisfaction is based on relevant and irrelevant considerations it shall not be permissible for the Court to sustain the satisfaction as being the result of relevant considerations only. In support of his contention, Sri Soli Sorabjee relied upon *Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay*, , *Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir*, , *Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax, Bihar and Orissa*, . On the question that if reliance is placed on some other material it is incumbent on the Government to disclose it so as to enable the Court to see whether that material is relevant or irrelevant and that Art. 74(2) does not protect disclosure of the material on the basis of which the advice was tendered, the learned counsel relied upon *N.P. Mathur and Others Vs. State of Bihar and Others*, ; *S.P. Gupta Vs. President of India and Others*, ; *Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors*, ; *Hochtief Gammon Vs. State of Orissa and Others*, ; *Sowdambigai Motor Service v. State of Tamil Nadu* (1980) 1 Mad LJ 82, paras 21, 22, 24; *Padfield v. Minister of Agriculture etc.* (1968) 1 All ER 694; *R. v. Secretary of State* (1987) 2 All ER 518; and *Muhammad Sharief v. Federation of Pakistan* 1988 Pak LD 725.

36. On the other hand, the learned Attorney General contended that in view of the provisions of Art. 74(2) the Court cannot ask for the other information on which, besides the report of the Governor, subjective satisfaction has been arrived at. He countered the arguments of Mr. Soli Sorabjee by contending that the point in issue is regarding the validity of the satisfaction of the President under Art. 356, which stands entirely on a different plank than the subjective satisfaction found elsewhere in administrative fields, that the decisions relied upon by Mr. Soli Sorabjee are all in relation to administrative law, and that even in the field of subjective satisfaction where relevant and irrelevant factors play their roles to reach the satisfaction, such satisfaction cannot be nullified if the relevant facts are sufficiently relatable to the question in issue. The learned Attorney General contended that a satisfaction arrived at on a mixed consideration of relevant and irrelevant material, would still be valid so long as the relevant material is sufficient to justify the satisfaction. Two decisions which

he cited in this regard are: (1) The State of Maharashtra and Another Vs. B.K. Takkamore and Others, and (2) State of Orissa Vs. Bidyabhushan Mohapatra, .

We have given our thoughtful consideration to the entire matter and find that in the view we have taken on the material disclosed that the same is relevant and the subjective satisfaction arrived at by the President is conclusive and that there is no scope at all for a finding that the action of the President is in flagrant violation of the very words of Art. 356(1), we do not think that it is necessary for us to go into the respective contentions as to the scope of Art. 74(2). So far as the scope of judicial scrutiny is concerned, presuming that the satisfaction rested on relevant and irrelevant grounds, our approach "is to be guided and controlled solely by the decision of the Supreme Court in State of Rajasthan and Others Vs. Union of India and Others, , As we read the decision, especially the observations of Chandrachud and Bhagwati JJ. excerpted earlier, we find no escape from the conclusion that the Courts should base their decision on the disclosed material and probing at any greater depth would be to enter a field from which Judges must scrupulously keep away. We have already found that the reports of the Governor give material facts which are most proximate and relevant grounds for the exercise of power under Art. 356 and the formation of the satisfaction preceding the exercising of such power. Therefore, even assuming that the undisclosed material found in other information was irrelevant to any extent, the impugned satisfaction cannot be attacked as based on "wholly irrelevant material." We may, however, add that in case the facts and circumstances mentioned in the report of the Governor and other circumstances taken into consideration had been so completely outside the purview of Art. 356 or so glaringly in conflict with the Constitutional provision, then certainly a question of excess power could have apparently arisen. Hence the basic fact to be determined is the relevancy of the grounds disclosed, and if the same are found to be . relevant, then no exception can be taken to the exercise of power under Art. 356(1). In the instant case, as already held, the facts disclosed are relevant and bear a rational nexus to the impugned Presidential Proclamation.

37. In the view we have taken, no other point arises for consideration.

38. Our conclusions, therefore, are:--

(1) That the proclamation made under Art. 356 of the Constitution is justiciable and that the Courts could look into the materials or the reasons disclosed for issuing the proclamation, to find out whether those materials or reasons were wholly extraneous to the formation of, the satisfaction and had no rational nexus at all to the satisfaction reached under Art. 356 of the Constitution.

(2) That under Art. 356(1) the President has to be satisfied on the basis of the report received from the Governor Of otherwise, that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The satisfaction of the President should be the result of comprehending in his own way the facts and circumstances relevant to the subjective satisfaction.

Satisfaction is to be of the President and the President alone. President means the Council of Ministers.

(3) That the two reports of the Governor conveyed to the President the essential and relevant facts from which the President could assess the situation for an action under Art. 356.

(4) That the facts stated in the two reports of the Governor are not only relevant but have close nexus and proximity to the Constitutional requirement of Art. 356. The factual situation in the State that the present Ministry has ceased to enjoy the majority support in the House, coupled with the fact stated that none is in a position to form a stable Ministry having such a majority support, cannot be regarded as wholly irrelevant or having no nexus or proximity to the requisite satisfaction preceding the exercise of power under Art. 356 of the Constitution. As a matter of fact, there cannot be more relevant and dominant facts than the facts stated in the Governor's reports.

(5) That in the context where the Governor's personal bona fides are not in question, his satisfaction expressed that there is no other party which is in a position to form the Government, is to be assumed as part of the relevant material facts in the sense that the very satisfaction stated therein comprehends within itself the idea of all the other necessary factors.

(6) That recourse to floor test was neither compulsory nor obligatory on the part of the Governor under the Constitution or other law, before sending a report to the President on the withdrawal of support of 19 MLAs by means of letters which were admittedly sent to the Governor in that regard. Likewise, we were not shown nor are we able to find any provision in the Constitution or elsewhere which makes it obligatory or compulsory for the Governor to test the veracity of support to the ruling party by having recourse to floor test as a pre-requisite for sending up a recommendation to the President for exercise of his power under Art. 356(1).

(7) That the introduction of Tenth Schedule in the Constitution has not in any way affected the exercise of power under Art. 356 nor has it amended Art. 356 in any manner. The amending body which inserted Tenth Schedule to the Constitution had before it several decisions (specially the State of Rajasthan and Others Vs. Union of India and Others, as to the scope of Art. 356. There is a presumption that the law making body was aware of the existing interpretation given by the Supreme Court on a provision of law or of a Constitutional provision. If the said Constitutional provision (Art. 356) was untouched while adding a new schedule to the Constitution elsewhere without reference to the existing provision (Art. 356), we have to presume that the existing interpretation of the said provision continues to govern the situation. It is not possible to hold that the interpretation given to Art. 356 in Rajasthan Case, if continued to govern it, would destroy the efficacy of the Tenth Schedule.

(8) That in law the legal mala fides which vitiate the impugned proclamation

should be attributable to the President or the Union Council of Ministers who in reality exercise the power under Art. 356(1). Hence, in our view, sending up a report by the Governor to the President invoking exercise of his power under Art. 356(1) cannot be a ground for holding that the impugned proclamation is one which is tainted with legal mala fides.

(9) That in the view we have taken on the material disclosed that the same is relevant and the subjective satisfaction arrived at by the President is conclusive and that there is no scope at all for a finding that the action of the President is in flagrant violation of the very words of Art. 356(1), we do not think that it is necessary for us to go into the respective contentions as to the scope of Art. 74(2): So far as the scope of judicial scrutiny is concerned, presuming that the satisfaction rested on relevant and irrelevant grounds, our approach is to be guided and controlled solely by the decision of the Supreme Court in Rajasthan Case. As we read the decision, especially the observations of Chandrachud, J. and Bhagwati, J. excerpted earlier, we find no escape from the conclusion that the Courts should base their decision on the disclosed material and probing at any greater depth would be to enter a field from which Judges must scrupulously keep away.

(10) That the basic fact to be determined is the relevancy of the grounds disclosed, and if the same are found to be relevant, then no exception can be taken to the exercise of power under Art. 356(1). In the instant case, as already held, the facts disclosed are relevant and bear a rational nexus to the impugned Presidential Proclamation. We find no escape from the conclusion that the grounds stated and material supplied in the reports of the Governor are neither irrelevant nor vague, that the reasons disclosed bear a reasonable nexus with the exercise of the particular power and hence the satisfaction of the President must be treated as conclusive, and that there is no scope at all for a finding that the action of the President is in flagrant violation of the very words of Art. 356(1).

39. In view of our aforesaid conclusions, we dismiss this writ petition, but without there being any order as to costs.

40. Mr. H. Subramhanya Jois, learned counsel for the petitioners, makes an oral prayer that this case be certified as fit one to appeal to the Supreme Court.

41. As our order is solely based on the decision of the Supreme Court in State of Rajasthan and Others Vs. Union of India and Others, , we find that in this case there remains no substantial question of law of general importance which needs to be decided by the Supreme Court.

42. Accordingly, the oral prayer of the learned counsel for certifying this case to be a fit one to appeal to the Supreme Court, is rejected.

43. Petition dismissed.