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RAMESHWAR PRASAD AND ORS. VS UNION OF INDIA**Introduction:**

The strength of the Bihar Legislative Assembly is 243 members and majority in the assembly to form the government is acquired with the magic number 122. In the 2005 legislative assembly elections to the State of Bihar, there was no clear majority either to single party or a coalition party. This led to President's rule being imposed in Bihar along with the legislative assembly being in a state of suspended animation which meant that the assembly could not carry out any business. This was supposed to be temporary to give parties time for discussing political rearrangements so as to prove a majority on the floor of the assembly.

However, during this period there was suspicion that MLAs (Members of Legislative Assembly) were being bought by various means such as money and promises of political positions. Due to these suspicions of horse trading and other unethical practices, the then Governor of Bihar, Buta Singh, wrote a report to the then President of India, A.P.J Abdul Kalam and on the basis of this report the legislative assembly was dissolved, President's rule was imposed on the State and re-elections were ordered. This move was criticised and several petitions were filed in the Supreme Court questioning the constitutionality of the decision taken.

The 2006 case, Rameshwar Prasad and Ors v. Union of India¹ raised the issue of the constitutional validity of dissolving the state legislative assembly of Bihar on the grounds of a

¹ AIR 2006 SC 980

report submitted by the Governor even before the first meeting of the legislative assembly and imposing President's Rule in the State. The case deals with the following articles of the Constitution of India: Article 174 (2) (b), Article 356 and Article 361.

The issues at hand for the Supreme Court to consider were as follows:

1. Can the state legislative assembly be dissolved under Article 174 (2) (b) of the Indian Constitution before its first meeting.
2. Was the proclamation unconstitutional and illegal?
3. If yes, could the Supreme Court order status quo ante as on 7/03/05 or 4/03/05?
4. Scope of immunity guaranteed to the Governor under Article 361 of the Constitution.

Analysis:

This was the first ever case where a state legislative assembly had been dissolved even before its first meeting and that a majority to form the government was being sought through unethical and illegal means.

The petitioners argued that to dissolve the state legislative assembly it is necessary that the President is convinced that the governance of a State cannot be done in accordance with the Constitution and there is a complete failure of the constitutional machinery. This has to be based on concrete evidence. The entire purpose of keeping the assembly in suspended animation was to provide time to the political parties to reassess their alignments so as to proof majority in the assembly. However, before this could take place the Governor sent a report based on mere suspicion as there was no concrete proof that horse trading was taking place. Thus, Article 365 has been used arbitrarily.

The authority to disqualify MLAs on the grounds of horse trading lies with the Speaker. The Governor cannot assume this authority. The Governor's report is based on incorrect facts as the allegations were based on ipse dixit and hence not substantial in the court. The dissolution of the legislative assembly should be examined with reference to the case *S.R Bommai v. Union of India*².

Till the MLAs did not take oath under Article 188 of the Constitution and did not hold even its first meeting, it is not permissible to order the dissolution of the assembly.

² (1994) 3 SCC 1

The Supreme Court held that the dissolution of the legislative assembly was unconstitutional and illegal. However, since the process of re-election had already started, the Supreme Court could not revive the dissolved assembly. The case was heard by a five-judge bench and the judgement was passed with a majority of 3:2.

The majority of the judges agreed with the arguments of the petitioners and held the governor of a state did not have such authority or power. If such an authority is given to the governor it would go against the very essence of democracy and would prove to be disastrous. Post-election rearrangements are a part of the democratic procedure and discarding them on the basis of being immoral would lead to innumerable re-elections. The governor's suggestion to dissolve the assembly and conduct re-election was too extreme and could not be reasoned in the absence of solid evidence

Justice K.G. Balakrishnan and Justice Pasayat had a different point of view than the majority. Justice Balakrishnan agreed with the arguments of the respondents and said, "If by any foul means the government is formed, it cannot be said to be a democratically-elected government. If the 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. The 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."

Justice Pasayat said, "It may be a wrong perception of the Governor. But it is his duty to prevent installation of a Cabinet where the majority has been cobbled together in the aforesaid manner... It may be in a given case be an erroneous approach, but it is certainly not irrational or irrelevant or extraneous." "The Governor had not in reality prevented anybody from staking a claim. It is nobody's case that somebody had staked a claim."

It was also held that under Article 361 of the Constitution of India the governor of a state has been given absolute immunity. They are not answerable to any court of law when they exercise their powers or perform their duty or does any other act in relation to such duty or power. However, it is pertinent to note that while the governor is not answerable to the court, the court holds the right to assess the validity of the decision and its intention.

Conclusion:

Rameshwar Prasad v. Union of India is a landmark case which upholds democratic principles and reiterates its power to resolve the arbitrary dissolution of legislative assemblies after the S.R Bommai case. The two dissenting judges also brought to light a different perspective to look at the issues. They gave priority to legal and fair means even if it meant that the legislative assembly had to be dissolved. As far as morality and ethics are concerned, this point of view is valid. On the other hand, the majority believed that Article 365 of the Constitution should be used in the rarest of rare cases as also expected and hoped by the makers of our Constitution. They believed that a liberal use of this article will lead to democracy and its principles becoming a joke. Dr. B.R Ambedkar was of the opinion that “such articles will never be called into operation and that they would remain a dead letter”. From the view of constitutionality, there are several other options available for this problem. A floor test to assess the strength and stability of the government can be held. The legislature can be put in a state of suspended animation and the Governor can suggest and assist the Council of Ministers through a report backed by relevant and necessary evidence. Hence imposing President’s rule under Article 365 should be the last resort for a governor. For this purpose while appointing a governor the suggestions of Sarkaria Commission should be taken into consideration.

Following this judgement the Governor of Bihar, Buta Singh stepped down from his position and the President of India, A.P.J Abdul Kalam contemplated resigning.

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