

# Dismissal of three BJP Govts. upheld

From Our Legal Correspondent

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A special nine-judge Bench of the Supreme Court has, unanimously upheld the proclamations issued by the President under Article 356 (1) of the Constitution on December 15, 1992 — dismissing the then BJP Governments of Madhya Pradesh, Rajasthan and Himachal Pradesh in the wake of the circumstances that followed the demolition of the Babri Masjid at Ayodhya on December 6, 1992. There was no challenge before the court against the proclamation issued by the President in December, 1992 dismissing the then BJP Government of Uttar Pradesh.

The Bench, through six separate judgments delivered in what are known as "Assembly dissolution cases," however, said the proclamation issued by the President was subject to judicial review in an appropriate case if it was found to be 'malafide' or based on "wholly irrelevant and extraneous considerations."

## No bar on court

The Bench also held that Article 74 (2) of the Constitution was no bar on the court, in an appropriate case from calling upon the Union of India (UOI) to disclose to the court the material upon which the President had formed the 'requisite satisfaction' in issuing a 'proclamation' under Article 356 (1) of the Constitution in a given case.

Article 74 (2) bars an inquiry into the question whether any and if so, what advice was tendered by the Council of Ministers at the Centre to the President.

If and when a 'privilege' from disclosure of the material concerned to the court is claimed by the UOI in defending a proclamation issued under Article 356, in a given case, it would have to be decided on its own merits under the provisions of Section 123 of the Evidence Act, according to the majority of the judges.

## Two 'unconstitutional'

The majority of the judges also held that the proclamations dated April 21, 1989 and October 11, 1991 and the action taken by the President in removing the then respective Ministries and legislative Assemblies of the States of Karnataka and Meghalaya "are unconstitutional."

In the Karnataka case, the majority judges took the view that irrelevant considerations based on the Governor's report appeared to have weighed on the President in issuing the then proclamation even without having allowed the then Chief Minister to have a 'floor test' of his strength in the Assembly.

In the 'Meghalaya case,' the action of the then Speaker of the Assembly and the Governor in not counting those MLAs — whose 'disqualification' under 'anti-defection law' was 'stayed'

by the apex court was not considered by the majority judges as relevant consideration in issuing the 'proclamation.'

The main majority judgments were delivered by Mr. Justice P. B. Sawant, speaking for himself and Mr. Justice Kuldip Singh and Mr. Justice B. P. Jeevan Reddy, speaking for himself and Mr. Justice S. C. Agrawal.

Mr. Justice Ratnavel Pandian, the presiding judge of the Bench in his separate judgment, agreed with the reasoning and conclusions contained in Mr. Justice Jeevan Reddy's judgment and also with most of the conclusions in the judgment of Mr. Justice Sawant.

Mr. Justice A. M. Ahmadi, in his separate judgment, while largely agreeing with the conclusions reached in the separate judgment of Mr. Justice K. Ramaswamy and also final conclusion in Mr. Justice J. S. Verma's separate judgment, said "the proclamations issued and consequential action taken against the States of Madhya Pradesh, Himachal Pradesh, Rajasthan and Karnataka are not justiciable while the proclamation issued in connection with Meghalaya may be vulnerable but it is not necessary to issue any order or direction in that behalf as the issue is no more live in view of the subsequent developments that have taken place in that State after fresh election."

Mr. Justice J. S. Verma, in his separate judgment speaking for himself and Mr. Justice Yogeshwar Dayal, said "this separate opinion is occasioned by the fact that in our view the area of justiciability is even narrower than that indicated in the elaborate opinions" (delivered by the majority judgment).

Mr. Justice Verma, in his judgment, also noted, that "only the Meghalaya case is justiciable and that proclamation was invalid while those relating to Madhya Pradesh, Himachal Pradesh, Rajasthan and Karnataka are not justiciable and that, however, in view of the subsequent elections held in Meghalaya that is no longer a live issue and therefore, there is no occasion to grant any substantial relief even in that case."

## Test of Proclamation

Mr Justice Ramaswamy, said "the 'satisfaction' reached by the President for issuing the proclamation under Article 356 must be tested only on those grounds of unconstitutionality (namely, legal malafides or high irrationality) in the exercise of the discretion to issue Presidential proclamation."

But, the judge added that the 'satisfaction' of the President "cannot be tested on the grounds that the material which enabled him to reach the satisfaction was not sufficient or adequate".

Mr Ramaswamy also said "the traditional parameters of judicial review" cannot be extended to the area of exceptional and extraordinary powers exercised under Article 356.

The majority judges said that when a prima

facie case was made out in the challenge in a 'proclamation', the 'burden' was on the UOI to prove that the relevant material did in fact exist and such material might be in the report of the Government or other than the report.

The also noted that, having regard to clause (3) of Article 356, it would not be permissible for the President to exercise powers under sub-clauses (a), (b) and (c) of clause (1), "to take irreversible actions (like dissolution of a State Legislative Assembly in a given case of 'proclamation') till atleast both Houses of Parliament had approved of the proclamation within a period specified in Article 356.

If the proclamation is held invalid in a given case, the majority pointed out, then notwithstanding the fact that it is approved by both Houses of Parliament, it would be open to the court to restore "the status quo ante" to the issuance of proclamation and hence to restore the Legislative Assembly and the Ministry.

The majority judges also said that while restoring the 'status quo ante', it would be open for the court to mould relief suitably and declare as valid, actions taken by the President till that date.

All the judgements emphasised that "secularism is one of the basic features of the Constitution".

The judges, while on this aspect, also said that "politics and religion cannot be mixed" and "any State Government which pursues unsecular policies or unsecular course of action acts contrary to the constitutional mandate and renders itself amenable to action under Article 356 of the Constitution".

While freedom of religion is guaranteed under the Constitution to all persons in India, from the point of view of the State, "the religion, faith or belief of a person is immaterial", the judges noted.

To the State, all are equal and are entitled to be treated equally and in matters of State, religion has no place and "no political party can simultaneously be a religious party", the judges noted.

All the judgements, in allowing appeals from the Union of India against the judgement of the Madhya Pradesh High Court, set aside the ruling striking down as invalid the Presidential proclamation issued on December 15, 1992 dismissing the then BJP Government at the State.