

(1986) 01 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9248 of 1985

Udai Narain Sinha

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-01-1986

Acts Referred:

Constitution of India, 1950 — Article 17(1), 172, 172(1), 174, 174(2)
Representation of the People Act, 1951 — Section 15, 73

Citation : AIR 1987 All 203

Hon'ble Judges : S.K. Mookerjee, J; S.K. Dhaon, J

Bench : Division Bench

Advocate : Petitioner in person, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dhaon, J.—An elector, who appears in person, has invoked the jurisdiction of this Court under Article 226 of the Constitution to challenge the existence of the current Legislative Assembly -- the Ninth Legislative Assembly.

2. The term of the Eighth Legislative Assembly was to expire on 27th June, 1985. The Governor of Uttar Pradesh, in the purported exercise of powers u/s 15 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) issued a notification on 30th Jan. 1985, calling upon all the Assembly constituencies in the State to elect members in accordance with the provisions of the Act, the Rules and the orders made thereunder. The Election Commission on 10th Mar., 1985, issued a notification purporting to be u/s 73 of the Act notifying the names of the members elected in the various constituencies barring a few constituencies where elections could not be held for one reason or the other. On the same date, the Governor, in the purported exercise of powers under Clause (b) of Article 174(2) of the Constitution, issued a notification dissolving the Uttar Pradesh Legislative Assembly with effect from that date. A notification issued on the same day announced that the Governor accepted the resignation of Sri Narain Dutt

Tewari, the then Chief Minister, and the members of his cabinet with effect from the afternoon of the said day, and directed that the Chief Minister should continue to function along with his cabinet till a new cabinet was constituted. On 11th Mar. 1985, a notification was issued to the effect that the Governor appointed Sri Narain Dutt Tewari as the Chief Minister.

3. The provisions of Section 15 of the Act are in pari materia with those contained in Section 14. In Anand Mohan Vs. Union of India (UOI) and Others, we had the occasion of considering the question whether a general election could be held for constituting a new House of the People even before the expiration of duration of the existing House. We took the view that the parliamentary constituencies in the country could be called upon to elect members of the House of the People in advance, at any time within six months from the date of expiration of the duration of the existing house but not before six months. We have already indicated that the Eighth Legislative Assembly had its life till 27th June, 1985. The notification dt. 30th Jan., 1985, having been issued well within six months was perfectly valid.

4. The petitioner made yet another attack on the validity of the notification dt. 30th Jan., 1985, on the ground that the Governor, in substance, played a fraud upon the electors of the State as eventually the life of the Eighth Legislative Assembly was cut short by an action taken under Article 174 of the Constitution, As this contention is based upon an interpretation of the preamble to the notification dated 30th Jan., 1985, it will be appropriate to extract the same : --

"Whereas it has been decided to hold a general election in the State of Uttar Pradesh for the purpose of constituting a new Legislative Assembly on the expiration of the duration of the existing Legislative Assembly" (underlined by us).

Emphasis has been laid by the petitioner upon the words underlined by us. The petitioner assumes that the duration of an existing Legislative Assembly can expire only on the completion of its full term of five years and not by its dissolution. In Anand Mohan's case (supra) we considered Article 83(2) and Clause (b) of Article 85(2) of the Constitution and held that the framers of the Constitution contemplated the dissolution of the House of the People by two methods, one by the action of the President and the other by the natural effluxion of time. This scheme is maintained in relation to the Legislative Assemblies. In Article 172 it is provided that every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and the expiration of the said period of five years shall operate as a dissolution of the Assembly and in Article 174(2) it is laid down that the Governor may, from time to time, dissolve the Legislative Assembly. It is evident that the dissolution of the Legislative Assembly is envisaged both under Articles 172 and 174. The expiration of the duration of an existing Legislative Assembly results in its dissolution.

5. The words "unless sooner dissolved" in Article 172(1) clearly indicate that no constitutional right has been conferred either upon a Legislative Assembly or its members to insist that it (the Assembly) shall not be dissolved till the expiration of a period of five years from the date appointed for its first meeting. The Governor employed proper and appropriate language by using the words underlined by us. He used the words in the sense, in which the framers of the Constitution designed them and not in the popular sense in which the petitioner wants them to be read. He did not and could not intend to surrender his constitutional power of dissolving the Assembly on a future date, if the exigency of the situation so required. Therefore, there is no occasion for describing the act of the Governor in issuing the notification dt. 30th Jan. 1985, as fraudulent.

6. The Governor purported to "dissolve the Uttar Pradesh Legislative Assembly with effect from 10th Mar. 1985". True, he did not make any specific mention either of the Eighth or Ninth Assembly. It is neither the case of the petitioner nor could it be that at any moment prior to the issue of the notification any date had been appointed for the first meeting of the new Legislative Assembly, yet, he contends that in fact and in law the Governor dissolved the Ninth Legislative Assembly.

6A. Let us have a look at the English Constitutional law. There, in the case of a new Parliament, before the members of either House are entitled to sit and vote, they must now give evidence of their title, and take the oath of allegiance. The sitting of Parliament may be terminated either by dissolution, prorogation or adjournment. Dissolution brings the life of an existing Parliament to an end, and may be effected in two ways, "(a) by an exercise of the Crown's prerogative" and "(b) by effluxion of time". Prorogation terminates a session of Parliament, and is effected by a Crown's prerogative. Adjournment does not put to an end to the existence or to a session of Parliament, but postpones the further transaction of business for a specified time. (See Ridge's Constitutional Law of England Seventh Edition pages 48 and 51 to 53). Articles 172 : and 174 have been considered by us. It is to be noted that Article 174(2) confers upon the Governor the power to prorogue a House from time to time. Article 188 provides that every member of the Legislative Assembly of a State shall, before taking his seat, make and subscribe an oath or affirmation. It will be seen that the framers of the Indian Constitution adopted constitutional law of England in so far as the dissolution of a Legislative Assembly is concerned.

7. The question is : Did the Ninth Legislative Assembly come into existence as a result of the notification dt. 10th Mar. 1985, issued u/s 73 of the Act so as to entitle the Governor to bring its life to an end by, exercising power under Article 174(2) : To put it differently, could the sitting of the Ninth Legislative Assembly be terminated even though no date had been appointed for its first meeting? The enacting part of Section 73 of the Act provides that, upon the issue of a notification by the Election Commission in the Official Gazette of the names of the members elected in the various constituencies, the Legislative Assembly

"shall be deemed to be duly constituted". The proviso to the said provision has relevance and may be extracted :

"Provided that the issue of such notification shall not be deemed -

(a) to preclude -

(i) the taking of the poll and the completion of the election in any parliamentary or Assembly constituency or constituencies in which the poll could not be taken for any reason on the date originally fixed under Clause (d) of Section 301 or

(ii) the completion of the election in any parliamentary or Assembly Constituency or constituencies for which the time has been extended under the provisions of Section 153; or

(b) to affect the duration of the House of the people or the State Legislative Assembly if any, functioning immediately before the issue of the said notification."

8. In Anand Mohan Vs. Union of India (UOI) and Others, we pointed out that the provisions of the Act shall be subservient to the provisions contained in the Constitution on account of the operation of Article 327. It is apparent that in the event of a real conflict between the provisions of Section 73 of the Act and the constitutional provisions the former must give way to the latter.

9. The legal fiction created in Section 73 of the Act activates us to ascertain for what purpose it is created. Once the purpose has been ascertained, we have to assume all these facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. However, we are warned that a fiction should not be extended beyond the purpose for which it is created and for discerning the purpose we are not expected to go beyond the language of the provision by which the fiction is created. A bare reading of the provisions of the proviso, as extracted above, indicates that the deeming provision has not been given a full play. On the contrary, its operation is restricted. Even though polling has not taken place and the election process has not been completed in one or more parliamentary or Assembly constituency, yet we are asked to forget the reality and assume that the Assembly has been duly constituted merely because a notification has been issued. Our Constitution does not prohibit an interregnum between the dissolution of an existing House of the People and the State Legislative Assemblies and the coming into existence of a new House or Assembly and the functioning of a new House or Assembly. The purpose of the fiction appears to be to minimise the period of the non-functioning of the normal democratic process. The issue of the notification u/s 73 clears the desk for the appointment of the date for the first meeting of either the House of the People or the Legislative Assembly.

10. Clause (b) of the proviso to Section 73 takes the matter beyond the pale of any controversy that the duration of the Eighth Legislative Assembly, which was admittedly functioning on or before 10th Mar. 1985, remained wholly unaffected. Its life remained intact till 27th June, 1985. It continued to function and had a

legal existence. In the absence of the appointment of a date for the first meeting of the Ninth Assembly in accordance with Article 172(1) its life did not commence for the purposes of that Article even though it may have been constituted by virtue of the notification u/s 73 of the Act. In other words, the life of the Ninth Legislative Assembly did not begin. If the life did not begin, the question of its being cut short did not arise. If no sitting of the Ninth Assembly took place no occasion arose for the termination of the sitting by dissolution. If it was not in existence it could not be dissolved. As it was still-born within the meaning of Article 172, the question of its being put to death within the meaning of Article 174 had no relevance. The conclusion is inevitable that Article 174(1) contemplates the dissolution of that Legislative Assembly the life of which commenced within the meaning of Article 172(1). The Governor, therefore, neither in fact nor in law dissolved the Ninth Legislative Assembly. On 10th Mar. 1985, he exercised his powers to dissolve the Eighth Legislative Assembly.

11. In *K.K. Aboo Vs. Union of India (UOI) and Others*, the facts were these. By a proclamation the President dissolved the Legislative Assembly and assumed the executive powers of the State to himself. A general election was held for the purposes of constituting a new Legislative Assembly in the State. The names of members elected for the various constituencies were notified u/s 73 of the Act. The new legislative Assembly had never been summoned under Article 174 of the Constitution to meet and, therefore, the members elected could not be sworn in. The Vice President, who was then discharging the functions of the President in the latter's absence out of India, revoked the proclamation of Sept. 10, 1964 and issued a fresh proclamation under Article 356 assuming to himself all the functions of Kerala Government and dissolved the newly constituted Legislative Assembly of the State. A learned single Judge held that the power to dissolve the State Legislative Assembly was implicit in Clause (b) of Article 356(1) and the President need not have resorted to the provisions of Article 356(1)(a) read with Article 172 or Article 174 to dissolve the State Legislative Assembly. However, the learned Judge also held:

"In my view once the Assembly is constituted, it becomes capable of dissolution. What has come to be is capable of being put to an end. The contention that the dissolution can only be after its first meeting does not appear to be sound. It has no support in any of the provisions relied on by the counsel."

The learned Judge was really not called upon to decide the question as obviously the President had dissolved the Legislature in the exercise of powers under Article 356 of the Constitution and the learned Judge had himself, as indicated above, held that such a power was implicit in Clause (b) of Article 356(1). Therefore, the aforequoted observations are, in our opinion, obiter. The learned Judge based his aforequoted view point solely upon the words "shall be deemed to be duly constituted" as used in Section 73 of the Act. We have already seen that Parliament in Section 73 created a fiction for a limited purpose of paving the way for either the President or the Governor to appoint a date for the first

meeting of either House or the Assembly so as to enable them to function after being summoned to meet under Article 174 of the Constitution. After giving a thoughtful consideration to the matter and in the light of the view expressed by us in this judgment we respectfully disagree with the view expressed by the learned Judge in the aforequoted passage.

12. There is no force in the submission of the petitioner that since the Eighth Legislative Assembly was not in session on 10th Mar. 1985, it could not be dissolved. Such a contention is not warranted either on principle or on authority. We have seen that in Article 172 the life of the Legislative Assembly starts from the date appointed for its first meeting. Under Article 174 the Governor is empowered to summon a Legislative Assembly from time to time. However, six months shall not intervene between such sitting of a Legislative Assembly in one session and the date appointed for its first sitting in the next session. The feature that emerges from these provisions is that the computation of the period of five years starts from the date appointed for the first meeting and the running of time is not arrested, even though the Legislature may or may not be in session. In Article 174(2) the significant words are that the Governor may from time to time dissolve the Legislative Assembly. It is, therefore, apparent that it is open to the Governor to dissolve a Legislative Assembly whenever and at whatever time he is so advised.

13. In England one of the methods of bringing the life of existing Parliament to an end is by an exercise of the "Crown's prerogative. If Parliament is sitting, this may be done either in person or by Royal Commission, but the useful method is first to prorogue Parliament which may then be dissolved by proclamation. See Ridge's Constitutional Law of England Seventh Edition page 51.

14. As a result of the foregoing discussion, we find no merit in this petition. It is dismissed summarily.