CASE NO.:
Writ Petition (civil) 257 of 2005

PETITIONER:
Rameshwar Prasad & Ors.

RESPONDENT:
Union of India & Anr.

DATE OF JUDGMENT: 24/01/2006

BENCH:
K.G. Balakrishnan

JUDGMENT:
J U D G M E N T
[With W.P. (C) No.255 of 2005, W.P. (C) No. 258 of 2005 & W.P. (C) No. 353 of 2005]

K.G. BALAKRISHNAN, J.

I have had the advantage of reading in draft the judgment prepared by Hon'ble the Chief Justice of India, Shri Y. K. Sabharwal and I find myself unable to agree with the decision on point No. 2 formulated in the judgment. On all other points, I gratefully adopt the exposition of law and agree with the decision proposed by the learned Chief Justice. Point No. 2 is as follows :-

"(1)\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005\005

(2) Whether the proclamation dated 23rd May, 2005 dissolving the Assembly of Bihar is illegal and unconstitutional?"

Few factual details are necessary to decide the question. The election to the Bihar State Legislature was held in the month of February, 2005 and the results of the election were declared on 23rd March, 2005. The names of the members elected to the Bihar State Legislature were notified by the Election Commission. Certain political groups and political parties participated and the National Democratic Alliance (for short 'NDA'), a coalition comprising Bhartatiya Janata Party (for short 'BJP') and Janata Dal (United) (for short "JD(U)") secured the largest support of MLAs. The party-wise strength in the Assembly was as follows :-

"(1) NDA 92
(2) RJD 75
(3) LJP 29
(4) Congress (I) 10
(5) CPI (ML) 07
(6) Samajwadi Party 04
(7) NCP 03
(8) Bahujan Samaj Party 02
(9) Independents 17
(10) Others 09"

In order to secure an absolute majority to form a Government in the State of Bihar, support of 122 Members of Legislative Assembly was required. NDA could secure only 92 seats and no other political parties or group came forward to

support NDA to form a Government. RJD was also in the same dilemma. LJP, another political party which was under the leadership of Shri Ram Vilas Paswan had secured 29 seats in the State Legislature. This political party did not extend support either to NDA or RJD. As none could form a Government, Governor of the State of Bihar sent a Report on 6th March, 2005 to the President of India recommending President's Rule in the State and for keeping the Assembly in suspended animation for the time being. On 7th March, 2005 the President's Rule was imposed in the State of Bihar and the Assembly was kept in suspended animation. This order passed by the President of India under Article 356 of the Constitution on 7th March, 2005 is not challenged in most of the petitions before us. In one of the petitions, the Notification issued on 7th March, 2005 under Article 356 of the Constitution is also challenged but the petitioner could not substantiate his contentions and the very challenge itself is highly belated.

While the Assembly was in suspended animation, the two political groups, the NDA which had secured 92 seats and the RJD which had secured 75 seats in the State Legislature made attempts to form a Government in the State of Bihar. It appears that the LJP, which had secured 29 seats in the State Legislature was not prepared to extend support either to NDA or RJD. When the (Vote on Account) Bill of 2005 for the State of Bihar was presented before the Parliament, the Home Minister made a statement to the effect that the President's Rule would not be continued for a long time and they would have been happy if a Government had been formed by the elected representatives and that the elected representative should talk to each other and create a situation in which it becomes possible for them to form a Government. The discussion must have been continued between the political parties.

On 27th April, 2005 the Governor of Bihar sent a Report to the President of India wherein he stated that he had received Intelligence Reports to the effect that some elected representatives were said to have been approached by factions within the party and outside the party with various allurements like money, castes and posts etc. and the same was a disturbing trend. He also cautioned that if the trend is not arrested immediately, the political instability would further deepen and the horse-trading would be indulged in by various political parties and it would not be possible to contain the situation and the people should be given a fresh opportunity to elect their representatives.

It seems that pursuant to letter dated 27th April, 2005 sent by the Governor of Bihar to the President, no decision was taken by the President for dissolution of the State Assembly. Again on 21st May, 2005 the Governor of Bihar sent a letter to the President and this is the crucial document on the basis of which the Bihar State Legislative Assembly was dissolved under Article 174 (2) (b) of the Constitution. The letter is as follows :-

" Respected Rashtrapati Jee,

I invite a reference to my D.O. letter No. 52/GB dated 27th April, 2005 through which I had given a detailed account of the attempts made by some of the parties notably the JD-U and BJP to cobble a majority and lay a claim to form a Government in the State. I had informed that around 16-17 MLAs belonging to LJP were being wooed by various means so that a split could be effected in the LJP. Attention was also drawn to the fact that the RJD MLAs had also become restive in the light of the

above moves made by the JDU.

As you are aware after the Assembly Elections in February this year, none of the political parties either individually or with the then pre-election combination or with post-election alliance combination could stake a claim to form a popular Government since they could not claim a support of a simple majority of 122 in a House of 243 and hence the President was pleased to issue a proclamation under Article 356 of the Constitution vide notification No. \026 GSR \026 162 (E) dated 7th March, 2005 and the Assembly was kept in suspended animation.

The reports received by me in the recent past through the media and also through meeting with various political functionaries, as also intelligence reports, indicate a trend to win over elected representatives of the people. Report has also been received of one of the LJP MLA, who is General Secretary of the party having registered today and also 17-18 more perhaps are moving towards the JD-U clearly indicating that various allurements have been offered which is very disturbing and alarming feature. Any move by the break away faction to align with any other party to cobble a majority and stake claim to form a Government would positively affect the Constitutional provisions and safeguards built therein and distort the verdict of the people as shown by the results in the recent Elections. If these attempts are allowed it would be amounting to tampering with Constitutional provisions.

Keeping the above mentioned circumstances, I am of the considered view that if the trend is not arrested immediately, it may not be possible to contain the situation. Hence in my view a situation has arisen in the State wherein it would be desirable in the interest of the State that the Assembly presently kept in suspended animation is dissolved, so that the people/electorate can be provided with one more opportunity to seek the mandate of the people at an appropriate time to be decided in due course."

The gist of the letter written by the Governor is that political parties either individually or with the then pre-election combination or with post-election alliance combination could not stake a claim to form a popular Government since none could claim support of a simple majority of 122 in a House of 243 members and, therefore, the President issued a Proclamation under Article 356. The Governor further stated that he had received information through media and reports gathered through meeting with various political functionaries that there had been a trend to win over elected representatives of the people and 17-18 MLAs were moving towards JD(U) and various allurements had been offered to them. Governor also indicated that any move by the break-away faction to align with any other party, to cobble a majority and stake a claim to form a Government would positively affect the Constitutional provisions and safeguards provided therein. The Governor was of the view that if the Assembly is dissolved, the political parties would get another

opportunity to seek a fresh mandate of the people. From the letter, it is clear that no political party or group or alliance had approached the Governor claiming absolute majority in the State Legislature nor did they try to form a Government with the help of other political parties or independent MLAs.

The Report of the Governor was received by the Union of India on 22nd May, 2005. The Union Cabinet which met at about 11.00 P.M., took a decision and sent a fax message to the President of India recommending dissolution of the Legislative Assembly of Bihar. On 23rd May, 2005 the Bihar Assembly was dissolved and that order of dissolution is under challenge before us.

We heard learned Attorney General, Mr. Milon K. Banerji; learned Solicitor General, Mr. Ghoolam E. Vahanvati; learned Additional Solicitor General, Mr. Gopal Subramaniam; Mr. Soli Sorabjee, learned Senior Advocate; Mr. P.S. Narasimha, learned counsel for the petitioner and Mr. Viplav Sharma, Advocate, who appeared in person. Many other counsel who were supporting the petitioner submitted their written arguments. Most of the arguments centered around the decision rendered by this Hon'ble Court in S.R. Bommai & Ors. Vs. Union of India & Ors. [(1994) 3 SCC 1]. The decision in S.R. Bommai's case was rendered by a Nine Judge Bench and several opinions were expressed. Justice B.P. Jeevan Reddy gave a separate judgment with which Justice S.C. Agrawal agreed. Justice A.M. Ahmadi, Justice J.S. Verma, Justice K. Ramaswamy and Justice Yogeshwar Dayal agreed with certain propositions given by Justice B.P. Jeevan Reddy. Although there was a broad concurrence with the views expressed by Justice Jeevan Reddy, Justice Sawant & Kuldip Singh, JJ. struck a different note and their approach, reasoning and conclusion are not similar.

In order to understand the scope and ambit of the decision in S.R. Bommai's case it is necessary to see the earlier decision in State of Rajasthan & Ors. Vs. Union of India & Ors. reported in (1977) 3 SCC 592. The facts which had led to the filing of that case was that in March, 1977 elections were held to the Lok Sabha and the result of the elections was interpreted to mean that the Congress party had lost people's mandate. The Union Home Minister sent a letter to the Chief Ministers of certain States asking them to advise their respective Governors to dissolve the Assemblies and seek a fresh mandate from the people. The letter together with the statement made by the Union Law Minister was treated as a threat to dismiss those State Governments. They approached this Hon'ble Court by filing suits and writ petitions. In that case, six opinions were delivered by the Seven Judge Bench. Though all of them agreed that the writ petitions and suits be dismissed, the reasoning were not uniform. Some of the opinions in that judgment can be briefly stated as follows :-

Bhagwati, J. on behalf of Gupta, J and himself, while dealing with the "satisfaction of the President" prior to the issuance of the Proclamation under Article 356 (1), stated as follows :-

"So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its Constitutional obligation to do so..... This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the

power conferred on each branch of Government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits. It is for this Court to uphold the Constitutional values and to enforce the Constitutional limitations. That is the essence of the Rule of Law....."

He went on to say :-
"..\005\005\005.. Here the only limit on the power of the President under Art. 356, clause (1) is that the President should be satisfied that a situation has arisen where the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The satisfaction of the President is a subjective one and cannot be tested by reference to any objective tests. It is deliberately and advisedly subjective because the matter in respect to which he is to be satisfied is of such a nature that its decision must necessarily be left to the executive branch of Government. There may be a wide range of situations which may arise and their political implications and consequences may have to be evaluated in order to decide whether the situation is such that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. It is not a decision which can be based on what the Supreme Court of United States has described as 'judicially discoverable and manageable standards'. It would largely be a political judgment based on assessment of diverse and varied factors, fast changing situations, potential consequences, public reaction, motivations and responses of different classes of people and their anticipated future behaviour and a host of other considerations\005"

He further stated :-

"\005.. It must of course be conceded that in most cases it would be difficult, if not impossible, to challenge the exercise of power under Art. 356, clause (1) even on this limited ground, because the facts and circumstances on which the satisfaction is based would not be known, but where it is possible, the existence of the satisfaction can always be challenged on the ground that it is mala fide or based on wholly extraneous and irrelevant grounds. \005..This is the narrow minimal area in which the exercise of power under Article 356, Clause (1) is subject to judicial review and apart from it, it cannot rest with the Court to challenge the satisfaction of the President that the situation contemplated in that clause exists".

(Emphasis supplied)

Beg, CJ was of the opinion that by virtue of Article 356 and Article 74(2) of the Constitution, it is impossible for the court to question the 'satisfaction' of the President. It is to be decided on the basis of only those facts as may have been admitted or placed before the court. Beg CJ was also of the opinion that the language of Article 356 and the practice since 1950 shows that the Central Government can enforce its will against the State Government with respect to the question as to how the State Government should function and should hold reigns of power. But these views were not accepted by the majority. YV Chandrachud, J, speaking on the scope of judicial review held that if the reasons disclosed by the Union of India are wholly

extraneous, the court can interfere on the ground of mala fides. "Judicial scrutiny", said the learned Judge, is available "for the limited purpose of seeing whether the reasons bear any rational nexus with the action proposed. The court cannot sit in judgment over the 'satisfaction' of the President for determining, if any other view is reasonably possible." As regards the facts disclosed in the case, the learned Judge was of the view that the facts disclosed by the Central Government in its counter affidavit cannot be said to be irrelevant to Article 356. Goswami and Untwalia, JJ. gave separate opinions and expressed the view that the facts stated cannot be said to be extraneous or irrelevant.

From the dicta laid down in State of Rajasthan's case, it is clear that the power of judicial review could be exercised when an order passed under Article 356 is challenged before the court on the ground of mala fides or upon wholly extraneous or irrelevant grounds and then only the court would have the jurisdiction to examine it. The plea raised by the learned Attorney General that a proclamation passed under Article 356 is legislative in character and outside the ken of judicial scrutiny was rejected by the majority of the Judges in State of Rajasthan's case.

On a careful examination of the various opinions expressed in S.R Bommai's case, it is clear that the majority broadly accepted the dicta laid down in Rajasthan's case. It was also held that the principles of judicial review that are to be applied when an administrative action is challenged cannot be applied when a challenge is made against a Presidential order passed under Article 356.

P.B. Sawant, J. speaking for himself and Kuldip Singh, J. took a different view and held that the same principles would apply when a proclamation under Article 356 also is challenged. Some of the observations made by the learned Judges would make the position clear.

In S.R Bommai's case, a plea was raised that the principles of judicial review as laid down in Barium Chemicals Ltd. & Anr. v. The Company Law Board & Ors. (1966) Suppl. 3 SCR 311 are applicable and the subjective satisfaction of the President as contemplated under Article 356 could be examined. In the Barium Chemical's case, the Company Law Board under Section 237(b) of the Companies Act appointed four inspectors to investigate the affairs of the appellant-company on the ground that the Board was of the opinion that there were circumstances suggesting that the business of the appellant-company was being conducted with intent to defraud its creditors, members or any other persons and that the persons concerned in the management of the affairs of the company had in connection therewith, been guilty of fraud, misfeasance and other misconduct towards the company and its members. The company filed a writ petition challenging the said order. In reply to the writ petition, the Chairman of the Company Law Board filed an affidavit and contended that there was material on the basis of which the order was issued and that he had himself examined this material and formed the necessary opinion within the meaning of the said Section 237(b) of the Companies Act. The majority of the Judges held that the circumstances disclosed in the affidavit must be regarded as the only material on the basis of which the Board formed the opinion before ordering an investigation under Section 237(b) and that the circumstances could not reasonably suggest that the company was being conducted to defraud the creditors, members or other persons

and, therefore, the impugned order was held ultra vires the section. Hidayatullah, J. as he then was, stated that the power under Section 237(b) is discretionary power and the first requirement for its exercise is the honest formation of an opinion that an investigation is necessary and the next requirement is that there are circumstances suggesting the inferences set out in the section. An action not based on circumstances suggesting an inference of the enumerated kind will not be valid. Although the formation of opinion is subjective, the existence of circumstances relevant to the inference as the sine quo non for action must be demonstrable. If their existence is questioned, it has to be proved at least prima facie. It is not sufficient to assert that the circumstances must be such as to lead to conclusions of action definiteness.

These principles were also applied in some of the later decisions where the administrative action was challenged before the court. (See M.A. Rashid & Ors. Vs. State of Kerala (1975) 2 SCR 93].

There was also a plea that the principles of judicial review enunciated by Lord Diplock in "Council of Civil Services Union & Ors. Vs. Minister for Civil Services 1985 AC 374 GCHQ would apply when Presidential Proclamation under Article 356 is challenged. This plea also was not accepted by the majority of the Judges in S.R. Bommai's case.

The broad view expressed by Sawant, J., to which Kuldip Singh, J. also agreed, could be gathered from the observations on page 102 in the S.R. Bommai's case which is to the following effect:

"From these authorities, one of the conclusions which may safely be drawn is that the exercise of power by the President under Article 356(1) to issue Proclamation is subject to the judicial review at least to the extent of examining whether the conditions precedent to the issuance of the Proclamation have been satisfied or not. This examination will necessarily involve the scrutiny as to whether there existed material for the satisfaction of the President that a situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution. \005\005\005\005\005\005\005

In other words, the President has to be convinced of, or has to have sufficient proof of information with regard to or has to be free from doubt or uncertainty about the state of things indicating that the situation in question has arisen. Although, therefore, the sufficiency or otherwise of the material cannot be questioned, the legitimacy of inference drawn from such material is certainly open to judicial review."

The above opinion expressed by Sawant J., to which Kuldip Singh, J. also agreed was not fully accepted by other Judges. B.P. Jeevan Reddy, J. speaking for himself and Agrawal, J., held that the proclamation under Article 356 is liable to judicial review and held that the principles of judicial review, which are applicable when an administrative action is challenged, cannot be applied stricto sensu.

At the end of the judgment, Jeevan Redddy, J. summarized the conclusions and conclusions (6) and (7) speak of the scope and ambit of judicial review. Clause (1), (2), (6) and (7) are

relevant for the purpose of the present case. These are as follows:
1) Article 356 of the Constitution confers a power upon the President to be exercised only where he is satisfied that a situation has arisen where the government of a State cannot be carried on in accordance with the provisions of the Constitution, Under our Constitution, the power is really that of the Union Council of Ministers with the Prime Minister at its head. The satisfaction contemplated by the Article is subjective in nature.
(2) The power conferred by Art. 356 upon the President is a conditioned power. It is not an absolute power. The existence of material -- which may comprise of or include the report(s) of the Governor -- is a pre-condition. The satisfaction must be formed on relevant material. The recommendations of the Sarkaria Commission with respect to the exercise of power under Art. 356 do merit serious consideration at the hands of all concerned.

[3] \005.
[4] \005.
[5] \005.
(6) Article 74(2) merely bars an enquiry into the question whether any, and if so, what advice was tendered by the ministers to the President. It does not bar the court from calling upon the Union Council of Ministers (Union of India) to disclose to the court the material upon which the President had formed the requisite satisfaction. The material on the basis of which advice was tendered does not become part of the advice. Even if the material is looked into by or shown to the President, it does not partake the character of advice. Article 74(2) and S. 123 of the Evidence Act cover different fields. It may happen that while defending the proclamation, the minister or the concerned official may claim the privilege under S. 123. If and when such privilege is claimed, it will be decided on its own merits in accordance with the provisions of S. 123.
(7) The proclamation under Article 356(I) is not immune from judicial review. The Supreme Court or the High Court can strike down the proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds. The deletion of clause (5) (which was introduced by 38th (Amendment) Act) by the 44th (Amendment) Act, removes the cloud on the reviewability of the action. When called upon, the Union of India has to produce the material on the basis of which action was taken. It cannot refuse to do so. if it seeks to defend the action. The court will not go into the correctness of the material or its adequacy. Its enquiry is limited to see whether the material was relevant to the action. Even if part of the material is irrelevant, the court cannot interfere so long as there is some material which is relevant to 'the action taken.
[Emphasis supplied]
Justice Ratnavel Pandian agreed with Jeevan Reddy J. on his conclusions on all the above points. He disagreed with only Clause (3) of the summary of conclusions. Clause (3) deals only with the power of dissolving the legislative assembly which shall be exercised by the President only after proclamation under clause (1) of Article 356 is approved by both the Houses of Parliament and until such approval the President can only suspend the Legislative Assembly by suspending the provisions of

the Constitution relating to the Legislative Assembly.

J.S. Verma, Ahmadi and Ramaswami, JJ. took a different note. Ahmadi, J. was of the opinion that the court cannot interdict the use of the constitutional power conferred on the President under Article 356 unless the same is shown to be mala fide. Before exercise of the Court's jurisdiction, sufficient caution must be administered and unless a strong and cogent prima facie case is made out, the President, i.e. the executive must not be called upon to answer the charge. Ramaswamy, J. was also of the same opinion.

Verma, J. was of the view that the test for adjudging the validity indicated in the The Barium Chemicals Ltd.'s case and other cases of that category have no application for testing and invalidating a proclamation issued under Article 356. He was of the opinion that only cases which permit application of totally objective standards for deciding whether the constitutional machinery has failed are amenable to judicial review and the remaining cases wherein there is any significant area of subjective satisfaction dependent on some imponderables or inferences are not justiciable because there are no judicially manageable standards for resolving that controversy and those cases are subject only to political scrutiny and correction for whatever its value in the existing political scenario.

It is important to note that in S.R. Bommai's case, majority of Judges held, that as regards the imposition of President's Rule in Karnataka, Meghalaya and Nagaland, the Presidential proclamations were unconstitutional. The facts which ultimately led to the Presidential proclamation under Article 356(1) in two States are significant to understand the law laid down in S.R. Bommai's case.
In the case of Karnataka, the President dismissed the government and dissolved the State Assembly. The Janta Party was ruling the State and it had formed the Government under the leadership of Shri S.R. Bommai. One member of the legislature defected from the party and presented a letter to the Governor withdrawing his support to the Ministry. On the next day, he presented to the Governor 19 letters allegedly signed by 17 Janta Dal legislators, one independent but associate legislator and one legislator belonging to Bhartiya Janata Party which was supporting the Minstry, withdrawing their support to the Minstry. On receipt of these letters, the Governor is said to have called the Secretary of the Legislative Department and got the authenticity of the signatures on the said letters verified. Governor then sent a report to the President stating therein that there were dissensions in the Janta Party which had led to the resignation of Shri Hegde and he referred to the 19 letters received by him and in view of withdrawal of support by the said legislators , the Chief Minister Shri Bommai did not command a majority in the Assembly and no other political party was in a position to form the government and, therefore, recommended to the President to exercise power under Article 356(1). The Governor did not ascertain the view of the Chief Minister, Shri Bommai, and on the next day, seven out of the nineteen legislators who had allegedly written the said letters to the Governor made a complaint that their signatures were obtained by misrepresentation. The Governor also did not take any steps directing the Chief Minister to seek a vote of confidence in the legislature nor met any of the legislators who had allegedly defected from the Janta Party. It was in this background that the proclamation issued by the President on the basis of the said report of the Governor and in the circumstances so obtaining, equally suffered from mala fides. The duly constituted Ministry

was dismissed on the basis of the material which was no more than the ipse dixit of the Governor.

In the case of Meghalaya, Meghalaya United Parliamentrary Party (MUPP) which had a majority in the Legislative Assembly formed the government in March, 1990 under the leadership of Shri B.B. Lyngdoh. One Kyndiah Arthree was at the relevant time the Speaker of the House. He was elected as the leader of the opposition known as United Meghalaya Parliamentary Forum (UMPF). On his election, Shri Arthree claimed support of majority of the members in the Assembly and requested the Governor to invite him to form the government. The Governor asked the Chief Minister Shri Lyngdoh to prove his majority on the floor of the House. A special sessions was convened on 7.8.91 and a Motion of Confidence in the Ministry was moved. Thirty Legislators supported the Motion and 27 voted against it. Instead of announcing the result of the voting on the Motion, the Speaker declared that he had received a complaint against five independent MLAs of the ruling coalition front alleging that they were disqualified as legislators under the anti-defection law and since they had become disentitled to vote, he was suspending their right to vote. On this announcement, there was uproar in the House and it had to be adjourned. On 11.8.1991, the Speaker issued show cause notices to the alleged defectors. The five MLAs replied stating that they had not joined any of the parties and they had continued to be independent. The Speaker passed an order disqualifying the five MLAs. Thereafter, on Governor's advice, the Chief Minister Shri Lyngdoh summoned the Session of the Assembly on 9.9.1991 for passing a vote of confidence in the Ministry. The Speaker, however, refused to send the notices of the Session to the five disqualified independent MLAs whereupon they approached this court. This court issued interim orders staying the operation of the Speaker's order. Only four of them had applied to the court for an order of stay. The Speaker issued a Press Statement in which he declared that he did not accept any interference by any court. The Governor, therefore, prorogued the Assembly indefinitely. The Assembly was again convened and the four independent MLAs who had obtained interim orders from the court moved a contempt petition before this court against the Speaker. The Speaker made a declaration in a press statement defying the interim order of this Court. On 8.10.1991, this Court passed an order directing that all authorities of the State should ensure the compliance of the Court's interim order of 6.9.1991 and four of the five independent MLAs received invitation to attend the Session of the Assembly. After the Motion of Confidence in the Ministry was put to vote, the Speaker declared that 26 voted for the Motion and 26 against it and excluded the votes of the four independent MLAs. The 26 MLAs who had supported the Ministry and four MLAs who had voted in favour of the Motion elected a new Speaker and the new Speaker declared that the Motion of Confidence in the Ministry had been carried since 30 MLAs had voted in favour of the Government. They thereafter sent letters to the Governor that they had voted in favour of the Ministry. However, the Governor wrote a letter to the Chief Minister asking him to resign in view of what had transpired in the Session on 8.10.1991. The Chief Minister moved this Court against the letter of the Governor. Despite all these facts, the President on 11.10.1991 issued a proclamation under Article 356(1) and in the proclamation it was stated that the President was satisfied on the basis of the report from the Governor and other information received by him that the situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution.

In the case of Nagaland also, similar situation had arisen. The facts are not necessary to be stated in detail.

In all these three cases where the Presidential Proclamations issued under Article 356 were quashed by this Court, were States wherein the Government was functioning on the strength of the majority, whereas in the instant case the decision of dissolution of the Assembly was evidently passed on the report of the Governor when the Assembly was in suspended animation and there was no democratically elected Government in the State and, therefore, there was no question of testing the majority of the Government on the floor of the Assembly.

From the S.R. Bommai's decision, it can be discerned that the majority was of the view that so far as the scope and ambit of judicial review is very limited when a proclamation under Article 356 is questioned and similar parameters would apply in a case where a Notification is passed under Article 174(2) {b) dissolving the State Legislative Assembly. The plea raised by the Additional Solicitor General, Shri Gopal Subramaniam that the Notification dissolving Assembly is of a legislative character and could be challenged only on the ground of absence of legislative competence or ultra vires of the Constitution, cannot be accepted. This plea was raised in Rajasthan's case as well as in S.R. Bommai's case, but it was rightly rejected in both the cases. However, the power exercised by the President is exceptional in character and it cannot be treated on par with an administrative action and grounds available for challenging the administrative action cannot be applied. In view of Article 74(2) of the Constitution, the court cannot go into the question as to what manner of advice was tendered by the Council of Ministers to the President. The power conferred on the President is not absolute; it has got checks and balances. It is true that the power exercised by the President is of serious significance and it sometime amounts to undoing the will of the people of the State by dismissing the duly constituted Government and dissolving the duly constituted Legislative Assembly. Any misuse of such power is to be curbed if it is exercised for mala fide purposes or for wholly extraneous reasons based on irrelevant grounds. The Court can certainly go into the materials placed by the Governor which led to the decision of dissolving the State Assembly.

The Presidential proclamation dissolving the Bihar State Legislative Assembly was issued pursuant to two reports sent in by the Governor. It may be remembered that Article 356(1) Proclamation imposing President's Rule was issued on 7th March, 2005. Thereafter, on 22nd April, 2005, the Governor sent a report wherein he stated that none of the political parties. either individually or with the then pre-election combination or with post-election alliance, could stake a claim to form a popular Government wherein they could claim support of a simple majority of 122 in a House of 243. The Governor had also indicated that there are certain newspaper reports and other reports gathered through meeting with different parties' functionaries that some steps are being taken to win over the elected representatives of the people through various allurements like money, caste, post, etc. Thereafter, on 21.5.2005, the Governor of Bihar sent another report and based on that, the Bihar State Assembly was dissolved on 23rd May, 2005. In the report dated 21st May, 2005, the Governor reiterated his earlier report that no party had approached him to form a popular Government since none could claim the support of a simple majority of 122 in a House of 243. In that report, the Governor had also stated that 17/18, or more perhaps, LJP MLAs are moving towards the JD(U) and that various allurements have

been offered to them and it was an alarming feature and the Governor was also of the opinion that it was positively affecting the Constitutional provisions and safeguards built therein and distorted the verdict of the people.

The contention urged by learned ASG, Shri Gopal Subramaniam was that this is the material which was placed before the President before a Proclamation was issued under Article 174(2)(b) of the Constitution. It is important to note that the writ petitioners have no case that JD(U) or any other alliance had acquired majority and that they had approached the Governor staking their claim for forming a Government. No material is placed before us to show that the JD(U) or its alliance with BJP had ever met the Governor praying that they had got the right to form a Government. The plea of the petitioners' counsel is that they were about to form a Government and in order to scuttle that plan the Governor sent a report whereby the Assembly was dissolved to defeat that plan is without any basis. The Governor in his report stated that 17 or 18 members of the LJP had joined the JD(U)-BJP alliance, but no materials have been placed before us to show that they had, in fact, joined the alliance to form a Government. One letter has been produced by one of the petitioners and the same is not signed by all the MLAs and as regards some of them, some others had put their signatures. Therefore, it is incorrect to say that the Governor had taken steps to see that the Assembly was dissolved hastily to prevent the formation of a Government under the leadership of the political party JD(U). If any responsible political party had any case that they had obtained majority support or were about to get a majority support or were in a position to form minority Government with the support of some political parties and if their plea was rejected by the Governor, the position would have been totally different. No such situation had been reached in the instant case. It is also very pertinent to note that the order for dissolution of the State Assembly was passed after about three months of the proclamation imposing the President's Rule was issued under Article 356(1). When there was such a situation, the only possible way was to seek a fresh election and if it was done by the President, it cannot be said that it was a mala fide exercise of power and the dissolution of the Assembly was wholly on extraneous or irrelevant grounds. It is also equally important that in Karnataka, Meghalaya and Nagaland cases, there was a democratically-elected Government functioning and when there is an allegation that it had lost its majority in the Assembly, the primary duty was to seek a vote of confidence in the Assembly and test the strength on the floor of the Assembly. Such a situation was not available in the present case. It was clear that not a single political party or alliance was in a position to form the Government and when the Assembly was dissolved after waiting for a reasonable period, the same cannot be challenged on the ground that the Governor in his report had stated that some horse-trading is going on and some MLAs are being won over by allurements. These are certainly facts to be taken into consideration by the Governor. If by any foul means the Government is formed, it cannot be said to be a democratically-elected Government. If Governor has got a reasonable apprehension and reliable information such unethical means are being adopted by the political parties to get majority, they are certainly matters to be brought to the notice of the President and at least they are not irrelevant matters. Governor is not the decision-making authority. His report would be scrutinized by the Council of Ministers and a final decision is taken by the President under Article 174 of the Constitution. Therefore, it cannot be said that the decision to dissolve the Bihar State Legislative Assembly, is mala fide exercise of power based on

totally irrelevant grounds.

Applying the parameters of judicial review of Presidential action in this regard, I do not think that the petitioners in these writ petitions have made out a case for setting aside the Notification issued by the President on 23rd May, 2005. The Writ Petitions are without any merit they are liable to be dismissed.