

CASE NO.:  
Special Reference Case 1 of 2003

PETITIONER:  
Ref.U/Article 317(1)for Inquiry & Report on Dr. H.B. Mirdha, Chairman, O.P.S.C

RESPONDENT:  
.....

DATE OF JUDGMENT: 05/08/2005

BENCH:  
CJI R.C. Lahoti,D.M. Dharmadhikari & G.P. Mathur

JUDGMENT:  
O R D E R

This is a Reference under Article 317(1) of the Constitution of India initiated by the President of India calling for an inquiry into the alleged misbehaviour of Dr. H.B. Mirdha, the then Chairman of the Orissa Public Service Commission. Before the Court closed for summer vacation, the learned counsel appearing in the case were heard on the preliminary objection raised on behalf of the respondent, laying challenge to the maintainability of the Reference itself. Orders were reserved. However, we find some essential factual information missing, on availability whereof, we would like to hear all the learned counsel on the necessary aspects of the preliminary objection, reflected in the issues which we frame hereunder.

First, on point of fact we would like the Union of India to supply the information and clarify if, before making the Reference to this Court, was there any advise by the Council of Ministers tendered to the President of India within the meaning of Article 74 of the Constitution?

On such information being made available in three weeks, we would like to hear the learned Attorney General for India as also all the learned counsel appearing in the case on the following issues :-

(1) Whether the applicability of Article 74 of the Constitution is attracted to a Reference made by the President under Article 317(1) of the Constitution?

(2) (a) If 'yes', at what stage?

(b) Whether the initiation of Reference by the President under Article 317(1) must be preceded by the advise of the Council of Ministers under Article 74?

(c) Whether the applicability of Article 74 is attracted to Article 317 only when the Report on Inquiry held by the Supreme Court has been received by the President and a decision for removal or otherwise is to be taken by the President.

List after four weeks.

JUDIS