

Topic: Meeting Of State Legislature And Power Of Summoning Under Article 188

Name of the Case: Rameshwar Prasad (VI) v. Union of India, AIR 2006 SC 980

Bench: Chief Justice Y.K. Sabharwal, Justice K.G. Balakrishnan, Justice B.N. Agrawal, Justice Ashok Bhan, Justice Arijit Pasayat

Fact of the case: Petitioner challenges the constitutional validity of notification which orders dissolution of the legislative assembly of the State of Bihar. It is a unique case. Earlier cases that come up before Supreme Court those where the dissolution of assemblies was ordered on the ground that the parties in the power had lost the confidence of the house. The present case is of its own kind where before even the first meeting of legislative assemblies, its dissolution has been ordered on the ground that attempts to crumble majority by illegal means and lay claim to form the government in the state and if these attempts continue, it would amount to tampering with Constitutional provisions.

Judgment: The Supreme Court held that the constitution of any Assembly can only be under Section 73 of the Representation of People Act, 1951 and the requirement of Article 188 of the Constitution suggests that the Assembly comes into existence even before its first sitting commences.

Normally, the government is formed by the party commanding the required majority in the State. However, the issue has become more complex with a number of political parties in the fray. If a political party with the support of other political parties or other MLAs stake claim to form a Government and satisfies the Governor about its majority to form a stable Government, the Governor cannot refuse formation of the Government and override the majority claim because of his subjective assessment that the majority was cobble together by illegal and unethical means.

The Governor summons house to meet at such times and places as he thinks fit. It is now a well-settled convention that the Governor summons the house not of his own accord but only with advised to do so by Council of ministers.

It is the Council of Minister which provides business for a session of the legislature, and, therefore, it follows that for the Governor to act otherwise in accordance with such advice in the matter of summoning House of legislature would be without purpose.

Six months should not intervene between the last sitting in one session of the house and date for his first meeting in the next session under Article 174 (1).
