

Topic: Appointment Of Prime Minister Under Article 74(1)

Name of the Case: Madan Murari v. Chaudhury Charan Singh, AIR 1980 Cal 95

Bench: Justice S Mukherjee

Fact of the case: The petitioner in this application is a citizen of India. In this application filed under Article 226 of the Constitution on 3 September 1979 he has asked for a rule nisi (unless) to show cause under what authority the respondent 1 and his colleagues resolved to advise the President to dissolve the Lok Sabha on 20 August 1979 and also rule nisi upon the respondent to show cause why writ or order or direction in the nature of Quo Warranto should not be instituted calling upon Chaudhary Charan Singh to show cause why he should not be removed from the office of Prime Minister. The petitioner also press for an ad interim (for an intervening or temporary period of time) order of injunction restraining the respondent 1 from functioning as Prime Minister of India till the disposal of the petition.

Judgment: The Court observed that despite the 42nd Amendment, the present act has its own discretion in choosing the Prime Minister. In making this assessment as to who as the Prime Minister will enjoy the confidence of Lok Sabha it is not fettered in his choice except by his own assessment. It was an unprecedented situation that such a government should give advice to the President which would be binding who could not sit in judgement on the political assessment of the present. Whether it was politically justified or not in appointing the Prime Minister is not a matter of Court to determine.

Thus, in the facts and circumstances of the case, the President was legally and constitutionally justified in calling upon Charan Singh to form the ministry. Once the ministry was formed it was competent constitutionally to function and aid and advise the President in terms of Article 74 (1) until the Cabinet resigned on 20 August 1979.

It was further observed that it was constitutionally within the discretion of President to accept the Cabinet advice to dissolve the Lok Sabha. The President was not bound to accept the advice, he was free to accept or not to accept that advice. The President did not act unconditionally in accepting that advice. After the Prime Minister and the Council of Minister tender his resignation, their continuance in office until alternative arrangements would be made as directed by the President was mandatory and imperative obligation for them as they held their office during President pleasure.

The court however expressed the view that the government should not function only as caretaker government and carry out day to day administration and defer all policy questions which could await disposal by Council of Ministers responsible to Lok Sabha. This was so because the government had never proved its responsibility to Parliament, it resigned before facing a vote of confidence.