

SUPREME COURT OF INDIA

Rameshwar Prasad

Vs.

Union of India

Writ Petition (Civil) 257 of 2005

(B.N.Srikrishna, Ashok Bhan, Arijit Pasayat and Y.K.Sabharwal and K.G.Balakrishnan JJ.)

07.10.2005

ORDER

[With W.P. (C) No.255 of 2005, W.P. (C) No.258 of 2005 and W.P.(C) No.353 of 2005]

1. The General Elections to the Legislative Assembly of Bihar were held in the month of February 2005. The Election Commission of India, in pursuance of Section 73 of the *Representation of the People Act, 1951* in terms of Notification dated 4th March, 2005 notified the names of the elected members.

2. As no party or coalition of the parties was in a position to secure 122 seats so as to have majority in the Assembly, the Governor of Bihar made a report dated 6th March, 2005 to the President of India, whereupon in terms of Notification G.S.R.162 (E) dated 7th March, 2005, issued in exercise of powers under Article 356 of the Constitution of India, the State was brought under President's Rule and the Assembly was kept in suspended animation. By another Notification G.S.R.163(E) of the same date, 7th March, 2005, it was notified that all powers which have been assumed by the President of India, shall, subject to the superintendence direction and control of the President, be exercisable also by the Governor of the State. The Home Minister in a speech made on 21st March, 2005 when the Bihar Appropriation (Vote on Account) Bill, 2005 was being discussed in the Rajya Sabha said that the Government was not happy to impose President's Rule in Bihar and would have been happy if Government would have been formed by the elected representatives after the election. That was, however, not possible and, therefore, President's Rule was imposed. It was also said that the Government would not like to see that President's Rule is continued for a long time but it is for elected representatives to take steps in this respect; the Governor can ask them and request them and he would also request that the elected representatives should talk to each other and create a situation in which it becomes possible for them to form a Government. The Presidential Proclamation dated 7th March, 2005 was approved by the Lok Sabha at its sitting held on 19th March, 2005 and Rajya Sabha at its sitting held on 21st March, 2005.

3. The Governor of Bihar made two reports to the President of India, one dated 27th April,

2005 and the other dated 21st May, 2005. On consideration of these reports, Notification dated 23rd May, 2005 was issued in exercise of the powers conferred by sub-clause (b) of Clause (2) of Article 174 of the Constitution, read with clause (a) of the Notification G.S.R.162(E) dated 7th March, 2005 issued under Article 356 of the Constitution and the Legislative Assembly of the State of Bihar was dissolved with immediate effect.

4. These writ petitions have been filed challenging constitutional validity of the aforesaid Proclamation dated 23rd May, 2005. Mr. Soli J. Sorabjee, Senior Advocate and Mr. P.S. Narasimha, Advocate and Mr. Viplav Sharma, advocate appearing-in-person have made elaborate submissions in support of the challenge to the impugned action of dismissing the assembly. On the other hand, Mr. Milon K. Banerjee, Attorney-General for India, Mr. Goolam E. Vahanavati, Solicitor General and Mr. Gopal Subramaniam, Additional Solicitor General appearing for Union of India and Mr. P.P. Rao, Senior Advocate appearing for the State of Bihar also made elaborate submissions supporting the impugned Proclamation dated 23rd May, 2005.

5. Many intricate and important questions of law having far reaching impact have been addressed from both sides. After the conclusion of the hearing of oral arguments, written submissions have also been filed by learned counsel. Fresh elections in State of Bihar have been notified. As per press note dated 3rd September, 2005 issued by Election Commission of India, the schedule for general elections to the Legislative Assembly of Bihar has been announced. According to it, the polling is to take place in four phases commencing from 18th October, 2005 and ending with the fourth phase voting on 19th November, 2005. As per the said press note, the date of Notification for first and second phase of poll was 23rd September and 28th September, 2005, date of poll being 18th October, 2005 and 26th October, 2005 respectively. Notifications for third and fourth phases of poll are to be issued on 19th and 26th October, 2005 respectively.

6. Keeping in view the questions involved, the pronouncement of judgment with detailed reasons is likely to take some time and, therefore, at this stage, we are pronouncing this brief order as the order of the court to be followed by detailed reasons later.

7. Accordingly, as per majority opinion, this court orders as under:

1. The Proclamation dated 23rd May, 2005 dissolving the Legislative Assembly of the State of Bihar is unconstitutional.

2. Despite unconstitutionality of the impugned Proclamation, but having regard to the facts and circumstances of the case, the present is not a case where in exercise of discretionary jurisdiction the status quo ante deserves to be ordered to restore the Legislative Assembly as it stood on the date of Proclamation dated 7th March, 2005 where under it was kept under suspended animation.