
(1981) 08 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1308 of 1981

Surya Narain Choudhary

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-08-1981

Acts Referred:

Constitution of India, 1950 — Article 124(4), 155, 156, 156(1), 156(3)

Citation : AIR 1982 Raj 1 : (1981) RLW 490 : (1981) WLN 198

Hon'ble Judges : M.L. Shrimal, J

Bench : Single Bench

Advocate : M.C. Surana, C.K. Garg, J.S. Rastogi and Khetan, for the Appellant;

Final Decision : Dismissed

Judgement

M.L. Shrimal, J.—Petitioner, Surya Narain Choudhary, by this writ petition has challenged the validity of the order of the President of India (Annexure-1, dt. Aug. 8, 1981), terminating the period of the office of Governor, held by Shri Raghukul Tilak and has claimed the following reliefs :--

(i) to issue a writ, order or direction in the nature of mandamus, directing respondents Nos. 1, 2 and 3 to treat respondent No. 4 Shri Raghukul Tilak as Governor of Rajasthan up to May 11, 1982;

(ii) to issue a writ, order or direction in the nature of quo warranto. quashing the appointment of Shri K.D. Sharma, Chief Justice of Rajasthan High Court, under Article 160 of the Constitution of India, directing him to discharge the functions of the Governor of Rajasthan; and

(iii) to issue a writ, order or direction that Article 156(1) of the Constn, is not subservient to Article 74 of the Constn. and in the alternative to declare Article 156(1) of the Constn. to be ultra vires of Article 74 of the Constn. and invalid, unconstitutional and violative of the basic features of the Constitution.

2. The case of the petitioner is that he was a member of the Rajasthan

Legislative Assembly from June, 1977 to Feb. 17, 1980. He is an active member of the Janata Party and a well known political and social worker, who is keenly interested in the social, political and economic welfare of the State and the people of Rajasthan. He is dedicated to the principles, enshrined in the Constn. and it is his bounden duty to see that the provisions of the Constn. are faithfully implemented and that he being a voter it is his right to see that the House is summoned by a validly and lawfully appointed Governor and not by an illegal incumbent to the office. The petitioner maintains that Shri Raghukul Tilak was appointed as Governor of Rajasthan on April 20, 1977 during Janta Party regime. He entered the office of the Governor of Rajasthan on May 12, 1977; and his five years' term will end on May 11, 1982. Under Article 156(3) of the Constn. he could hold his office for a period of five years from the date on which he entered upon his office.

3. The petitioner states that the President of India by an order, dt. Aug. 8, 1981. directed that Shri Raghukul Tilak "shall cease to hold the office of Governor of Rajasthan with immediate effect." The provision of Article 156(1) of the Constn. is subject to the provision of Article 156(3) and the latter provision is to prevail over the former one and as such the premature termination of the period of Governorship of Shri Raghukul Tilak is not in accordance with the provisions and the spirit of " the Constn.

4. The petitioner further avers that up to the year 1980 the provisions of Article 156(3) were always treated as mandatory and all the Governors appointed to discharge the functions of that high office were allowed to hold office for a term of live years. It is only after the coming of the Congress (I) in power that a dangerous trend of terminating the term of Governors, before their scheduled term of five year is completed, has started. It has been done with a view to overawe the Governors so that they may toe the line of the Central Government. For the first time in 1977 the Congress Party lost the election, when Janata Government came into power, which was headed by Shri Morarji Desai. Thereafter, certain appointments on the posts of Governors, whose term was going to expire or expired in 1977. were made. The Governors of Tamil Nadu, Rajasthan, Maharashtra and West Bengal were appointed in the regime of Janata Government. The present Prime Minister has been consistently making efforts to "Jase out the Janata Party Governors appointed in the year 1977 or later. According to the petitioner, Shri Prabhu Dass Patwari, the Governor of the State of Tamil Nadu. was dismissed: and thereafter, the Government at the Centre wanted to terminate the term of the Governor of West Bengal and wanted to appoint a new Governor for that State; but the Government of West Bengal made it known to the Union Government that they were not in favour of changing the Governor of the State.

5. The petitioner further contends that the party in power controlling the Union Government is at loggerheads with the Government of West Bengal and is seeking an opportunity to dissolve the West Bengal Assembly; and as the

Governor of West Bengal is not amiable to the control of the Central Government, the Government of India is conceiving and planning the dismissal of the Governor of West Bengal with a view to send there a Governor, who may make a report against the Government of West Bengal as desired by the Union Government and recommend its dismissal and also dissolution of the Legislative Assembly of that State. According to the information of the petitioner received from various papers, Shri T. N. Singh, present Governor of West Bengal, has declared his intention to take the matter to the Court of Law in the contingency of his dismissal; and as such the Government of India has dismissed, through the President the Governor of Rajasthan, Shri Raghukul Tilak. which is a part of a political measure and the same is likely to be repeated in the State of West Bengal. The idea behind it is that a Governor amiable to the influence of the party in power in the Centre may be appointed in West Bengal, so that the Assembly may be dissolved and fresh elections may be held under his control to the advantage of the Congress (I) party.

6. The petitioner's learned counsel further contends that Article 156(3) of the Constn. cannot be read subject to Article 156(1). The founding fathers of the Constn. wanted to ensure a minimum constitutional term of five years for the office of the Governor. Any other meaning given to the provisions of Arts. 156 (1) and 156 (3) is likely to demolish the basic structure of the Constn. because, the high Constitutional office of the Governor would become subservient to the President and through him to the Government of India which was never the intention of the framers of the Constn. The impugned order, dated Aug. 8, 1981 (Annexure-1), does not read that it was issued under the pleasure of the President. It merely makes reference to Article 156. A mere reference to a particular Article is not sufficient till there is an express exercise of pleasure and the same is made known by express and proper words. The learned counsel for the petitioner also urges that the President has issued the impugned order in accordance with the mandate of Art, 74 of the Constn. He has not exercised his independent discretion and applied his mind in issuing the impugned order, rather he has followed the advice tendered to him by the Union Council of Ministers. The effect of 42nd Amendment Act. 1976, particularly, amending Article 74 of the Constn. under which the President is required to act in accordance with the advice of the Council of Ministers, is that the pleasure of the President under Article 156(1) is always subject to the advice and subservient to the advice tendered by Council of Ministers. As such the provisions Of Article 156(1) of the Constn. has become nugatory and has lost all its force and sanctity. In view of the amendment of Article 74 the provision of Article 156(1) is liable to be declared to be ultra vires of Article 74. The president of India or the Union Government thro" him, has acted arbitrarily, capriciously and unreasonably in terminating the term of the Governor of the State. The premature termination of the term of Shri Raghukul Tilak cannot be termed to be a termination simpliciter. He is neither the servant, nor an employee under the President or the Central Government. His office is not subordinate or subservient to the

Government of India. He is an incumbent of Constitutional functionary and the Government of India has no power to recommend or seek the dismissal or premature termination of the term of Governor thro* the mechanism of Article 156(1) of the Constn. by getting a Presidential order. In support of the above contention he has placed reliance on Har Govind Pant v. Chancellor University of RajasthanAIR 1978 Raj 72 (FB) and Hargovind Pant Vs. Dr. Raghukul Tilak and Others, Learned counsel urged that it is the requirement of the law that every action of the executive Government must be accompanied with reasons and should be free from arbitrariness; and that is the very essence of rule of law. As the impugned order was passed as a result of the advice tendered by the Government of India; and as (he same is arbitrary, capricious and unreasonable, it is liable to be struck down. The Constn. conceives of an impeachment of the President of India, Comptroller and Auditor General of India. Chief Election Commissioner and Judges, but nowhere it conceives of an impeachment of a Governor and as such his removal or premature termination is violative of the provisions of the Constn. Shri Raghukul Tilak was appointed as Governor of Rajasthan as he had been a freedom fighter of repute, a man of outstanding ability, a writer and a thinker, and there is no reason whatsoever to justify his dismissal or premature termination. There is nothing to suggest that he was found guilty of treason or of violating any provision of the Constitution or any statutory law or had behaved in a manner which does not her hove the high office of the Governor. In the absence of above grounds his dismissal is unreasonable, arbitrary, irrational and mala fide, which must be quashed. Shri Raghukul Tilak by his premature termination has lost his status, besides consequential loss of remuneration and as the impugned order was passed in violation of the principles of natural justice, without giving him a notice regarding the intended order or without communicating to him any reason for his termination and as such it is liable to be set aside and is ab initio null and void. Learned counsel further urges that by no stretch of imagination can it be said that any public policy warranted the passing of the impugned order (Annexure-1, dt. Aug. Section 1981).

7. As the order of termination is ultra vires the Constn. and is ab initio null and void, there is no vacancy in the eye of law for the office of the Governor of Rajasthan, and, therefore, the President has no authority or right to appoint Shri K. D. Sharma under Article 160 of the Constn. to discharge the functions of the Governor. Shri K. D. Sharma holds an office of profit as he has not resigned from the office of Chief Justiceship, and as such he cannot be appointed to discharge the functions of the Governor of Rajasthan. Article 158(2) of the Constn. imposes a ban to such an appointment.

8. Shri K. D. Sharma has taken oath under Article 159 of the Constn. to discharge the functions of the Governor, and while discharging the Junctions of the Governor has issued Ordinance and has given assent to Bills, passed by the State Legislature. Thus, in fact and in law he is acting as Governor of the State of Rajasthan, while his appointment under Article 160 of the Constn. is completely

unconstitutional. There also existed no contingency as envisaged by Article 160 of the Constn. and, therefore, the appointment of Shri K.D. Sharma to discharge the functions of the Governor is wholly illegal. The theory that all posts, civil, military, naval and all high constitutional offices like that of Governor, Ministers etc. are held during the pleasure of the President is a relic of British imperialism and the theory must be rejected being against the democratic principles, enshrined in the Constn. which declares India to be a sovereign, socialist and secular democratic republic.

9. On the basis of the above averments the petitioner claims the reliefs, - mentioned above.

10. I will deal with the contentions of the learned counsel for the petitioner ad seriatum. But before I take up these points, the first preliminary question which needs to be determined is whether the petitioner has any specialised interest of his own to vindicate, apart from a mere political concern sought to be expressed by him.

11. Admittedly Shri Raghukul Tilak has expressed no grievance against his termination from the high office of the Governor. The present writ petition purports to have been filed by a political and social worker of the Janata Party, who once happened to be a Minister under the Janata Regime, and who is under a fear that if the termination of Shri Raghukul Tilak is not challenged, there is every likelihood that the President of India might terminate the term of the Governor of West Bengal, Mr. T.N. Singh, who, according to the petitioner, is having smooth relations with the C. P. M., the party in power in the State of West Bengal, and is not amiable to the wishes of the Union Government or the President of India. Thus, apparently what the petitioner wants to agitate before this Court is the wrangle between the Union Government, headed by the Indian Congress (I) Party and the Janata Party, whose member he is, or tension between the party in power in the Union and the C. P. M. in West Bengal.

12. Article 226 of the Constn. empowers the High Court to issue to any person or authority including in appropriate cases Government, within its territorial jurisdiction, directions, orders or writs in the nature of mandamus, certiorari, prohibition, quo-warranto or habeas corpus for the enforcement of any of the rights conferred by Part III and for "any other purpose".

13. The founding fathers of the Constn. have couched the Article in comprehensive phraseology to enable the High Court to remedy injustice wherever it is found, but it is equally true that a person invoking the extraordinary jurisdiction under Article 226 of the Constn. should be an aggrieved person. If he does not fulfil the character of an aggrieved person and is a "stranger", the Court may, in its discretion, deny him such an extraordinary remedy, save in very special and exceptional circumstances. The petitioner challenging the order must have some specialised interest of his own to vindicate, apart from a generally felt political concern, which is of abstract

nature. Legal wrong requires a judicially enforceable right or interest. The touch-stone to the justiciability is injuria to a legally protected right. A mere nominal, imaginary and a highly speculative adverse effect to a person or felt concern cannot be said to be sufficient to bring him within the fold of an "aggrieved person". The words "aggrieved person" cannot be confined within the bounds of a rigid formula. The scope of the words and meaning thereof depend on diverse facts and circumstances of each case, nature and extent of a person's interest and the nature and extent of the prejudice or injury suffered by him. This Court, in exercise of its power under Article 226, of the Constn. is required to determine and enforce legal rights. It has authority only over issues which are appropriate for disposal by Judges. The Constn. indicates limited area within which judicial action is required to be taken, however, far-reaching the consequence of such action within that area may be. The Court is expected to exercise powers to settle cases and controversies, arising between parties or between persons and State, which may raise questions of law or facts or both,

14. The Supreme Court in a number of cases has laid down that in order to have locus standi to invoke extrar ordinary jurisdiction under Article 226 a claimant should ordinarily be one, who has a personal or individual right in the subject-matter of the application. No doubt, sometimes this rule is relaxed, but not abandoned. But the general rule is infringement of some legal right or legal interest, which may give to a person a locus standi in the matter.

15. In United States of America in the case of Rolla W. Coleman, W. A. Barron. Claude C. Bradney etc. v. Clarence W. Miller (1938) 83 Law ed 1385 : 307 US 433 a question regarding agitation of political rights arose. Justice Frankfurter, repelling the argument advanced before him, held :

".....this is not the tribunal for its challenge except by those, who have some specialised interest of their own to vindicate, apart from a political concern which belongs to all."

The above quoted passage was read with approval by their Lordships of the Supreme Court in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, In the same case their Lordships of the Supreme Court also approved the following observations made in American Jurisprudence, (at p. 585);

" "Legal wrong" requires a judicially enforceable right and the touch stone to justiciability is injury to a legally protected right. A nominal or highly speculative adverse effect on the interest or right of a person has been held to be insufficient to give him the "standing to sue" for judicial review of administrative action."

16. Mere wrangles between Government and an incumbent of any political party have no place in the scheme of Article 226 Of the Constitution. They have to resolve their dispute elsewhere and by means less solemn and sacrosanct with a Court proceeding. The purpose of Article 226 of the Constn. is to afford a forum for quick resolution of disputes, which depend for their decision on the existence

or extent of a legal right. It is only when a legal, or a mere political issue arises touching upon the existence or extent of a legal right, that Article 226 of the Constn. is attracted.

17. In fact that the petitioner, as already noted above, has filed this writ petition as an active member of a political party, who lost in the last elections. The purpose of filing the writ petition is to safeguard the right of the C. P. M. Government in West Bengal, for which he speculates that its interest will be adversely affected if the President is allowed to exercise the right vested in him under Article 156(1) of the Constn. i.e., if he is allowed to terminate the term of the office of the Governor of a State at his pleasure.

18. The order dt. Aug. 8, 1981 (An-nexuure-1) cannot be said to have been passed against the petitioner. The impugned order does not, in any way affect the personal interest of the petitioners. No decision has been pronounced against him which may wrongly deprive him of something or which may wrongfully refuse him something. It cannot be said that he has suffered any legal wrong or injury, in the sense that his interest, recognised by law, has been prejudicially and directly affected by the impugned act complained of, reference may be made to *Kesavan Vs. State of Tamil Nadu and Another*,

19. The petitioner's contention in respect of his fundamental duties under Article 51A of the Constn. too does not give him any locus standi. The fundamental duties of citizens are duties of individual citizens. They cast no public duties which alone can be enforced by a writ of mandamus; vide *Muslim Mission v. State* AIR 1980 AP 246.

20. As regards relief No. 1, claimed by the petitioner for issuance of writ, order or direction in the nature of mandamus to the respondents Nos. 1, 2 and 3 to treat the respondent No. 4, Shri Raghukul Tilak, as Governor of Rajasthan up to May 11, 1982, suffice it to say that in the writ petition there is no specific assertion to the effect that in the interest of justice the respondents Nos. 1, 2 and 3 be directed thro' mandamus to restore respondent No. 4 to the office of Governor of Rajasthan and as such the petitioner is not entitled to claim relief No. 1 *Har Govind Pant Vs. Chancellor, University of Rajasthan and Others*, The Supreme Court decision in *Kamini Kumar Das Choudhury Vs. State of West Bengal and Others*, supports this view. In *Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others*, their Lordships of the Supreme Court have observed as under :--

"A demand for justice and its refusal must precede the filing of a petition asking for direction or Writ of Mandamus....."

Reference may also usefully be made to *Vijal Goods Transport, Company v. State Of Rajasthan*. (Civil Writ Petn. No. 342 of 1978, decided on May 26. 1978) (re-Ported in *Vijay Goods Transport Co. Vs. The State of Rajasthan and Others*, In the ease on hand failure to make demand for justice on the part of the petitioner operates as a bar against the maintainability of the writ petition regarding the

grant of the above mentioned relief.

21. I find no merit in the arguments that the impugned order, Annexure-1, was not issued while exercising powers vested in the President of India under Article 156(1) of the Constn. and "at the pleasure of the President", as laid down in the Article. A perusal of the impugned order reveals that it has been issued in the name of the President of Endia, and has been duly signed by himself. It is expressly recited therein that the impugned order was issued by the President by virtue of the powers vested in him under Article 156 of the Constn, it was not necessary to specifically mention in the order that it was issued in exercise of the power "at the pleasure of the President." The power vested in the President must be deemed to have been exercised "by him in the manner required by the article referred.

22. A Governor of a State is appointed by the President. He holds office during the pleasure of the president. The original plan in the draft Constn. was to have elected Governors, but later in the Constituent Assembly it was replaced by the mode of appointment by nomination by the President after a good deal of discussion. It was envisaged that if a Governor was to be elected by direct vote he would consider himself to be superior to the State Chief Minister, returning from a single constituency; and this would lead to frequent frictions between the Governor and the Chief Minister. When executive powers as a whole are legally vested in the Governor and when he believes that he has got the backing of the people of the State behind him. he at his discretion might come forward and intervene in the governance of the State. That would really amount to something contrary to the spirit of democracy and system of parliamentary government. The executive power of the State is vested in the Governor, and every executive action of the Government is required to be expressed to be taken in his name, besides this he is integral part of the Legislature: vide Article 168 of the Constn. He has also the power to reserve any bill for consideration of the President. The Governor, under Article 200 of the Constn. has also got the power to reserve any bill for the consideration of the President, if such a bill, in his opinion, became law it would so derogate from the powers of the High Court as to endanger the position, which that Court is designed to fill under the Constn. There is also another significant role, which the Governor has to play under the Const.; and that is of making a report where he finds that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constn. It is the Governor's report which generally forms the basis of President's action taken under Article 356 of the Constn. It must be realised that the Governor while discharging his functions works as a channel of communication and contact between the State and the Centre. The founding fathers in their wisdom, provided in Article 61 of the Constn. for the removal of the President from office by impeachment, but as the Governor holds office during the pleasure of the President, it was not felt necessary to make provision in the Constn. for the removal of the Governor by impeachment or by any other process analogous to impeachment. As already mentioned above. Governor is an

important channel of communication and contact between the State and the Centre. Under Article 164(1) Chief Minister is appointed by the Governor. On the advice of the Chief Minister other Ministers are appointed by the Governor; and the Ministers including the Chief Minister hold office during the pleasure of the Governor. As regards non-State field, provisions are found in Part XI of the Constn. Article 256 provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. Article 257 lays down that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Central Government to be necessary for that purpose. The executive power of the Union also extends to the giving of directions to a State as to the construction and maintenance of means of communication declared to be of national or military importance, and also for giving directions to States to take measures for the protection of Railways within the State. In this role as a link with the Centre, the Governor keeps the President well informed periodically and regularly of the matters connected with the affairs of the State. There may be occasions for Governor, in addition to his periodical reports, to inform the President, of any serious internal disturbance or of the exercise or otherwise of any possible danger of external aggression. Duty to report flows from Article 365. Article 35fi deals with the steps to be "taken by the President. In case of failure of Constitutional machinery in a State, on a report lodged by the Governor. The Union Government has the duty to ensure that Government of every State is carried on in accordance with the provisions of the Constn. To fulfil this object there is no central agency in a State other than that of the Governor. The Central Government can also under Article 258 conditionally or unconditionally entrust powers vested in it to be exercised by the State Government or the officers of the State. In regard to some of these non-State matters the Governor cannot possibly act on the advice of his Ministers and is required to act according to the directions of the Central Government. The Governor in his own assessment can dismiss the Chief Minister. For instance, Shri Ajoy Mukherji was requested by the West Bengal Governor to convene an Assembly for deciding whether the United Front Government enjoyed majority support any longer. On Shri Mukherji's declining to do so, the Governor made his own assessment and dismissed him from the office of Chief Minister and appointed Shri P. C. Ghosh the next Chief Minister. If an elected representative of the people can be dismissed by the Governor on the assessment made by him, it does not stand to reason why the Governor, who is, as a matter of fact an appointee of the President of India and expressly holds office during pleasure of the President. cannot be asked to resign or in case of failure to accept the advice of the President, be made to vacate his office or otherwise his term be not terminated.

23. A celebrated writer on Constitutional Law Alexandrowicz in his well known book "Constitutional Development of India" writes :--

"If the Governor chooses to exercise his discretion independently of the Centre or the President, that is. the Union Government, the president will be entitled to withdraw his pleasure of continuing the Governor under Article 156(1) of the Constitution."

24. Mr. H. M. Seervai in his well known book "Constitutional Law of India" Volume II, 1976 Edition, page 1046, Point 18.4 observed :--

"The President can be removed from the office by impeachment for the violation of the Constitution (Article 61). The President, or one who has held the office of President is eligible for re-election. The Governor holds office during the pleasure of the President and can be removed by him at any time during short term of office (Art. 156). so that it is not necessary to provide for removal of Governor by impeachment or by a process analogous to impeachment."

25. Kagzi, M. C. J. in his book, "The Constitution of India" (1975 Edition, pages 261-262) observed :--

".....A person is appointed the Governor for a term of five years: but he can resign his office earlier. The Governor holds his office during the pleasure of the President who may recall him at any time....."

"There is no provision for appointment of a Deputy Governor.....Accordingly, any casual vacancy due to illness, death or long absence of a Governor should be filled in the manner the President may decide in accordance with the practice developed since after the commencement of the Constitution. The established practice requires the President to appoint the Chief Justice or in his absence the senior most Judge of the State High Court as the Governor pro tempore."

26. The Governor's appointment and also, by necessary implication his removal is during pleasure of the president. The Presidential pleasure in matter of removal of the Governor is not regulated or controlled by any provision in the manner as provided under Article 311 in relation to Civil (Administration) Services. The above provision for his removal or dismissal is an obvious requisition of the unregulated and uncontrolled Presidential pleasure, exercisable at any moment without cause or without any stated reasons. If this were not so, the Governor will have most secured term of office, more secure than any office held by a member of civil service. He will be irremovable, although Judges holding offices during good behaviour would be removable in accordance with the procedure established by Article 124(4). The condition of his term of appointment being during pleasure any provision or procedure if provided for his removal would be unnecessary and superfluous. He has no security of tenure and" no fixed terms of office. !He may be removed by an expression of Presidential displeasure. His removal at pleasure gives no cause of action. The impugned Presidential Notification albeit a bold expression of displeasure is a

complete answer to all doubts, disputes, challenges and contentions against his removal. Neither the Presidential order can be challenged in any Court, nor can it be refuted in any House of State Legislature/Parliament. Legally the Presidential order is conclusive.

27. If the quinquennial term of a Governor were fixed term, the condition of his holding office during Presidential pleasure would be a redundancy. The essence of his term is the Presidential pleasure, and not the duration of limit of five years. This is amply borne out by a reference to the Constituent Assembly Debates. The idea of a fixed mandatory term, and for that matter the idea of an irremovable Governor was not approved or accepted by the Constn. The mode of an elected and consequently, an irremovable Governor was not deliberately adopted by the framers. It was thought that an appointed Or nominated Governor holding office during Presidential pleasure would remove a source of possible separatist tendencies.

28. The pleasure condition of a Governor's term makes any proceeding or procedure or rules of natural justice for his removal unnecessary. A removal provision exists in cases of high functionaries including President. Chief Justice and Judges of the Supreme Court and those of the High Courts. But no such provision exists in case of those] functionaries who hold office during pleasure of President. If a Governor should be irremovable during his five year term, while President, can be removed following his impeachment in Parliament an irremovable Governor of a State holding office during pleasure of the President would be an anomaly. He must endanger executive efficiency, Union-State relations and might be possible focal point of separatist tendencies. Even the learned counsel for the petitioner thinks that this should not be so. He readily concedes that there can be a situation in which removal or dismissal of a Governor might become justified in the national interest.

29. At this stage I may point out the case of H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, which the learned counsel referred. The case relates to the executive discretion of the President under Article 336 for purposes of recognition of a Ruler for the time being for a claim of privy purse, etc. The clause envisages, as held by the Supreme Court, consideration of specific individual claims for recognition. It does not relate to exercise of executive power in relation to State affairs. The case has, therefore, no bearing with the controversy raised in the present matter.

30. Article 367(1) of the Constn. makes it clear that the General Clauses Act, 1897, shall, subject to any adaptations and modifications made therein under Article 372, be applicable to the interpretation of the Constn. as it applies to the interpretation of an existing act of the Legislature of the Dominion of India. The words "hold office during the pleasure" came up for interpretation in *Terrell v. Secretary of State for the Colonies* (1953) 2 All ER 490, before the Queens Bench Division of England. The question involved in that case was that in 1930, by letters, dt. July 15 and Aug. 7, the Secretary of State for the Colonies offered to

the claimant Terrell the appointment of a Judge of the Supreme Court of the Straits Settlements. One of the matters mentioned in the letters was that the compulsory retiring age would be 62. The claimant accepted the appointment. In 1942 when Malaya was occupied by Japanese, he was on leave in Australia and was unable to assume his office until the British regained control of Malaya. In March 1942, he was informed that as no other suitable appointment in the colonial legal service could be found for him, he must be awarded a pension on abolition of office, and on July 7, 1942, his appointment was ended, 17 months before his 62nd birthday. On a claim by him that he was not liable to be dismissed before he reached the age of 62, when he would be entitled to a larger pension. His Lordship Goddard C. J. held :

"Judges in Malaya did not hold their office during good behaviour, but they held, and always had held, office at the pleasure of the Crown and, therefore, the claimant had held the office during pleasure. The right of the Crown to dismiss at pleasure was a rule of law which could not be taken away by any contractual arrangement....."

31. The words "to hold office at the pleasure of the Crown" have their origin in the Latin phrase "Durante-bene-placito" (during pleasure), meaning that the tenure of office of a person, except where it is otherwise provided by statute, can be terminated at any time without cause assigned. The true scope and intent of this expression is that even if a special contract has been made with the person, the Crown is not bound thereby. In other words, the person concerned is liable to be dismissed without notice and there is no right of action for wrongful dismissal. It is a well known rule of English Law, which has been incorporated in Article 156(1) of the Constn.

32. On the parity of reasoning of the above noted case it can be safely said that it lies within the power of the President to terminate, in his discretion, the term of the office of the Governor at his pleasure.

33. The learned counsel wrongly construes Article 156 by saying that Clause (3) controls Clause (1) of the Article. The correct construction is Just the opposite. It is expressly stated that Clause (3) is subject to Clause (1). This means that five years term is subject to the exercise of pleasure by the President. He may in exercise of pleasure cut short the term. The Presidential pleasure contemplated in the Article is un-justiciable. It may be pointed that where any regulatory restriction for the exercise of pleasure is contemplated, such a provision could have been made in express words as is the case with Article 311 in relation to pleasure under Article 310. In the absence of any like regulatory provision and its unqualified character, no restriction can be placed upon it.

34. The interpretation suggested by the learned counsel that the term of the office of Governor cannot be reduced, if accepted, will have the effect of making Clause (1) of Article 156 otiose. It is also likely to create unsurmountable difficulties for the country. As for instance in Assam, which stands surrounded by

foreign countries like China. Burma etc. and a narrow 30 miles corridor connects it with the rest of the country. If the party in power of the State and the Governor decide to secede and integrate with China, the President of India cannot be asked by a Court of Law to wait for five years-- in not terminating the terms of the Governor or recall him earlier. Articles of the Constn, are required to be given harmonious interpretation. A look at the debates in the Constituent Assembly will show that one of the reasons, which weighed with our founding fathers, was not to have the elected Governors as this method would encourage separatist tendency. The stability and the unity of the Government machinery of the country as a whole could, the Constituent Assembly rightly observed, be achieved only by adopting the system of nomination.

35. For the reasons already mentioned above I hold that there is no merit in the argument that unless a minimum Constitutional term of five years for the office of the Governor is held to be mandatory, it would demolish the basic structure of the Constn. and the Government would become subservient to the President and thro" him to the Government of India. It will not be out of place to mention here that sometimes during the term of the office of a Governor he has been and is subject to transfer from one State to another by order of the President.

36. The limb of the same argument is that it is the requirement of law that every executive action must be accompanied by reasons and should be free from arbitrariness. There is nothing on record to hold that the President of India while passing the order. Annexure-1, acted capriciously or arbitrarily. Shri Raghukul. Tilak a few months back fell ill and was under stage of coma and the Notification, published in the Gazette shows that Shri K.D. Sharma was asked by the president to discharge the functions of the Governor as provided in Article 160 of the Constn. Neither Article 156 nor Article 160 enjoins on the President duty to give explicit reasons while issuing orders under them. The President of India is the best Judge to decide as to when and in what circumstances the term of sition Governor of a State should be reduced or he may be asked to vacate the office or may be transferred from one place to another. It is not the requirement of Article 156 that a person who holds the office at the pleasure of the President shall be removed by a speaking order. In my humble opinion, reasons are not required to be disclosed.

37. The point is undisputed that the Governor is not an employee either of the President or of the Union Government. He is a Constitutional functionary. Obviously the Governor is also the medium thro" whom Union keeps itself informed as to whether the State is complying with the directives issued by the Union from time to time. However, after promulgation of a proclamation on the failure of the constitutional machinery in the State, the Governor acts as agent of the President. As regards those functions of the State Government, which have been assumed by the President under the proclamation (Article 356 (1) (a)), it is obvious that in matters on which the Governor is empowered to act in his discretion or on his special responsibility, the Governor will be under the

complete control of the President. Article 371(2) provides that President may direct that the Governor of Maharashtra or Gujarat shall have a special responsibility for taking steps for the development of certain areas in the State such as Vidharb. Saurashtra etc. Similarly, the Governor of Nagaland under Article 371(1)(b) has similar responsibilities with respect to law and order in the State. Special responsibilities have also been imposed upon upon the Governors of Manipur and Sikkim. In discharge of such responsibilities, the Governor has to act according to the directions issued by the President from time to time and if anyone of the above noted Governors flout the directions of the President aided by the Council of Ministers, it cannot be said that the intention of the Constn. is that the President should feel helpless and should not remove the Governor of that State prior to the expiry of the term of five years.

38. Learned counsel for the petitioner states that long discussion was carried on in the Constituent Assembly regarding the term of appointment of the Governor and his removability. Ultimately Dr. Ambedkar observed that this power of removal was given to the President in general terms. This was so, although Prof. Shah wanted that certain grounds should be stated in the Constitution itself for the removal of the Governor. Therefore, it seems obvious to me that when the President is given the general power, he is also given power to remove a Governor for corruption, for bribery, for violation of Constitution or for any other reason which the President, no doubt, feels is legitimate ground, for the removal of the Governor. It seems, therefore, quite unnecessary to burden the Constn. with all these details in express terms. When it is perfectly possible for the President to act upon any one or more ground under the formula, I should think that it is unnecessary to categorise the conditions under which the President may undertake the task of removing the Governor.

39. The above noted observation made by Dr. Ambedkar relied upon by the learned counsel for the petitioner in no way supports the case of the petitioner. The power of removal has been left in the hand of the highest Constitutional functionary of the Union of India; and a presumption under S. 114 of the Evidence Act does arise that an official act must have been done in the manner it ought to have been done. No fact or data has been mentioned in the writ petition or placed before this Court on the basis of which it can be said that the President while passing the impugned order dt. Aug. 8, 1981, acted capriciously, arbitrarily or maliciously. Mere averment of the word "capricious" or "malicious" in the writ petition is, not sufficient Necessary details are required to be mentioned. In the writ petition in hand, it has been mentioned that Shri Raghukul Tilak was a freedom fighter and he is a man of letters and he was appointed by the President of India on April 20, 1977. It is also an admitted fact that Shri Raghukul Tilak was allowed to act as Governor for a pretty long time after the Congress (I) coming into power in Centre and the State. Thus, there is nothing on record or even a semblance of suggestion that on any account whatever the Government at the Centre, its functionaries or the President bore an ill-will against Shri Tilak. Simply because no reason has been mentionpd in the impugned order, it cannot

be said that the order is arbitrary, capricious or malacious. Nowhere in the writ petition it has been mentioned that Shri Raghukul Tilak had expressed any grievance or was sore about his termination and the petitioner cannot be allowed to make any grievance about it.

40. I find no merit in the contention that the President of India while terminating the term of appointment of Shri Raghukul Tilak as Governor of Rajasthan ought to have allowed him to work on that post till a permanent incumbent was appointed. Once a person holding office of the Governor loses the confidence of the President and the President withdraws his pleasure from him, the conclusion is inescapable that his further continuance on that post will not be conducive to the interest of the State. It will be preposterous to suggest that the Chief Justice of the State should not be asked to discharge the functions of the Governor in pursuance of the provisions of Article 160 of the Constn. of India. The President of India under his seal and signature has appointed Shri Kalyan Dutt Sharma to discharge the functions of the Governor of Rajasthan and I find no illegality in the order dt. Aug. 8. 1981, appointing Justice Shri Kalyan Dutt Sharma Chief Justice of the Rajasthan High Court to discharge the functions of the Governor of Rajasthan with effect from Aug. 8, 1981. The provision of Article 160 of the Constn. is meant to meet the situation which arose in Rajasthan when Shri Raghukul Tilak ceased, to hold the office of the Governor of the State.

41. Since Shri K.D. Sharma was appointed to discharge the functions of the Governor of Rajasthan with effect from Aug. 8. 1981, soon after he took the oath to discharge the functions of the Governor and as a result of it he ceased to hold the office of the Chief Justice of Rajasthan for the time being as he became unable to perform the duties of the office of the Chief Justice Shri D. P. Gupta, by the order of the President of India was appointed "as Acting Chief Justice from the same date. This could have been done only under Article 223 of the Constn. Under the Rajasthan High Court Ordinance. 1949, the definition of "Chief Justice" includes "Acting Chief Justice." Also Sub-clause D (11) (a) of Schedule II to the Constn. provides that the expression "Chief Justice" includes "Acting Chief Justice". It is the requirement of Article 216 of the Constn. that every High Court shall consist of a Chief Justice and such other Judges as the President may deem it necessary to appoint. A close reading of Articles 218, 223 r.w. Schedule II Sub-clause D (11) clearly reveals that there cannot be two Chief Justices in a High Court; and an Acting Chief Justice is appointed only when the Chief Justice is away and unable to perform duties of his office. After taking the oath under Article 159 of the Constn. to discharge the functions of the Governor. Shri K. D. Sharma cannot be said to continue to hold the office of the Chief Justice; and as such it cannot be held that he suffers from the disqualification provided under Article 158(2) of the Constn. Moreover a person asked to discharge the functions of the Governor of a State under Article 160 need not possess the qualifications mentioned in Article 158 of the] Constn. because, he is not termed as Governor. The oath prescribed for the Governor and for a person discharging the functions of the Governor is different. Schedule II Part A Sub-clause (4) further provides

that a person discharging the functions of the Governor shall be entitled to the same emoluments, allowances and privileges as the Governor whose functions he discharges or for whom he acts. Thus, the functionary discharging the functions provided under Article 160 of the Constn. cannot be termed to be a Governor within the meaning of Article 155 of the Constn. The necessary corollary of that is that a stop-gap functionary need not possess necessary qualifications for being appointed as a "Governor, and also does not suffer from the disqualifications attached to that office. Thus. Shri K.D. Sharma cannot be said to be usurper of the office of the Governor of the State of Rajasthan.

42. It is also clear that there is no conflict between Article 74 and Article 156(1) of the Constn.

43. The contention of the learned counsel for the petitioner that the executive power of the President should correlate to the matters with respect to which Parliament has power to make laws in no way helps the cause of the petitioner. The appointment or the removal of the Governor is not covered by List II of Schedule 7. It does not fall within the State List and thus the Parliament has power to make necessary rules and regulations regarding the office of the Governor under unenumerated residuary heads of List I, entry 97 under Article 248. The President can, therefore, certainly exercise the powers vested in him under Article 156(1) of the Constn, Moreover, as already mentioned above, for certain functions the Governor is directly responsible to the President. For not discharging his duties, the Governor can be removed by the President, by order.

44. For the reasons mentioned above, the writ petition fails and is dismissed in limine.