

“S.R. Bommai V. Union of India”

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Citation

AIR 1994 SC 1918

Decided On:

11.03.1994

Judges/Coram:

*S.R. Pandian, A.M. Ahmadi, Kuldip Singh, J.S. Verma, P.B. Sawant, K. Ramaswamy, S.C.
Agrawal, Yogeshwar Dayal and B.P. Jeevan Reddy, JJ.*

Introduction

The case of *S.R. Bommai Vs. Union Of India*¹ proved to be a very landmark judgement in the history of India. The biggest judicial organ of India “Supreme Court” was called upon after around forty two years of the adoption of the grand norm of the country “The Constitution of India”, to interpret the basic structures of the Constitution relating to a provision of an article which was said to remain a dead letter. Till the judgement of this case, the presidential rule as per the provision of the Article 356² (which was said to remain a dead letter) has been called upon upto 95 times in the country. This clearly determines the need to resolve the problem arising in this sphere of law and to grab the attention of Judiciary. In this case Supreme Court had discussed the issues associated with Article 356 in depth. A Constitutional bench of 9 Judges heard the argument on the behalf of both the parties and the majority view is deductible.

Facts of the case

The Governor of Karnataka received nineteen letters by the council of ministers stating that they are withdrawing the support from the ruling party and hence due to the non-majority Governor forwarded a report to the president about the deflection of Council Of Ministers from the party in

¹ AIR 1994 SC 1918

² Article 356, The Constitution of India, 1950.

ruling. The Governor stated in the report that the existing Chief Minister Mr. S.R. Bommai failed to call in majority for the majority of assembly and thus the president's rule should be imposed in the State under Article 356(1) of the Constitution of India. The very next day of sending the report, seven out of the nineteen ministers complained about the misrepresentation in their respective letters and Hence Mr. S.R. Bommai, the Chief Minister and the Law Minister visited the to summon the assemble same day in order to prove the Majority of his government in the assembly. The report of the same was forwarded to the President But again on the same day, the President received another report from the Governor which states that Mr. S.R. Bommai, the then Chief Minister of Karnataka has lost his confidence of Majority and has requested the president to proclaim the emergency in the state under Article 356. On the basis of this report, the president proclaimed the emergency.

A writ petition was filed challenging the validity of the proclamation in the special 3 judges bench of Karnataka High Court but it was dismissed and Thus he preferred this appeal.

The Similar question of law arose in the case of Meghalaya, Nagaland, Madhya Pradesh, Rajasthan and Himanchal Pradesh and hence all the petitions were heard conjointly by the 9 judges bench of Supreme Court.

Issues:

- 1) Whether the presidential rule proclaimed under article 356 is justified.
- 2) Whether the President enjoys unrestricted power to proclaim emergency.
- 3) Whether the proclamation comes under the scope of Judicial review.
- 4)

Judgment

The Hon'ble court held that the power of president to proclaim the emergency in a state i.e. the presidential rule is subject to some restrictions and it should be on the basis of the report and opinion of governor and not in the sole satisfaction.

The Hon'ble court also held that the court owns the power to Judicial review of the proclamation and id it is found to be malafide, the court can stuck down the proclamation even if it has received the consent of both the houses.

Analysis

The Hon'ble court critically examined three broad issues i.e. the nature of Federalism, Secularism and the proclamation being under the scope of judicial review.

Nature of Federalism in Indian Constitution

All the judges agreed in the nature of the Federalism in the Indian Constitution that it holds the Federal character but with some unitary features since it gives more power to the central government instead of the federal/state government. However the judges agreed on the point that the states are supreme in their sphere. The Hon'ble court held that the Federalism is the basic feature of the Indian constitution

It can be clearly seen that the Hon'ble court attempted to portray that the Union government is indestructible as per the Indian Constitution, which is the need of the hour. But at the same time the court seems to be balancing this new view by stating that as per the federal character of the constitution the power of the proclamation under article 356 must be used very sparingly and must remain a "dead letter" as said by Dr. B.R. Ambedkar.

The ratio of Sarkaria commission recommendation is still not known. Two judges endorsed the report, two fell a very short of it by saying it for 'serious consideration', Justice Ramaswamy J. endorsed the report but said that it should not be in the part of the judiciary but on the Union Government, while the rest two judges concurred with the 'serious consideration' thing. Thus the legal status of Sarkaria Commission report is still in dilemma.

Secularism

One of the most popular reasons known for the dismissal of these appeals was that the Supreme court held that the secularism is a basic feature of the constitution and while upholding the same the hon'ble court held that the religious differences can't be included in the politics. If a party in the ruling state does not follow the basic structure of the constitution then it will be unconstitutional which in further means that the government can't be carried out as per the provisions of the constitution. As per the view of judges the addition of Secularism in the constitution is the act which made the fact explicit, which was in past an implicit.³

³ At para 29

After stating that the secularism is a basic feature of the Indian constitution, the hon'ble judges referred to the provisions of Representation of People Act, 1952 which prohibits the seeking of votes in the name of religion, which in further supported on upholding the secular feature in the basic structure.

All the judges agreed that the Secularism is the basic structure of the constitution and violation of any basic feature of the constitution including the Secularism can be a basis of issuing of proclamation under Article 356. However in the view of researcher, it can be a very dangerous precedent as it gives the power to issue the proclamation in even a very minor act.

Judicial Review

The hon'ble court examined the power of Judicial review in two parts, one of it being the political question while the other being the Application of Article 74(3) and section 123, Indian Evidence Act.

- **Political Question:**

Justice J. Ahmedi held that the decision of issuing the proclamation under article 356 on the basis of the report he receive from the Governor is totally a political decision and it is next to impossible to evolve any criteria or set of rules to judicially manage the same. Therefore since the nature of the proclamation is not like one to be judicially justifiable, it is not justifiable.

Hon'ble J. Ramaswamy held that as far as the decision of proclamation does not have the malafide intention, it could not be challenged on the basis of inadequate or insufficient material to issue the prolaimation. The decision is a political one.

All the other judges also held the same view that the decision can not be challenged on the basis of inadequate material because it is the circumstances which becomes the base for the decision and the judiciary can't travel to the political arena and encroach upon policy making.

- **Artcle 74(2), Constitution of India & Sec. 123, Indian Evidence Act.**

Hon'ble Justice J. Ramaswamy held that Art. 74(2) of the Indian Constitution should be harmonized with Article 142 and the advice of the council of ministers can't be ecamined. Article 74(2) and Article 142, Constitution of India, states that the advice of council of ministers should never be asked to be revealed. But at the same time hon'ble court held that while the

advice of the Council of Ministers can't be asked to reveal but the court can call the material on the basis of which such decision has been taken. However the plea of Sec. 123 has to be examined on merits and a broad principle can't be laid down.

Justice Jeevan reddy further upheld that the scrutiny of the material on which the decision of council of ministers was based upon can be done either before or after the parliament approved the proclamation.

Conclusion

The case of S.R. Bommai V. Union of India is no doubt a very big development in the Constitution of India but it has left out a lot of dilemma and has not conclusively settled the matter. Hon'ble judges has pronounced 6 different judgments and these is no single judgment which indicated the ratio of majority and minority in any part. This left many of the points in dilemma and there are many points like the legality of Sarkaria Commission's report which left in between and no minority or majority has been made. At lease all the judgements pronounced should have been complied in a single order indicating the majority and the minority.

The judgment in this case however discussed many pin points and developed the constitution on the part of Federalism and secularism but it also shows the improper application of the art of judgment writing. The judgment should have been properly laid down the cumulative conclusions.