

(1991) 05 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Petition No. 1573 of 1991

Sudershan Goel

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-05-1991

Acts Referred:

Citation : (1991) 44 DLT 328 : (1991) RLR 338

Hon'ble Judges : Milap Chand Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : D.S. Tewatia and Madhu Tawetia, for the Appellant;

Judgement

M.C. Jain, J.

(1) Counsel for the petitioner submits that respondent nos. 5 and 6 may be deleted from the array of respondents. Accordingly, respondents 5 and 6 are deleted from the array of respondents. -

(2) By this writ petition, the petitioner seeks a direction restraining the Caretaker Central Government from recommending the imposition of President's Rule in the State of Bihar and there is a further prayer made by the petitioner restraining the Chief Election Commissioner from postponing the election process set in motion in the entire State of Bihar.

(3) According to the learned counsel for the petitioner, the situation is too imminent that any moment there will be imposition of President's Rule on the advice of the present Caretaker Central Government. He took us through the historical background in which the present Caretaker Government came into existence and submitted that the exercise of such a power or authority by the Caretaker Government would be a mala fide exercise of power for extraneous and political reasons and as a matter of fact, the situation as obtaining in the State of Bihar does not at all warrant imposition of President's Rule. The learned counsel submitted that the Presidential satisfaction is justiciable after the Forty-fourth Amendment, whereby clause (5) was deleted. He referred to a decision of

the Supreme Court in A.K. Roy and Others Vs. Union of India (UOI) and Others, , where their Lordships observed in paras 27 :

State of Rajasthan and Others Vs. Union of India and Others, is often cited as an authority for the proposition that the Courts ought not to enter the "political thicket". It has to be borne in mind that at the time when that case was decided. Article 356 contained Clause (5) which was inserted by the 38th Amendment, by which the satisfaction of the President mentioned in Clause (1) was made final and conclusive and that satisfaction was not open to be questioned in any Court on any ground. Clause (5) has been deleted by the 44th Amendment and, Therefore, any observations made in the Rajasthan case on the basis of that clause cannot any longer hold good. It is arguable that the 44th Constitution Amendment Act leaves no doubt that judicial review is not totally excluded in regard to the question relating to the President's satisfaction."

(4) In view of the aforesaid observations of their Lordships to the Supreme Court, learned counsel submitted that judicial review is not totally excluded with regard to the question of President's satisfaction under Article 356 of the Constitution. Article 356 lays down that on receipt of a report from the Governor of a State or otherwise, on being satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may issue proclamation as envisaged under Article 356 of the Constitution. Learned counsel further submitted that the President is not bound by the advice of the Caretaker Government. He supported this submission by placing reliance on the observations made in Madan Murari Verma Vs. Choudhuri Charan Singh and Another, , wherein His Lordship Sabyasachi Mukharji, (as he then was), observed that,

"There is no mention of any care-taker Government as such, in our Constitution or in the constitutional law, though Sir Ivor Jennings has described in his book - Cabinet Government, Third Ed. p. 85 the ministry that was formed by Mr. Churchill in England after the war before and pending the General election in 1945 as caretaker Government. But an extraordinary situation like the present, in my opinion, calls for a care-taker Government and Therefore, the respondent no. I and his Council of Ministers can only carry on day-to-day administration in office which are necessary for carrying on "for making alternative arrangements". In effect the President, in my opinion is, Therefore, not obliged to accept the advice that the respondent no. I and his Council of Ministers tender to him except for day-to-day administration and the Council of Ministers and the respondent no. I should not make any decisions which are not necessary except for the purpose of carrying on the administration until other arrangements are made. This in effect means that any decision or policy decision or any matter which can await disposal by the Council of Ministers responsible to the House of People must not be tendered by the respondent no. I and his Council of Ministers. With this limitation, the respondent no. I and the Council of Ministers can only function. And in case whether such advice is necessary to carry on the

day-to-day administration till "other arrangements are made" or beyond that, the President, in my opinion, is free to judge."

(5) Learned counsel also submitted that under Article 355, it is the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. Our attention was invited by the learned counsel to the averments made in para B on page 9 of the writ petition that during the assembly elections to the State of Bihar, as many as 1979 companies of para military forces in Bihar had been deployed but strangely enough in the present day situation, which the so called caretaker- minority Government describes as alarming, only 99 companies have been deployed. It is also averred in this para that this only shows the scant concern of the central government whose main thrust is to get the elections postponed or clamp President's Rule under the false pretext of alarming law and order situation.

(6) We have considered the aforesaid submissions of the learned counsel. It is true that the exercise of power under Article 356 may be subject to judicial review after deletion of clause (5) by the 44th Amendment. But the question is as to whether there are any genuine apprehensions on the part of the petitioner that the power under Article 356 would not be properly exercised, more particularly, when there has been a statement made by the care-taker Government that it has no intentions to impose President's Rule. It has also been submitted before us that the President has not been accepting the advice of the care-taker Government. The President has refused to make appointments, as advised by the care-taker Government. That also shows that the President is acting in a manner knowing fully well the limitations of the care-taker Government. Postponing of decisions and policies and actions of the caretaker Government by the President shows that the President is not being carried away by the advice of the care-taker Government. This being so, we feel that it would not be proper for this Court to issue any directions as sought by the petitioner after notice to the respondents. However, with regard to the last submission, in view of the provisions contained in Article 355, we expect that the Union through the care-taker Government shall act in a manner so that the Government of the State of Bihar may be run in accordance with the provisions of the Constitution, having regard to the law and order situation as obtaining in that State. Necessary paramilitary forces and other forces if need be, would be deployed. This writ petition is, Therefore, disposed of with the above observations.