

Topic: Non- Justiciability Of Cabinet Advice Under Article 74(2)

Name of the Case: S.R. Bommai v. UOI, AIR 1994 SC 1918

Bench: Justice Kuldip Singh, Justice P.B. Sawant, Justice S.C. Agrawal, Justice K Ramasamy, Justice Yogeshwar Dayal, Justice B.P. Jeevan Reddy, Justice S.R. Pandian, Justice A.M. Ahmadi

Judgment: The Supreme Court while interpreting the implications of Article 74(2) held that no court is concerned with what advice was rendered by the ministers to the President. The court is only concerned with the validity of the order and not with what happened in the inner councils of the president and the minister. An order cannot be challenged on the ground that it is not in accordance with the advice tendered by the minister or that it was based on no advice. If, in a given case, the President acts without, or contrary to, the advice tendered to him, it may be a case warranting his impeachment, but so far as the court is concerned, it is the act of President.

Article 74(2) protects and features the secrecy of the deliberations between the President and his Council of ministers. It's scope is limited. Article 74(2) cannot override the basic provisions of Constitution relating to judicial review. When any action taken by the President in exercise of his functions is challenged, it is for Council of Ministers to justify the same, since the President acts under Article 74(1).

Article 74(2) does not mean that the government need not justify the act of the President taken in exercise of his functions. When act or order of President is questioned in the court, it is for the Council of ministers to justify the same by disclosing the material which formed the basis of Act/order.