(2016) 04 UK CK 0013

Uttarakhand High Court

Case No: Writ Petition (M/S) No. 795 of 2016

Shri Harish Chandra Singh Rawat	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision: April 21, 2016

Acts Referred:

- Constitution of India, 1950 - Article 202, 226, 356

Citation: (2016) AIRCC 2455

Hon'ble Judges: K.M. Joseph, CJ. and V.K. Bist, J.

Bench: Division Bench

Advocate: Dr. Abhishek Manu Singhvi, Senior Advocate, assisted by Mr. Devendra Singh Bohara, Ms. Padmalakshmi Iyenger, Mr. Amit Bhandari and Mr. Javed-ur-Rehman, Advocates, for the Petitioner; Mr. Mukul Rohatgi, Attorney General of India, with Mr. Tushar Mehta, Add

Final Decision: Allowed

Judgement

K.M. Joseph, C.J.(Oral)—The petitioner, who was the Chief Minister of the State of Uttarakhand till 27.03.2016, seeks the following reliefs:

"(a) issue a writ, order or any other appropriate writ(s), order(s) quashing the Proclamation dated 27.03.2016 issued under Article 356 of the Constitution of India bearing no. F. No. V/11013/2/2016-CSR-I and the consequent Notification thereof; and

(b) issue a writ, order or any other appropriate writ(s), order(s) quashing the recommendation of the Respondent, recommending imposition of Presidents Rule in the State of Uttarakhand; and

(c) issue a writ or any other appropriate writ(s), order(s) or direction directing the Respondent to furnish the records pertaining to the recommendation of the Respondent contained in its Report/material, which has culminated in the meeting

of the Union Cabinet on 26th/27th March, 2016, recommending imposition of Presidents' Rule in the State of Uttarakhand and Proclamation dated 27.03.2016 and the consequent Notification imposing President's Rule in the State of Uttarakhand; and

(d) issue a writ or any other appropriate order or direction restoring the Government of the Indian National Congress headed by Shri Harish Rawat, along with his Council of Ministers, to office and revive and reactivate the 3rd Uttarakhand Legislative Assembly; and

(e) issue a writ or any other appropriate order or direction in the declaring all consequential actions/orders passed and laws promulgated during the period of Proclamation and President's Rule as illegal and void-ab-initio and accordingly quash the same;

(f) issue Rule nisi in terms of prayer (a) ' (e) above;"

Facts in Brief:

2. Election to the Uttarakhand Legislature, which consists of 70 elected members and one nominated Anglo-Indian member, was held on 30.01.2012. The results were announced on 06.03.2012. The Indian National Congress emerged with 32 seats. The Bhartiya Janata Party (BJP) got 31 seats. Three seats were bagged by the Bahujan Samaj Party (BSP). The Uttarakhand Kranti Dal (P) secured one seat. There were three Independents returned by the electorate. Thereafter, certain bye-elections were held. Resultantly, the position in regard to the membership of the Uttarakhand Legislature in the year 2016 was as follows:

Indian National Congress (INC)	:	36
Bhartiya Janta Party (BJP)	:	28
Bahujan Samaj Party (BSP)	:	2
Uttarakhand Kranti Dal (P) (UKD(P))	:	1
Independents	:	3

3. The budget session for the year 2016 commenced on 09.03.2016 with the Governor addressing the House. It is the case of the petitioner that the BJP Government at the Centre had been attempting to overthrow democratically elected Governments belonging to the opposition political parties by unconstitutional means. Reference is made to a recent attempt in this regard in the State of Arunachal Pradesh. There is specific allegation that, in the State of Uttarakhand also, the BJP, through undemocratic machinations and means, conceived to overthrow and topple the State Government. On 18.03.2016, the Appropriation Bill was taken

up for consideration. According to the petitioner, the Bill was passed. After the passage of the Bill, 26 MLAs belonging to the BJP and 9 MLAs belonging to the Congress, who are characterised as the rebel MLAs and who had been instigated by the BJP to topple the democratically elected Government, purported to seek a division of vote. The case of the petitioner is that the demand was made after the passage of the Bill. It is the further case of the petitioner that the validity of the passage of a Bill is a matter for the Speaker to decide. Taking this as a pretext, it is the case of the petitioner, a sequence was woven by the BJP to impose President's Rule in the State. The 26 MLAs belonging to the BJP and the 9 rebel Congress MLAs went to the Raj Bhawan on the same day and submitted a signed joint memorandum on the letter head of the leader of the opposition stating that the Government had been reduced to a minority criticising the manner in which the vote on the Appropriation Bill was carried out and that the Government led by the Congress Party should be dismissed. This document is produced as Annexure P-2. It is the further case of the petitioner that, realising the consequences under the Tenth Schedule to the Constitution of having the 9 Congress MLAs sign a joint memorandum with the BJP MLAs demanding that the Government be dismissed, the 26 BJP MLAs again addressed Annexure P-3 contending that the Appropriation Bill had not been validly passed. There were resolutions moved against the Speaker and the Deputy Speaker. It is stated to be part of the mala fide move of the BJP. It is the further case of the petitioner that the 9 dissident members of the Congress Party went to the Jolly Grant Airport at Dehradun together with the BJP MLAs in the same bus and, from the Airport in the night of 18.03.2016, they left for Delhi in a Plane accompanied by one Shri Shyam Jaju, General Secretary In-charge (BJP) of the State of Uttarakhand, and Sri Kailash Vijayvargiya, National General Secretary, BJP. It is alleged that the rebel MLAs were put up at the Leela Hotel in Delhi. Annexure P-5 dated 18.03.2016 is a letter written by the Officer on Special Duty (hereinafter referred to as the "OSD") and Secretary to the Governor of Uttarakhand, requesting for the audio video recording of the proceedings of the Assembly. It is alleged by the petitioner that the Speaker, vide letter dated 18.03.2016 (Annexure P-6), submitted the records of the proceedings to the Governor. Petitions were filed in respect of the 9 dissident members of the Congress Party on 19.03.2016 invoking the Tenth Schedule to the Constitution and seeking to disqualify them. Annexure P-8 purports to be the show-cause notice dated 19.03.2016. Annexure P-9 is a communication dated 19.03.2016 issued by the Governor directing the petitioner to seek vote of confidence from the Legislature at the earliest, but not later than 28.03.2016, which date, it is alleged, had already been earmarked by the Speaker for re-convening the session when it was adjourned on 18.03.2016. By Annexure P-10, the Secretary of the Uttarakhand Vidhan Sabha notified the members of the Assembly that the next sitting of the session would be held on 28.03.2016 at 11:00 a.m. By Annexure P-11, the Governor reiterated his demand on 20.03.2016 that the petitioner must take vote of confidence at the earliest without any delay. The petitioner has alleged that he has written back to the Governor inviting his attention to the letter of the

Secretary (apparently Annexure P-10), addressed to the members indicating that the Assembly will be convened on 28.03.2016 at 11:00 a.m. and that the vote of confidence will be sought on that day.

4. There is reference to a march by the members of the BJP to meet the President to request him to dismiss the Government. Equally, there is reference to delegation of Congress leaders meeting the President and submitting Annexure P-13. Annexure P-14 dated 23.03.2016 purports to be a message dispatched under Article 175(2) of the Constitution, inter alia, directing that the vote of confidence should be held on 28.03.2016. Since it will assume significance, we deem it appropriate to extract the same at this juncture. It reads as follows:

"Message Under Article 175(2) of The Constitution of India

Memo No. 118/Raj Bhawan

Dated: 23rd March, 2016

Message

In exercise of the powers conferred upon me by Article 175(2) of the Constitution of India, I, (Dr. K.K. Paul), Governor of Uttarakhand hereby send the following message to the 3rd Vidhan Sabha of Uttarakhand in the context of its next meeting on 28.03.2016.

A group of 35 Members of the Vidhan Sabha (26 BJP+9 Congress) visited the Raj Bhawan on 18 March 2016 and submitted a Memorandum, interalia questioning the status of Appropriation Bill 2016. It was urged that despite 35 Members requesting for a voting by division, they were ignored by the Speaker. It was also contended that this resulted into denying them their right to vote on the Appropriation Bill. It was also claimed that the details of the voting in favour of the said Bill and those against it have not been recorded.

In the above circumstances, on the 19th March, 2016, a communication was sent to the Chief Minister to seek a vote of confidence in the Assembly at the earliest, but not later than 28th March 2016, the date decided by the Speaker for the next meeting of the Assembly. On 20 March 2016, a further communication was addressed to the Chief Minister, to take a vote of confidence at the earliest.

The Chief Minister has vide his communication dated 20 March 2016 intimated that the vote of confidence will be sought on 28 March 2016 when the Assembly meets at 11 A.M.

The proceedings of the Assembly on 28th March 2016 on the vote of confidence shall be conducted peacefully, upholding the spirit of democracy. The results of the voting by division shall be declared soon thereafter. The entire proceedings of the Assembly shall also be recorded.

Proceedings of the House during the course of vote of confidence shall be videographed and authenticated copy of the video and other records shall be sent to me along with the transcript of proceedings the same day.

It is also reiterated that the Members need to be conscious of the fact that the entire proceedings in the House need to be conducted as per the highest traditions of Constitutional propriety, morality and decorum.

You are requested to take above into consideration while conducting the proceedings of the House.

Sd/-

((Dr. K.K. Paul))

Governor, Uttarakhand"

5. The proceedings for disqualification of the 9 dissident MLAs were to commence on 26.03.2016. They filed Writ Petition (MS) Nos. 791 of 2016 and 792 of 2016 on 25.03.2016 before this Court seeking postponement of the disqualification proceedings. They, however, were not able to obtain any order of stay. It is the case of the petitioner that the ruling BJP at the Centre, in pursuance of its scheme to overthrow the Government of the State, decided to take recourse to the emergency provisions contained in Article 356 of the Constitution in its desperation to topple the Government. A doctored video on the basis of a purported sting operation was released on 26.03.2016, it is alleged. It was to portray a case for imposition of President's Rule, it is stated. The contents of the video tended to show that the petitioner was indulging in horse trading. It is described as absolutely preposterous, to say the least. The veracity of the video was in dispute and completely unauthenticated; there is no horse trading, is the case.

6. The matter relating to the dissident members of the Congress was adjourned to 27.03.2016 (it was a Sunday). It is the case of the petitioner that, in pursuance of the preconceived design to topple the State Government and after the rebel MLAs had failed to get any relief from the Court, a Cabinet meeting took place at 09:30 p.m. on 26.03.2016. It is the case that the Cabinet deliberately waited to see if the disqualification proceedings would be stayed and, only after the writ petitions were dismissed, stepped in to further the oblique and nefarious designs to overthrow the State Government. It is stated that none appeared for the respondents (we take it that the petitioner is hinting at the 9 dissident MLAs, as there are only two respondents in the writ petition, which are the Union of India and the State of Uttarakhand). It is the further case of the petitioner that the Notification was issued under Article 356 of the Constitution, which is impugned before us.

7. A counter affidavit has been filed by the first respondent (Union of India). It is their case, inter alia, that there were indeed materials available justifying invocation of Article 356. There is deliberate suppression and concealment of material facts.

The petitioner was aware of the fact that 27 MLAs belonging to the BJP had contacted the Governor earlier in the day and had submitted a memorandum requiring the Speaker to hold a division of vote on the Appropriation Bill 2016-2017. This memorandum submitted by the BJP MLAs had been forwarded to the Speaker by fax at about 11:10 a.m. The Governor was not in Dehradun when the representation was received at about 10:30 a.m. at his office. Shri Ajay Bhatt, the Leader of the Opposition, had contacted the Governor on phone and he was informed about the representation. The Governor repeatedly instructed his Secretary to receive the representation regarding seeking division of vote and that it should be forwarded to the Speaker. It was also directed that the audio and video recording of the proceedings should also be obtained from the Speaker. It was forwarded at about 11:10 a.m. on 18.03.2016. The Governor received another representation from the Leader of the Opposition on 18.03.2016 about the arrest of one BJP MLA Shri Ganesh Joshi at about 08:45 a.m. The Governor stood apprised about the illegal and unconstitutional act regarding the arrest of Shri Ganesh Joshi and appropriate instructions were sought for his participation in the proceedings of the Assembly on 18.03.2016. It is the case of the first respondent that the fact of receipt of the letter was reiterated in communication dated 19.03.2016. It is their case that the petitioner has misled the Court by presenting the case in the manner as if the Appropriation Bill was considered and passed without and / or before the Speaker having received the representation of 27 MLAs for division of vote on this Bill in terms of the directions of the Governor. Reference is made to various paragraphs in the writ petition (paras 16 to 23) in this regard. There is charge of deliberate concealment and suppression of the three-page memorandum. Even though the communication from the OSD to the Governor is produced, which refers to the memorandum, the memorandum, itself, was not produced, runs the argument. The Speaker actually acted illegally in not complying with the demand for division and proclaiming that the Bill was passed. In fact, on 18.03.2016, the Government had fallen. Continuance of such a Government till 27.03.2016 is completely illegal and unprecedented. The situation constituted a constitutional breakdown and that led to action under Article 356. In the matter of production of the Proclamation under Article 356 also, the most crucial page relating to suspension of various provisions of the Constitution had not been appended. Without prejudice to the contentions, it is also stated that, in the special report dated 19.03.2016, forwarded by the Governor to the President giving his preliminary views, the Governor had referred to the events, which took place on 18.03.2016, including the direction to forward the representation of 27 MLAs for division of vote, and the memorandum in regard to Shri Ganesh Joshi was also reiterated. The demand of Shri Ajay Bhatt, the Leader of the Opposition, was also reiterated. Shri Ajay Bhatt, the Leader of the Opposition, calling on the Governor at about 08:00 p.m. and informing that the Government had fallen, was also incorporated. There is reference in the said report about 34 MLAs giving the representation on the letter head of the Leader of the Opposition, which was signed by 35 MLAs. There is further

reference to communication dated 20.03.2016 by the Governor to the petitioner reiterating his advice that the vote of confidence be taken at the earliest and this be done without any delay. There is reference to letter sent on 20.03.2016 to the President and there is also reference to letter dated 21.03.2016 to the President, about which we shall advert to in greater detail in the course of the judgment. It is also stated that the petitioner was very firmly advised when he, along with the Parliamentary Affairs Minister, called on the Governor that the vote of confidence must be taken within 2-3 days, as has been repeatedly emphasised by the Governor that it had to be done at the earliest. The petitioner expressed his inability as the Speaker had already initiated the process. The petitioner informed the Governor that there was no irregularity in the House. The petitioner was shown the proceedings of the House by the Governor, wherein a demand for division of vote was made, but was not allowed. The petitioner took the stand that the decision of the Speaker was final. There is reference to three rebel MLAs of the Congress submitting letter dated 20.03.2016 stating that there is a breakdown of the constitutional machinery as the majority of the MLAs have voted against the Money Bill and the defeated Money Bill was claimed to have been passed. Then there is reference to the Message under Article 175(2), which we have already adverted to. Still further, there is reference to communication dated 25.03.2016 sent by the Governor to the President conveying that the petitioner will be seeking a vote of confidence on 28.03.2016 and that the Message under Article 175(2) was also sent to the Speaker. We will be referring to this document in greater detail. Finally, on 26.03.2016, the Governor had sent a letter to the President, wherein, among other things, he refers to the fact that a letter was received from the office of one Shri Bahuguna (one of the Congress MLAs, who stood disqualified); the cover had a representation by another MLA (who is also disqualified, namely, Shri Harak Singh Rawat); there is a pen drive attached to it; and there are three audio conversations and one video recording. It tended to show that the petitioner was in conversation with another person, claimed to be one Shri Umesh Sharma, who was not clearly visible. The conversation indicated monetary and other allurements being discussed. The same was forwarded to the President. There are other things, which the Governor has indicated, which we will refer to in the course of our judgment.

8. A note for the Cabinet was prepared on 26.03.2016 itself in the light of the material available and the recent political developments in the State and the aspect highlighted in the pen drive indicating horse trading, non-holding of the division of vote on the Appropriation Bill, the petitioner not acceding to the repeated requests of the Governor for securing vote of confidence expeditiously in order to win over support by allurements etc., one BJP MLA Shri B.L. Arya being made the Vice President of Ambedkar Jayanti Samaroh Samiti and his remaining absent from the Assembly proceedings on 18.03.2016 and, even though there was similar disqualification petition filed against him by the BJP, the Speaker not taking any decision to disqualify him as was done in the case of 9 Congress MLAs. They are all

incorporated in the note of the Cabinet. The aspect of the defeat of Appropriation Bill, which could have led to the fall of the Government, and the claim of the Appropriation Bill having been passed by voice vote, etc. were also included in the said note. On the basis of the said note, the Cabinet recommended the President for invocation of Article 356 and the President approved the same on 27.03.2016. Thereafter, the Notification was issued on 27.03.2016, whereby the entire Council of Ministers of the State Government was relieved from the Government. It is stated that this order has not been filed and not challenged.

9. There is reference to further reports. There is also reference to various contentions, which we shall refer to. A rejoinder affidavit is filed to which a sur-rejoinder has been filed by respondent No. 1.

Contentions of the Parties:

10. Dr. Abhishek Manu Singhvi, learned Senior Counsel, assisted by Mr. Devendra Singh Bohara, Ms. Padmalakshmi Iyenger, Mr. Amit Bhandari and Mr. Javed-ur-Rehman, Advocates, addressed arguments on behalf of the petitioner. He would submit that the power under Article 356 is an emergency power to be exercised rarely. It is an exceptional power. He would submit that the principles relating to judicial review of action under Article 356 are well settled having regard to the judgments of the Apex Court in the case of **S.R. Bommai & others v. Union of India & others, reported in (1994) 3 SCC 1** as also in the case of **Rameshwar Prasad & others (VI) v. Union of India & another, reported in (2006) 2 SCC 1**. He would submit that the floor test is the only test when it comes to assessing the question whether a person commands the majority and the confidence of the House. He would, next, contend that this is a case, which involves a double whammy. It is an extra-ordinary case, where, by the impugned Proclamation, a blow has been dealt, unconstitutional as it is, to the powers of the Speaker on the one hand and, on the other hand, to the authority of the Governor himself. Expatiating on this point, he would point out that the Proclamation was directed against the power validly wielded and exercised by the Speaker under the Tenth Schedule and the attempt was to deprive him of his legitimate power. Equally becoming the victim of the Proclamation was the Governor himself, who had, through three communications, the last being a Message under Article 175(2), directed the holding of the floor test on 28.03.2016. The reasons, which have been trotted out, are not germane to the formation of the requisite opinion under Article 355, without which, the Proclamation would have no legs to stand on. He would submit that the petitioner having produced the material, the burden was entirely on the Centre to justify the action. He would submit that the material and the averments in the counter affidavit are clearly insufficient to sustain the Notification under Article 356. Learned Senior Counsel would refer us to the following paragraphs of the judgment in Bommai's case (supra) by Justice Sawant (paragraphs 59, 60, 61, 69 to 75 & 96):

"59. It is in the light of these other provisions relating to the emergency that we have to construe the provisions of Article 356. The crucial expressions in Article 356(1) are - if the President, "on the receipt of report from the Governor of a State or otherwise" "is satisfied" that "the situation has arisen in which the Government of the State cannot be carried on "in accordance with the provisions of the Constitution". The conditions precedent to the issuance of the Proclamation, therefore, are: (a) that the President should be satisfied either on the basis of a report form the Governor of the State or otherwise, (b) that in fact a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. In other words, the President''s satisfaction has to be based on objective material. That material may be available in the report sent to him by the Governor or otherwise or both from the report and other sources. Further, the objective material so available must indicate that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Thus the existence of the objective material showing that the Government of the State cannot be carried on in accordance with the provisions of the Constitution is a condition precedent before the President issued the Proclamation. Once such material is shown to exist, the satisfaction of the President based on the material is not open to question, However, if there is no such objective material before the President, or the material before him cannot reasonably suggest that the Government of the State cannot be carried on in accordance with the provisions of the Constitution, the Proclamation issued is open to challenge.

60. It is further necessary to note that the objective material before the President must indicate that the Government of the State "cannot be carried on in accordance with the provisions of the Constitution". In other words, the provisions require that the material before the President must be sufficient to indicate that unless a Proclamation is issued, it is not possible to carry on the affairs of the State as per the provisions of the Constitution. It is not every situation arising in the State but a situation which shows that the constitutional Government has become an impossibility, which alone will entitle the President to issue the Proclamation. These parameters of the condition precedent to the issuance of the Proclamation indicate both the extent of and the limitations on, the power of the judicial review of the Proclamation issued. It is not disputed before us that the Proclamation issued under Article 356(1) is open to judicial review. All that is contended is that the scope of the review is limited. According to us, the language of the provisions of the Article contains sufficient guidelines on both the scope and the limitations, of the judicial review.

61. Before we examine the scope and the limitations of the judicial review of the Proclamation issued under Article 356(1), it is necessary to deal with the contention raised by Shri Parasaran appearing for the Union of India. He contended that there is difference in the nature and scope of the power of judicial review in the administrative law and the constitutional law. While in the field of administrative

law, the Court''s power extends to legal control of public authorities in exercise of their statutory power and therefore not only to preventing excess and abuse of power but also to irregular exercise of power, the scope of judicial review in the constitutional law extends only to preventing actions which are unconstitutional or ultra vires the Constitution. The areas where the judicial power, therefore can operate are limited and pertain to the domain where the actions of the Executive or the legislation enacted infringe the scheme of the division of power between the Executive, the Legislature and the judiciary or the distribution of powers between the States and the center. Where, there is a Bill of Rights as under our Constitution, the areas also cover the infringements of the fundamental rights. The judicial power has no scope in constitutional law beyond examining the said infringements. He also contended that likewise, the doctrine of proportionality or unreasonableness has no play in constitutional law and the executive action and legislation cannot be examined and interfered with on the anvil of the said doctrine.

69. The main argument against the order was that an order under the said provision is to be issued not in subjective discretion or opinion but on objective facts in the sense that the circumstances must exist to lead one to the conclusion that the relevant situation had arisen. As against this, the argument of the Attorney General and other counsel supporting the Presidential Order was that it is the subjective satisfaction of the President and it is in his discretion and opinion to dissolve the National Assembly. It was also argued on their behalf that in spite of the fact that Article 58(2)(b) states that "notwithstanding anything contained in Clause (2) of Article 48," the President may also dissolve the National Assembly in his discretion under Article 58(2) and when he does exercise his discretion to dissolve the Assembly, the validity thereof cannot be questioned on any ground whatsoever as provided for under Article 48(2). Dealing with the first argument, the learned Chief Justice, Salam stated as follows:

Whether it is ''subjective'' or ''objective'' satisfaction of the President or it is his ''discretion'' or ''opinion'', this much is quite clear that the President cannot exercise this powers under the Constitution on wish or whim. He has to have facts, circumstances which can lead a person of his status to form an intelligent opinion requiring exercise of discretion of such a grave nature that the representative of the people who are primarily entrusted with the duty of running the affairs of the State are removed with a stroke of the pen. His action must appear to be called for and justifiable under the Constitution if challenged in a Court of Law. No doubt, the Courts will be chary to interfere in his ''discretion'' or formation of the ''opinion'' about the ''situation'' but if there be no basis or justification for the order under the Constitution, the Courts will have to perform their duty cast on them under the Constitution. While doing so, they will not be entering in the political arena for which appeal to electorate is provided for.

Dealing with the second argument, the learned Chief Justice held:

If the argument be correct then the provision "Notwithstanding anything contained in Clause (2) of Article 48" would be rendered redundant as if it was no part of the Constitution. It is obvious and patent that no letter or part of a provision of the Constitution can be said to be redundant or non-existent under any principle of construction of Constitutions. The argument may be correct in exercise of other discretionary powers but it cannot be employed with reference to the dissolution of National Assembly. Blanket coverage of validity and un-questionability of discretion under Article 48(2) was given up when it was provided under Article 58(2) that "Notwithstanding Clause (2) of Article 48--", the discretion can be exercised in the given circumstances. Specific provision will govern the situation. This will also avoid redundancy. Courts'' Power whenever intended to be excluded is expressly stated; otherwise it is presumed to be there in Courts of record....Therefore, it is not quite right to contend that since it was in his ''discretion'', on the basis of his ''opinion'' the President could dissolve the National Assembly. He has to have reasons which are justifiable in the eyes of the people and supportable by law in a Court of Justice.... It is understandable that if the President has any justifiable reason to exercise his ''discretion'' in his ''opinion'' but does not wish to disclose, he may say so and may be believed or if called upon to explain the reason he may take the Court in confidence without disclosing the reason in public, may be for reason of security of State. After all patriotism is not confined to the office holder for the time being. He cannot simply say like Caesar it is my will, opinion or discretion.
Nor give reasons which have no nexus to the action, are bald, vague, general or such as can always be given and have been given with disastrous effects....

Dealing with the same arguments, R.S. Sidhwa, J. stated as follows:

I have no doubt that both the Governments are not compelled to disclose all the reasons they may have when dissolving the Assemblies under Articles 58(2)(b) and 112(2)(b). If they do not choose to disclose all the material, but only some, it is their pigeon, for the case will be decided on a judicial scrutiny of the limited material placed before the Court and if it happens to be totally irrelevant or extraneous, they must suffer.

x x x

15. The main question that arises in this case is when can it be said that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Constitution. The expression "Government of the Federation" is not limited to any one particular function, such as the executive, the legislative, or the judicial, but includes the whole functioning of the Federation Government in all its ramifications."

70. We may now refer to the decisions of this Court on the subject. In **Barium Chemicals Ltd. and Anr. v. The Co. Law Board and Ors., 1966 Supp. 3 S.C.R. 311**, the facts were that an order was issued on behalf of the Company Law Board under

Section 237(b) of the Companies Act appointing 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 appellant-Company had filed a writ petition before the High Court challenging the said order and one of the grounds of challenge was that there was no material on which such order could have been made. In reply to the petition, the Chairman of the Company Law Board filed an affidavit in which it was contended, inter alia, 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) before the issue of the order and that it was not competent for the Court to go into the question of the adequacy or otherwise of such material. However, in the course of reply to some of the allegations in the petition, the affidavit in paragraph 14 had also proceeded to state the facts on the basis of which the opinion was formed. The majority of the judges held that the circumstances disclosed in paragraph 14 of the said 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 said circumstances could not reasonably suggest that the business of the Company was being conducted to defraud the creditors, members or other persons or that the management was guilty of fraud towards the Company and its members. They were, therefore, extraneous to the matters mentioned in Section 237(b) and the impugned order was ultra vires the section. Hidaytullah, J., as he then was, in this connection 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 qua 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 exist, and give no clue to what they are, because the circumstances must be such as to lead to conclusions of action definiteness. Shelat, J. commenting on the same issue, stated that although the formation of opinion is a purely subjective process and such an opinion cannot be challenged in a Court on the ground of propriety, reasonableness or sufficiency, the authority concerned is nevertheless required to arrive at such an opinion from circumstances suggesting what is set out in Sub-clauses (i), (ii) or (iii) of Section 237(b). The expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. It is hard

to contemplate that the Legislature could have left to the subjective process both the formation of opinion and also the existence of circumstances on which it is to be founded. It is also not reasonable to say that the clause permitted the Authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose. If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the matters enumerated in Section 237(b), the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute.

71. In **MA. Rashid and Ors. v. State of Kerala, [1975] 2 SCR 93**, the facts were that the respondent State issued a notification under Rule 114(2) of the Defence of India Rules, 1971 imposing a total ban on the use of machinery for defibring husks in the districts of Trivandrum, Quilon and Alleppey. The appellants who were owners of Small Scale Industrial Units, being affected by the notification, challenged the same. In that connection, this Court observed that where powers are conferred on public authorities to exercise the same when "they are satisfied" or when "it appears to them" or when "in their opinion" a certain state of affairs existed, or when powers enable public authorities to take "such action as they think fit" in relation to a subject matter, the courts will not readily defer to the conclusiveness of an executive authority''s opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated. Administrative decisions in exercise of powers conferred in subjective terms are to be made in good faith and on relevant considerations. The courts can inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or the facts in a material respect. The standard of reasonableness to which the administrative body is required to conform may range from the courts opinion of what is reasonable to the criterion of what a reasonable body might have decided; and courts will find out whether conditions precedent to the formation of the opinion have a factual basis. But the onus of establishing unreasonableness rests upon the person challenging the validity of the acts.

72. In **State of Rajasthan and Ors. etc. v. Union of India etc., [1978] 1 SCR 1** , 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 limitation. That is the essence of the Rule of Law.

x x x

We must make it clear that the constitutional jurisdiction of this Court is confined only to saying whether the limits on the power conferred by the Constitution have been observed or there is transgression of such limits. Here the only limit on the Power of the President under Article 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, fact 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, in the light of experience of public affairs and pragmatic management of complex and often curious adjustments that go to make up the highly sophisticated mechanism of a modern democratic government. It cannot, therefore, by its very nature be a fit subject-matter for judicial determination and hence it is left to the subjective satisfaction of the Central Government which is best in a position to decide it. The Court cannot in the circumstances, go into the question of correctness or adequacy of the facts and circumstances on which the satisfaction of the Central Government is based.... But one thing is certain that if the satisfaction is mala fide or is based on wholly extraneous and irrelevant grounds, the Court would have jurisdiction to examine it, because in that case there would be no satisfaction of the President in regard to the matter which he is required to be satisfied. The satisfaction of the President is a condition precedent to the exercise of power under Article 356, Clause (1) and if it can be shown that there is no satisfaction of the President at all, the exercise of the power would be constitutionally invalid.... It must of course be concerned (sic.) that in most cases it would be difficult, if not impossible, to challenge the exercise of power under Article 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.... 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."

73. In **Kehar Singh and Anr. etc. v. Union of India and Anr., [1988] Supp. 3 S.C.R. 1103** , it is held that the President''s power under Article 72 of the Constitution dealing with the grant of pardons, reprives, respites, remissions of punishments or suspensions, remissions or commutations of sentences of any person convicted of any offence falls squarely within the judicial domain and can be examined by the court by way of judicial review However, the order of the President cannot be subjected to judicial review on its merits except within the strict limitation defined in **Mam Ram etc. etc. v. Union of India and Anr., 980 CriLJ 1440**. Those limitations are whether the power is exercised on considerations or actions which are wholly irrelevant, irrational, discriminatory or mala fide. Only in these rare cases the Court will examine the exercise of the said power.

74. 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. Needless to emphasise that it is not any material but material which would lead to the conclusion that the Government of the State cannot be carried on in accordance with the provisions of the Constitution which is relevant for the purpose. It has further to be remembered that the Article requires that the President "has to be satisfied" that the situation in question has arisen. Hence the material in question has to be such as would induce a reasonable man to come to the conclusion in question. The expression used in the Article is "if the President is satisfied". The word "satisfied" has been defined in Shorter Oxford English Dictionary [3rd Edition] at page 1792 as

"4. To furnish with sufficient proof or information, to set free from doubt or uncertainty, to convince; 5. To answer sufficiently [an objection, question]; to fulfil or comply with [a request]; to solve [a doubt, difficulty]; 6. To answer the requirements of [a state of things, hypothesis, etc.]; to accord with [conditions].

Hence, it is not the personal whim, wish, view or opinion or the ipse dixit of the President de hors the material but a legitimate inference drawn from the material placed before him which is relevant for the purpose. 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.

75. It has also to be remembered in this connection that the power exercised by the President under Article 356[1] is on the advice of the Council of Ministers tendered under Article 74[1] of the Constitution. The Council of Ministers under our system would always belong to one or the other political party. In view of the pluralist democracy and the federal structure that we have accepted under our Constitution, the party or parties in power [in case of coalition Government] at the center and in the States may not be the same. Hence there is a need to confine the exercise of power under Article 356[1] strictly to the situation mentioned therein which is a condition precedent to the said exercise. That is why the framers of the Constitution have taken pains to specify the situation which alone would enable the exercise of the said power. The situation is no less than one in which "the Government of the State cannot be carried on in accordance with the provisions of this Constitution". A situation short of the same does not empower the issuance of the Proclamation. The word "cannot" emphatically connotes a situation of impasse. In shorter Oxford dictionary, third edition, at page 255, the word "can" is defined as "to be able; to have power or capacity". The word "cannot", therefore, would mean "not to be able" or "not to have the power or capacity". In Stroud''s judicial dictionary, fifth edition, the word "cannot" is defined to include a legal inability as well as physical impossibility. Hence situation which can be remedied or do not create an impasse, or do not disable or interfere with the governance of the State according to the Constitution, would not merit the issuance of the Proclamation under the Article.

96. It will be an inexcusable error to examine the provisions of Article 356 from a pure legalistic angle and interpret their meaning only through jurisdictional technicalities. The Constitution is essentially a political document and provisions such as Article 356 have a potentiality to unsettle and subvert the entire constitutional scheme. The exercise of powers vested under such provisions needs, therefore, to be circumscribed to maintain the fundamental constitutional balance lest the Constitution is defaced and destroyed. This can be achieved even without bending much less breaking the normal rules of interpretation, if the interpretation is alive to the other equally important provisions of the Constitution and its bearing on them. Democracy and federalism are the essential features of our Constitution and are part of its basic structure. Any interpretation that we may place on Article 356 must, therefore help to preserve and not subvert their fabric. The power vested de jure in the President but de facto in the Council of Ministers under Article 356 has all the latent capacity to emasculate the two basic features of the Constitution and hence it is necessary to scrutinise the material on the basis of which the advice is given and the President forms his satisfaction more closely and circumspectly. This can be done by the Courts while confining themselves to the acknowledged parameters of the judicial review as discussed above viz., illegality, irrationality and mala fides. Such scrutiny of the material will also be within the judicially discoverable and manageable standards."

11. Next, the learned Senior Counsel would refer us to the following paragraphs of the judgment in Bommai's case (supra) by Justice Jeevan Reddy (paragraphs 336, 337, 338, 368, 370, 372 and 375):

"336. Thus, the approach of the Board was one of ''hands-off. The Governor-General was held to be the final Judge of the question whether an emergency exists. The power conferred by Section 72 was described an absolute power without any limits prescribed, except that which apply to an enactment made by the Indian legislature. It was also observed that the subject matter is not fit one for a court to enquire into.

337. We may point out that this extreme position is not adopted by Sri Parasaran, learned Counsel appearing for the Union of India. He did concede that judicial review under the Constitution is not excluded in the matter of proclamation under Article 356(1) though his submission was that it should be available in an extremely narrow and limited area since it is a power committed expressly to the President by the Constitution and also because the issue is not one amenable to judicial review by applying known judicially manageable standards. The Supreme Court of Pakistan in **Federation of Pakistan v. Mohd. Saifullah Khan, P.L.D., (1989) S.C. 166** , described the approach (adopted in Bhagat Singh) in the following words (quoting Cornelius, J.):

"In the period of foreign rule, such an argument, i.e., that the opinion of the person exercising authority is absolute may have at times prevailed, but under autonomous rule, where those who exercise power in the State are themselves citizens of the same State, it can hardly be tolerated."

338. We have no hesitation in rejecting the said approach as totally inconsistent with the ethos of our Constitution, as would be evident from the discussion infra.

368. After considering a large number of decisions, Shelat, J. held:

"....the words, "reason to believe" or "in the opinion of do not always lead to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether subjective process not lending itself even to a limited scrutiny by the Court that such "a reason to believe" or "opinion" was not formed on relevant facts or within the limits of, as Lord Redcliffe and Lord Reid called, the restraint of the statute as an alternative safeguard to rules of natural justice where the function is administrative."

The learned Judge then examined the object underlying Section 237 and held:

"There is no doubt that the formation of opinion by the Central Government is purely subjective process. There can also be no doubt that since the legislature has provided for the opinion of the Government and not of the court such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency. But the Authority is required to arrive at such an opinion from circumstances suggesting what is set out in Sub-clauses (i), (ii) or (iii). If these circumstances were

not to exist, can the Government still say that in its opinion they exist or can the Government say the same thing where the circumstances relevant to the clause do not exist? The legislature no doubt has used the expression" circumstances suggesting". But, that expression means that the circumstances need not be such as would conclusively establish an intent to defraud or a fraudulent or illegal purpose. The proof of such an intent or purpose is still to be adduced through an investigation. But the expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. That expression points out that there must exist circumstances from which the Authority forms an opinion that they are suggestive of the crucial matters set out in the three Sub-clauses. It is hard to contemplate that the legislature could have left to the subjective process both the formation of opinion and also the existence of circumstances on which it is to be founded. It is also not reasonable to say that the clause permitted the Authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose. It is equally unreasonable to think that the legislature could have abandoned even the small safeguard of requiring the opinion to be founded on existent circumstances which suggest the things for which an investigation can be ordered and left the opinion and even the existence of circumstances from which it is to be formed to a subjective process There must, therefore, exist circumstances which in the opinion of the Authority suggest what has been set out in Sub-clauses (i), (ii) and (iii). If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute."

370. Counsel brought to our notice a decision of the High Court of Australia in the **Queen v. Toohey-Ex parte Northern Land Council, 151 Common Wealth Law Reports 170**. Under the Aboriginal Land Rights (Northern Territory) Act, 1976, provision was made for the aboriginals to claim return of the land traditionally occupied by them. The application was to be made to the Commissioner under the Act. Tochey, J. was acting as the Commissioner. The application was made by the Prosecutor, Northern Land Council,. According to the Land Rights Act, no such claim could be laid if the land claimed was comprised in a town. The expression ''town'' was defined to have the same meaning as in the law relating to Planning and Development of Town. In 1979, Planning Act was enacted superseding an earlier Act. In Section 4(1) of the Planning Act, "town" meant inter alia "lands specified by the regulations to be an area which has to be treated as a town". Planning Regulations were made by the Administrator of the Northern territory under the Planning Act specifying inter alia the cox peninsula as part of ''Darwin town''. The cox peninsula was separated from Darwin town-proper by an arm of the sea. The land route for reaching the peninsula from Darwin town-proper was a difficult and

long one. The Prosecutor, Northern Land Council challenged the validity of the Planning Regulation on the ground that the inclusion of cox peninsula in the Darwin town is not really for the purposes germane to the Planning Act and the Regulations made thereunder but for an altogether extraneous purpose. The question was whether such a plea can be investigated by the courts. The contention of the other side was that the Administrator was the Crown''s Representative in the Territory and, therefore, the power exercised by him was immune from any examination by the courts. This argument was met by the prosecutor of the Northern Land Council saying that the Administrator is only the servant of the crown and not its representative and hence, possesses no immunity and on the further ground that even if he is the Representative of the Crown, there was no such immunity. The majority (Murphy, J. dissenting) held that judicial review of the Regulations was not barred. The conclusion may best be set out in the words of Stephen, J.:

"Conclusion on examinability.

The trend of decisions in British and Commonwealth courts has encouraged me to conclude that, in the unsettled state of Australian authority, the validity of reg.5 was open to be attacked in the manner attempted by the Council. Such a view appears to me to be in accord with principle. It involves no intrusion by the courts into the sphere either of the legislature or of the executive. It ensures that, just as legislatures of constitutionally limited competence must remain within their limits of power, so too must the executive, the exercise by it of power granted to it by the legislature being confined to the purposes for which it was granted. In drawing no distinction of principle between the acts of the representative of the Crown and those of Ministers of the Crown it recognises that in the exercise of statutory powers the former acts upon the advice of the latter: as Latham, C.J. said in the Australian Communist Part Case, the opinion of the Queen''s representative "is really the opinion of the Government of the day". That this is so in the Northern Territory appears from Section.33 of the Northern Territory (Self-Government) Act 1978.

I have already referred to the possibility of a legislature by appropriate words excluding judicial review of the nature here in question. The terms of the present grant of power conferred by Section 165(1) are devoid of any suggestion of such exclusion. It follows that if it be shown that a regulation made under that power was made for a purpose wholly alien to the Planning Act it will be ultra vires the power and will be so treated by the courts."

372. Having noticed various decisions projecting different points of view, we may now proceed to examine what should be the scope and reach of judicial review when a proclamation under Article 356(1) is questioned. While answering this question, we should be, and we are, aware that the power conferred by Article 356(1) upon the President is of an exceptional character designed to ensure that the Government of the States is carried on in accordance with the Constitution. We are equally aware that any misuse or abuse of this power is bound to play havoc with

our constitutional system. Having regard to the form of Government we have adopted, the power is really that of the Union Council of Ministers with the Prime Minister at its head. In absence, it is not really a power but an obligation cast upon the President in the interest of preservation of constitutional Government in the States. It is not a power conceived to preserve or promote the interests of the political party in power at the center for the time being nor is it supposed to be a weapon with which to strike your political opponent. The very enormity of this power - undoing the will of the people of a State by dismissing the duly constituted Government and dissolving the duly elected Legislative Assembly - must itself act as a warning against its frequent use or misuse, as the case may be. Every misuse of this power has its consequences which may not be evident immediately but surface in a vicious form a few years later. Sow a wind and you will reap the whirlwind. Wisdom lies in moderation and not in excess.

375. It is necessary to reiterate that the court must be conscious while examining the validity of the proclamation that it is a power vested in the highest constitutional functionary of the Nation. The court will not lightly presume abuse or misuse. The court would, as it should, tread wearily, making allowance for the fact that the President and the Union Council of Ministers are the best judges of the situation, that they alone are in possession of information and material - sensitive in nature sometimes -and that the Constitution has trusted their judgment in the matter. But all this does not mean that the President and the Union Council of Ministers are the final arbiters in the matter or that their opinion is conclusive. The very fact that the founding fathers have chosen to provide for approval of the proclamation by the Parliament is itself a proof of the fact that the opinion or satisfaction of the President (which always means the Union Council of Ministers with the Prime Minister at its head) is not final or conclusive. It is well-known that in the parliamentary form of government, where the party in power commands a majority in the Parliament more often that not, approval of Parliament by a simple majority is not difficult to obtain. Probably, it is for this reason that the check created by Clause (3) of Article 356 has not proved to be as effective in practise as it ought to have been. The very fact that even in cases like Meghalaya and Karnataka, both Houses of Parliament approved the proclamations shows the enervation of this check. Even the proponents of the finality of the decision of the President in this matter could not but concede that the said check has not proved to be an effective one. Nor could they say with any conviction that judicial review is excluded in this behalf. If judicial review is not excluded in matters of pardon and remission of sentence under Article 72 - a seemingly absolute and unconditional power - it is difficult to see on what principle can it be said that it is excluded in the case of a conditional power like the one under Article 356."

12. Learned Senior Counsel would submit that, in fact, the later judgment of the Apex Court in the case of Rameshwar Prasad (supra), speaking through Chief Justice Y.K. Sabharwal, has taken the view that Bommai's case has expanded the scope of

judicial review. He drew our attention to the following paragraphs of the judgment in Rameshwar Prasad's case (supra) (paragraphs 67, 68, 69, 96, 130, 138, 140, 141, 142, 145, 146, 147, 148 & 154):

"67. In Chapter VI, Sarkaria Commission dealt with the emergency provisions noting the concern of framers of the Constitution of need for such provision in a country of our dimensions, diversities, disparities and "multitudinous people, with possibly divided loyalties". They took care to provide that, in a situation of such emergency, the Union shall have overriding powers to control and direct all aspects of administration and legislation throughout the country. They realised that a failure or breakdown of the constitutional machinery in a State could not be ruled out as an impossibility and a situation may arise in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

68. The common thread in all the emergency provisions is that the resort to such provision has to be in exceptional circumstances when there be the real and grave situation calling for the drastic action.

69. Sarkaria Commission as also this Court has noted the persistent criticism in ever-mounting intensity, both in regard to the frequency and the manner of the use of the power under Article 356. The Sarkaria Commission has noticed that gravamen of the criticism is that, more often than not, these provisions have been misused, to promote the political interests of the party in power at the Centre. Some examples have been noted of situations in which the power of Article 356 was invoked improperly if not illegally. It is noted that the constitutional framers did not intend that this power should be exercised for the purpose of securing good Government. It also notices that this power cannot be invoked, merely on the ground that there are serious allegations of corruption against the Ministry.

96. Power under Article 356(1) is an emergency power but it is not an absolute power. Emergency means a situation which is not normal, a situation which calls for urgent remedial action. Article 356 confers a power to be exercised by the President in exceptional circumstances to discharge the obligation cast upon him by Article 355. It is a measure to protect and preserve the Constitution. The Governor takes the oath, prescribed by Article 159 to preserve, protect and defend the Constitution and the laws to the best of his ability. Power under Article 356 is conditional, the condition being formation of satisfaction of the President as contemplated by Article 356(1). The satisfaction of the President is the satisfaction of the Council of Ministers. As provided in Article 74(1), the President acts on the aid and advice of the Council of Ministers. The plain reading of Article 74(2) stating that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any Court, may seem to convey that the court is debarred from inquiring into such advice but Bommai has held that Article 74(2) is not a bar against scrutiny of the material on the basis of which the President has issued the proclamation under Article 356'

130. As opposed to the cases of dissolution of Karnataka and Nagaland, while considering the cases of dissolution of assemblies of Madhya Pradesh, Rajasthan and Himachal Pradesh, it was held in Bommai that the reports of the Governors disclosed that the State Governments had miserably failed to protect the citizens and property of the State against internal disturbances, it was found that the Governor's reports are based on relevant material and are made bona fide and after due verification. It is in the light of these findings that the validity of the Proclamation was unanimously upheld in respect of these three States.

138. Clearly, Bommai's case expanded the scope of judicial review. True, observations by Justice Reddy were made in the context of a situation where the incumbent Chief Minister is alleged to have lost the majority support or the confidence of the House and not in the context of a situation arisen after a general election in respect whereof no opinion was expressed, but, in our view the principles of scope of judicial review in such matters cannot be any different. By and large, same principles will apply when making recommendation for dissolution of a newly elected Assembly and again plunging the State to elections.

140. Thus, it is open to the Court, in exercise of judicial review, to examine the question whether the Governor's report is based upon relevant material or not; whether it is made bona fide or not; and whether the facts have been duly verified or not. The absence of these factors resulted in the majority declaring the dissolution of State Legislatures of Karnataka and Nagaland as invalid.

141. In view of the above, we are unable to accept the contention urged by the ld. Attorney General for India, Solicitor General of India and Additional Solicitor General, appearing for the Government that the report of the Governor itself is the material and that it is not permissible within the scope of judicial review to go into the material on which the report of the Governor may be based and the question whether the same was duly verified by the Governor or not. In the present case, we have nothing except the reports of the Governor. In absence of the relevant material much less due verification, the report of the Governor has to be treated as the personal ipse dixit of the Governor. The drastic and extreme action under Article 356 cannot be justified on mere ipse dixit, suspicion, whims and fancies of the Governor. This Court cannot remain a silent spectator watching the subversion of the Constitution. It is to be remembered that this Court is the sentinel on the qui vive. In the facts and circumstances of this case, the Governor may be main player, but Council of Ministers should have verified facts stated in the report of the Governor before hurriedly accepting it as a gospel truth as to what Governor stated. Clearly, the Governor has mislead the Council of Ministers which lead to aid and advice being given by the Council of Ministers to the President leading to the issue of the impugned Proclamation.

142. Regarding the argument urged on behalf of the Government of lack of judicially manageable standards and, therefore, the court should leave such complex

questions to be determined by the President, Union Council of Ministers and the Governor, as the situation like the one in Bihar, is full of many imponderables, nuances, implications and intricacies and there are too many ifs and buts not susceptible of judicial scrutiny, the untenability of the argument becomes evident when it is examined in the light of decision in Bommai&#65533; case upholding the challenge made to dissolution of the Assemblies of Karnataka and Nagaland. Similar argument defending the dissolution of these two assemblies having not found favour before a Nine Judge Bench, cannot be accepted by us. There too, argument was that there were no judicially manageable standards for judging Horse-trading, Pressure, Atmosphere being vitiated, wrongful confinement, Allurement by money, contacts with insurgents in Nagaland. The argument was rejected.

145. In the present case, like in Bommai&#65533;s case, there is no material whatsoever except the ipse dixit of the Governor. The action which results in preventing a political party from staking claim to form a Government after election, on such fanciful assumptions, if allowed to stand, would be destructive of the democratic fabric. It is one thing to come to the conclusion that the majority staking claim to form the Government, would not be able to provide stable Government to the State but it is altogether different thing to say that they have garnered majority by illegal means and, therefore, their claim to form the Government cannot be accepted. In the latter case, the matter may have to be left to the wisdom and will of the people, either in the same House it being taken up by the opposition or left to be determined by the people in the elections to follow. Without highly cogent material, it would be wholly irrational for constitutional authority to deny the claim made by a majority to form the Government only on the ground that the majority has been obtained by offering allurements and bribe which deals have taken place in the cover of darkness but his undisclosed sources have confirmed such deals. The extra-ordinary emergency power of recommending dissolution of a Legislative Assembly is not a matter of course to be resorted to for good governance or cleansing of the politics for the stated reasons without any authentic material. These are the matters better left to the wisdom of others including opposition and electorate.

146. It was also contended that the present is not a case of undue haste. The Governor was concerned to see the trend and could legitimately come to the conclusion that ultimately, people would decide whether there was an &#65533;ideological realignment", then there verdict will prevail and the such realigned group would win elections, to be held as a consequence of dissolution. It is urged that given a choice between going back to the electorate and accepting a majority obtained improperly, only the former is the real alternative. The proposition is too broad and wide to merit acceptance. Acceptance of such a proposition as a relevant consideration to invoke exceptional power under Article 356 may open a floodgate of dis-solutions and has far reaching alarming and dangerous consequences. It may also be a handle to reject post-election alignments and realignments on the ground of same

being unethical, plunging the country or the State to another election. This aspect assumes great significance in situation of fractured verdicts and in the formation of coalition Governments. If, after polls two or more parties come together, it may be difficult to deny their claim of majority on the stated ground of such illegality. These are the aspects better left to be determined by the political parties which, of course, must set healthy and ethical standards for themselves, but, in any case, the ultimate judgment has to be left to the electorate and the legislature comprising also of members of opposition.

147. To illustrate the aforesaid point, we may give two examples in a situation where none of the political parties was able to secure majority on its own:

1. After polls, two or more political parties come together to form the majority and stake a claim on that basis for formation of the Government. There may be reports in the media about bribes having been offered to the elected members of one of the political parties for its consenting to become part of the majority. If the contention of the respondents is to be accepted, then the constitutional functionary can decline the formation of the Government by such majority or dissolve the House or recommend its dissolution on the ground that such a group has to be prevented to stake claim to form the Government and, therefore, a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

2. A political party stakes claim to form the Government with the support of Independent elected candidate so as to make up the deficient number for getting a majority. According to media reports, under cover of darkness, large sums of bribes were paid by the particular party to Independent elected candidates to get their support for formation of the Government. The acceptance of the contention of the respondents would mean that without any cogent material, the constitutional functionary can decline the formation of the Government or recommend its dissolution even before such a claim is made, so as to prevent staking of claim to form the Government.

148. We are afraid that resort to action under Article 356(1) under the aforesaid or similar eventualities would be clearly impermissible. These are not the matters of perception or of the inference being drawn and assumptions being made on the basis whereof it could be argued that there are no judicial manageable standards and, therefore, the Court must keep its hands off from examining these matters in its power of judicial review. In fact, these matters, particularly without very cogent material, are outside the purview of the constitutional functionary for coming to the conclusion that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

154. Though Bommai has widened the scope of judicial review, but going even by principles laid in State of Rajasthan's case, 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. Apart from the fact that the narrow minimal area of judicial review as advocated in State of Rajasthan's case is no longer the law of the land in view of its extension in Bommai's case but the present case even when considered by applying limited judicial review, cannot stand judicial scrutiny as the satisfaction herein is based on wholly extraneous and irrelevant ground. The main ground being to prevent a party to stake claim to form the Government.

13. In regard to the issue that the Appropriation Bill had not been passed on the basis of division of votes, which was demanded by the 27 MLAs by a written communication addressed to the Governor, the learned Senior Counsel would point out that, having regard to the role of the Governor, forwarding the application to the Speaker asking him to hold voting by division and about videographing the entire affair, it was completely unauthorised in law. He drew our attention to Articles 174, 175 & 176 of the Constitution of India. He would submit that, under Article 174, the Governor has three distinct roles. He is to summon the Assembly; thereafter, he has power to prorogue; and, finally, he has power to dissolve the House. The Governor is expected to act on the advice of the Council of Ministers, except in matters, where, under the Constitution, a discretion is vested in him. Equally, he may enjoy a discretionary authority when the same is lodged in him under a statute. Otherwise, he is essentially a figurehead. The executive power is to be exercised actually by the Council of Ministers. He would submit that the Governor has, actually, no legislative power. He drew our attention to the judgment in the case of **Union of India & others v. Valluri Basavaiah Chowdhary and others, reported in (1979) 3 SCC 324**. Therein, the court inter alia held as follows:

"18. The Governor is a constitutional head of the State Executive, and has, therefore, to act on the advice of a Council of Ministers under Article 163. The Governor is, however, made a component part of the State Legislature under Article 164, just as the President is a part of Parliament. The Governor has a right of addressing and sending messages to under Articles 175 and 176, and of summoning, proroguing and dissolving under Article 174, the State Legislature, just as the President has in relation to Parliament. He also has a similar power of causing to be laid before the State Legislature the annual financial statement under Article 202(1), and of making demands for grants and recommending "Money Bills" under Article 207 (1). In all these matters the Governor as the constitutional head of the State is bound by the advice of the Council of Ministers.

19. The Governor is, however, made a component part of the legislature of a State under Article 168, because every Bill passed by the State legislature has to be reserved for his assent under Article 200. Under that article, the Governor can adopt one of the three courses, namely (i) he may give his assent to it, in which case the Bill becomes a law; or (ii) he may except in the case of a "Money Bill" withhold his assent therefrom, in which case the Bill falls through unless the procedure indicated

in the first proviso is followed, i.e., return the Bill to the Assembly for reconsideration with a message, or (iii) he may (subject to Ministerial advice) reserve the Bill for the consideration of the President, in which case the President will adopt the procedure laid down in Article 201. The first proviso to Article 200 deals with a situation where the Governor is bound to give his assent when the Bill is reconsidered and passed by the Assembly. The second proviso to that article makes the reservation for consideration of the President obligatory where the Bill would, "if it became law", derogate from the powers of the High Court. Thus, it is clear that a Bill passed by a State Assembly may become law if the Governor gives his assent to it, or if, having been reserved by the Governor for the consideration of the President, it is assented to by the President. The Governor is, therefore, one of the three components of a State legislature. The only other legislative function of the Governor is that of promulgating Ordinances under Article 213(1) when both the Houses of the State legislature or the Legislative Assembly, where the legislature is unicameral, are not in session. The Ordinance-making power of the Governor is similar to that of the President, and it is co-extensive with the legislative powers of the States legislature.

21. The function assigned to the Governor under Article 176(1) of addressing the House or Houses of Legislature, at the commencement of the first session of each year, is strictly not a legislative function but the object of this address is to acquaint the members of the Houses with the policies and programmes of the Government. It is really a policy statement prepared by the Council of Ministers which the Governor has to read out. Then again, the right of the Governor to send messages to the House or Houses of the Legislature under Article 175(2), with respect to a Bill then pending in the legislature or otherwise, normally arises when the Governor withholds his assent to a Bill under Article 200, or when the President, for which consideration a Bill is reserved for assent, returns the Bill withholding his assent. As already stated, a "Bill" is something quite different from a "resolution of the House" and, therefore, there is no question of the Governor sending any message under Article 175(2) with regard to a resolution pending before the House or Houses of the Legislature."

14. The learned Senior Counsel would further submit that the founding fathers have contemplated a reciprocal respect as between the Legislature and the courts. He drew our attention to Article 212 of the Constitution. More about it will follow in our judgment. The Governor has no role to play in regard to the proceedings of the House. In regard to the position under Article 212, he relied on the following decisions of the Apex Court:

(i) **M.S.M. Sharma v. Shree Krishna Sinha, reported in (1961) 1 SCR 96** (para 10).

(ii) **Mohd. Saeed Siddiqui v. State of Uttar Pradesh & another, reported in (2014) 11 SCC 415** (paras 32 to 37).

(iii) **Yogendra Kumar Jaiswal & others v. State of Bihar & others, reported in (2016) 3 SCC 183** (paras 38 to 43).

15. Therefore, he would submit that even the courts have no jurisdiction to enquire into the question whether the rules of procedure were followed in the Legislature. The Legislature and, in particular, the Speaker is the master to rule on all matters of procedure and how the Assembly is to be conducted. It may be another thing if there is any violation of any constitutional inhibition or an infraction of a substantive nature. He would, therefore, contend that the Governor had absolutely no role to do what he did, starting with forwarding of the representation and directing that voting in the Appropriation Bill be done by way of division of votes. He would submit that such incursions into the authority of the Speaker would spell doom for parliamentary proceedings and introduce chaos, which may not be countenanced. According to him, a mountain has been made out of a molehill in regard to the charge that, despite there being a demand for division in the matter of voting of the Appropriation Bill, it was flouted. Drawing inspiration from the statements made in the rejoinder affidavit, he would contend that, actually, the demand for grants had been made and passed on 17.03.2016 and some had been passed on 18.03.2016. After the demands for grants are passed, the passing of the Appropriation Bill cannot be subjected to any amendment or variation and is, essentially, a formality. He drew our attention to Articles 203 & 204 of the Constitution, which read as follows:

"203. Procedure in Legislature with respect to estimates.-

(1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

204. Appropriation Bills.- (1) As soon as may be after the grants under article 203 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet -

(a) the grants so made by the Assembly; and

(b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the

House or Houses.

(2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 205 and 206, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article."

16. He also sought support from the following passages from the work Practise and Procedure of Parliament by M.N. Kaul and S.L. Shakdher, 6th Edition. Therein, under the Chapter ‘Procedure in Financial Matters’, i.e. Chapter XXIX, it is stated inter alia as follows:

"The motion for leave to introduce an Appropriation Bill cannot be opposed, as the Bill is introduced only after the relevant demands have been voted by the House. Such a motion is forthwith put to the vote of the House. An amendment to an Appropriation Bill for omission of a certain demand is out of order on the ground that the demand has already been voted by the House.

By convention, Bills are not put down for consideration and passing on the same day on which they are introduced in the House. In the case of Appropriation Bills, however, the Speaker has, on request received from the Minister, allowed the Appropriation Bills to be introduced, considered and passed on the same day.

‘..

Scope of Discussion

The debate on an Appropriation Bill is restricted to matters of public importance or administrative policy implied in the grants covered by the Bill and which have not already been raised while the relevant Demands for Grants were under discussion.

‘..

Amendments

No amendment can be proposed to an Appropriation Bill, which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the Speaker as to whether such an amendment is inadmissible is final.

The rest of the procedure in regard to Appropriation Bills is the same as for Bills with such modifications as the Speaker may consider necessary.

An amendment to an Appropriation Bill for omission of a demand already voted by the House is out of order. However, an amendment to an Appropriation Bill which does not vary the amount or alter the destination of any grant or vary the amount of any expenditure charged on the Consolidated Fund but is only of a clarificatory nature is in order."

17. He would refer us to sub-Article (2) of Article 204, which we have already quoted above. He would submit that the Constitution, itself, makes it clear that, when the demand for grants had been passed, there can be no question of any amendment, which would have the effect of diverting destination of the funds or even varying the amount. He would, in fact, submit that the demand for grant had been piloted by one of the Ministers, who, incidentally, turned a dissident. He would further emphasise that this solitary instance of a matter, which essentially pertained to the procedure in passing the Appropriation Bill, which indeed had been passed on the said day, has been seized upon by the Central Government to impose President's Rule, which is a power of an extra-ordinary nature. At any rate, there is no pattern of any such doings. Therefore, it is patently impermissible. In fact, according to him, Appropriation Bill is a sum of its constituent parts.

18. According to the learned Senior Counsel, in fact, the members of the BJP had introduced number of cut motions when the demands for grants were taken up, both on 17.03.2016 and 18.03.2016. The matter stood resolved and it progressed further to the stage of consideration of the Appropriation Bill. When it reaches the stage of Appropriation Bill, there is no scope for debate or discussion. The debate would be justified only if there is a change in circumstances, which results in a matter of public importance emerging. Therefore, he would submit that this is a matter, which, essentially, related to the procedure being followed in the House and the word of the Speaker is the last word and even the courts cannot sit in review over the proceedings in the Assembly. He wondered how the Central Government could have seized upon the solitary instance of an Appropriation Bill being allegedly passed in derogation of the demand by the members, who, according to the respondents, were 35 in number and, therefore, constitute a majority. In answer to a query of the Court as to whether voting on the Appropriation Bill could be used by way of testing, shaking and fatally undermining the confidence, which the Government of the day commands in the House, he would answer by pointing out that it is for testing that confidence that the matter stood posted to 28.03.2016 by the Governor. He drew our attention to paragraph 507 of the judgment in the case of **Smt. Indira Nehru Gandhi v. Raj Narain & another, reported in 1975 (Supp.) SCC 1**, which reads as follows:

"507. What is alleged by the election-petitioner is that the opposition members of Parliament, who had been detained under the preventive detention laws, were entitled to get notice of the proposed enactments and the Thirty-ninth amendment, so as to be present "in Parliament", to oppose these changes in the law. I am afraid,

such an objection is directly covered by the terms of Article 122 which debars every court from examining the propriety of proceedings "in Parliament". If any privileges of members of Parliament were involved, it was open to them to have the question raised "in Parliament". That is no provision of the Constitution which has been pointed out to us providing for any notice to each member of Parliament. That, I think, is also a matter completely covered by Article 122 of the Constitution. All that this Court can look into, in appropriate cases, is whether the procedure which amounts to legislation or, in the case of a constitutional amendment, which is prescribed by Article 368 of the Constitution, was gone through at all. As a proof of that, however, it will accept, as conclusive evidence, a certificate of the Speaker that a Bill has been duly passed."

19. He would submit that never before in the history of independent India has resort been made to Article 356 purporting to short-circuit the floor test ordered by the Governor and also seeking to torpedo the authority of the Speaker under the Tenth Schedule. There is, in fact, reference in regard to Appropriation Bill to Rule 185. It reads as follows:

"Rule 185 Appropriation Bill:

(1) Subject to the provisions of the Constitution, the procedure in regard to an Appropriation Bill shall, with such modifications as the Speaker may consider necessary, be the same as for Bill generally:

(2) Provided that no amendment shall be proposed to an Appropriation Bill which have the effect of varying the amount or altering the destination of any grant made under Article 203.

(3) The Speaker may suspend the operation of any rule with a view to the timely passing of such Bills."

20. Therefore, the learned Senior Counsel would submit that, when the Bill was passed with the authority vested with the Speaker to suspend any of the rules, it would include any other rule. The Speaker must be treated as having exercised his power having regard to the fact that it is a financial Bill, which needed to be passed with great expedition. He would submit that, in the absence of any pattern, at any rate, there cannot be invocation of Article 356. He would paint a disastrous situation emerging if there could be oversight of the proceedings of the Assembly. According to him, federalism would become a victim. Equally, democracy would be impacted. Even if an error is made by the Speaker and, that too, on one occasion, to have the events of 18.03.2016 as the fundamental premise to sustain the Proclamation under Article 356 would spell doom for both, democracy and federalism. He would point out that, if the court had undertaken the review under Article 212, it would have to cross through various stages. It would have to, first, find out whether the matter related to procedure or whether it related to substantive right or the case of violation of a constitutional mandate. He posed a question as to how the Central

Government could have seized upon the solitary instance and resorted to the extra-ordinary power under Article 356. The Governor, he would submit, acted as a post office. He complains that the stand of the Governor that, despite communication by him, no division has taken place, betrays a state of mind, which ill-accords with his constitutional powers.

21. In regard to the question relating to suppression of material facts, the argument would run as follows:

The impugned decision was issued on 27.03.2016. Within 24 hours, the writ petition was filed. Furthermore, the representation, which was given by the 27 MLAs of the BJP in the morning of 18.03.2016 has actually been produced and marked as Annexure P-3. The respondents are certainly aware of the said document. Even they did not point out that this had been produced. The parties, in fact, proceeded as if it had not been produced; whereas, it has actually been produced. It was filed in hurry and sometimes errors occur. It was not deliberate. Furthermore, it is contended that, in a case of this nature, what is impugned is the imposition of President's Rule under Article 356. The alleged suppression, when the document has actually been produced, can never be considered as a ground to dismiss the writ petition. He would submit that, in fact, the production of the said representation would only strengthen the petitioner's case that only 27 MLAs of the BJP had moved the Governor and 9 dissident members of the Congress had not filed any representation. Petitioner had nothing to gain by suppressing. Equally, it is submitted that non-production of one page of the Notification has no fatal consequences.

22. In regard to the sting operation, it is submitted that it is not admitted. It is disputed. Secondly, it is pointed out that, at any rate, it only points to a solitary instance. It is further contended that actually the petitioner was entrapped and entrapment is not a sting, runs the argument. Appeal is made to the higher normative values of democracy and federalism, which stands at least temporarily fatally impacted by the displacement of the democratically elected Government.

23. The learned Senior Counsel would refer to the judgments in Bommai's case (supra) and Rameshwar Prasad's case (supra) to point out that floor test is the only and the surest way and, the earlier the floor test is done, the chances of horse trading could be obviated. In this connection, he has a case that the date fixed, i.e. 28.03.2016 was reasonable. He would invoke the larger principles of democracy and federalism to contend that, while a writ applicant can ordinarily be told off the gates if his conduct does not match with that of a person seeking discretionary and extra-ordinary relief under Article 226, the present petitioner may not be thrown out. He would submit that democracy, with all its faults, is the system of Government, which the people of India have embraced under the written Constitution. There may be pitfalls; but howsoever imperfect it may be, it remains the best possible form of Government. In the context of the need to uphold the

values of democracy as also the upkeep of the ideal of federalism, he would submit that the Court may not throw out the writ petition on the basis of a disputed sting operation.

24. In regard to the double standards being allegedly practised by the Speaker in the matter of disqualifying members of the two different parties, namely, the Congress and the BJP, the learned Senior Counsel would point out the following facts:

The petition to disqualify Shri B.L. Arya, a BJP MLA, was filed only on 05.04.2016. The Speaker gave him 7 days' time to respond. He gave his reply on 12.04.2016. The complainant remained absent and, finally, the case stood posted to 21.04.2016. The Speaker sent the reply submitted by Shri B.L. Arya to the complainant because he was absent. Therefore, there is absolutely no basis to try and make out a case of practising of double standards. In fact, the facts would show that the Speaker was even-handed. As to luring the said MLA by offering him the post of Vice President of Ambedkar Jayanti Samaroh Samiti, it is submitted that, actually, it is done as per the convention (Mr. Rakesh Thapliyal, learned Assistant Solicitor General in fact points out that it was done on 19.03.2016). It is, in fact, the case of the petitioner that, by convention, it is offered to the members of the opposition parties.

25. The learned Senior Counsel would point out that there is no statement in the letters of the Governor that there was a breakdown of the constitutional order in the State warranting imposition of President's Rule.

26. Mr. Mukul Rohatgi, the learned Attorney General, who appeared on behalf of the first respondent and who was assisted by Mr. Tushar Mehta, learned Additional Solicitor General and Mr. Rakesh Thapliyal, learned Assistant Solicitor General, would submit that the Governor's report as such is not binding on the President. Even if the Governor does not recommend imposition of President's Rule, that will not militate against the power of the President (no doubt, effectively the Cabinet at the Centre) from taking a decision under Article 356. He would submit that going by the conclusions even in Bommai's case (supra), the power of the Court is confined to examine whether there was any material; whether the material is relevant; or whether the material is wholly irrelevant or extraneous. If there is no material or the material is wholly irrelevant or the material is wholly extraneous, the Court may interfere. At the same time, if there is some relevant material, the fact that the other materials are irrelevant would not justify the Court invalidating the action under Article 356. When the relevant material can be separated, that would suffice to sustain the Notification. The court would not sit in judgment over the sufficiency of the material. The Court would not substitute its views with that of the highest constitutional authority. If two views are possible, certainly the Court would not interfere. He would urge that the writ petition be dismissed on the short ground of suppression of material facts, misleading of the Court and twisting of facts. He would submit that ordinarily, an Appropriation Bill may be passed in a formal and

swift manner. In this case, however, on 18.03.2016, the members of the BJP Legislative Party and 9 dissident Members ‘sprang a surprise’ and ‘came out in the open’ and demanded division of vote on the floor of the House. There was an earlier representation by the BJP MLAs, which was forwarded. The pleadings of the petitioner are adversely commented upon to point out suppression, misrepresentation and twisting. He would submit that it must be remembered that it is on the said basis that the petitioner sought an interim order from the learned Single Judge before whom the matter was originally listed (the case was made over to the Bench on the basis of consent of the parties on the basis of the writ petition itself being heard). An interim order was obtained. The respondents were handicapped as they had not given their response. They were not having materials to point out the correct facts. Therefore, this aspect is fatal. The events, as they unfolded on 18.03.2016 beginning with the representation of the MLAs and it being forwarded at the instructions of the Governor and direction being observed in its breach had not been highlighted in the writ petition. It is pointed out that Shri B.L. Arya, MLA, finds mention in the representation; but he was won over and he was made Vice President of Ambedkar Jayanti Samaroh Samiti. He would point out with reference to the Assembly with 71 members, that it was reduced to an actual strength of 68 Members on the fatal day, namely, 18.03.2016. Shri Ganesh Joshi was arrested; Shri B.L. Arya was not present and one Shri Ansari belonging to BSP was also not present. Therefore, if the Speaker is excluded, there were only 67 persons. There is indisputable material to show that 35 MLAs (26 belonging to the BJP and 9 dissident Members belonging to the Congress) made a demand for division on the floor of the House. The majority was defied by the Speaker, who arrogated to himself the power to defy the fundamental elements of a democratic body, a body, which should function in a democratic manner. He questions why the Appropriation Bill was not sent till 28.03.2016 to the Governor. The respondents have a case that, in fact, the Bill had not been passed on 18.03.2016 and the reluctance in sending the Bill to the Governor till 28.03.2016 betrays the Speaker’s state of mind. He would rely on Rule 296, which reads as follows:

"296. Decision - (1) Votes may be taken by voices or by division and shall be taken by division, if any member so desires:

Provided that the Speaker may, if he is satisfied that division is unnecessarily claimed, avoid a division and take votes by show of hands.

(2) The result of a division shall at once be announced by the Speaker and shall not be challenged."

27. Therefore, if a single Member makes a demand, the Speaker is obliged to make a resort to division of votes and, at any rate, even voting by show of hands under Rule 296 is not resorted. This is a murder of democracy, he argued. The Government had clearly no authority to continue, as it had lost majority and had fallen in terms of non-passage of the Money Bill on 18.03.2016. This solitary but momentous event

was sufficient to impose President's Rule. He would point out that the arrest of the BJP MLA Sri Ganesh Joshi was placed before the Speaker. He would also point out the fact that Sri B.L. Arya, a BJP MLA has been won over. The Speaker was not acting in an impartial manner. He specifically argued that this is for the reason that the disqualification proceedings against Shri B.L. Arya were going on at a tardy pace; whereas, the proceedings against the 9 dissident Congress MLAs went at a tremendous speed and culminated in the disqualification on 27.03.2016.

28. He would submit that, under Articles 196, 197 and 198, besides Article 200, for a Bill to become law, it must be passed. He would submit that whatever be the nature of the debate in regard to the Appropriation Bill, it must be passed. In this case, it was not passed; but, the Speaker declared it passed. This indicated, though a solitary instance, the breakdown of the constitutional system and the Government could not possibly be carried on after 18.03.2016. The Government led by the petitioner was reduced to a minority on 18.03.2016 and was in sin and the Central Government could not allow such a Government to continue.

29. In regard to the effect of the subsequent developments, namely, the decision to hold the floor test on 28.03.2016 rendering events on 18.03.2016 irrelevant, the learned Senior Counsel would submit that it would remain relevant. He would submit that this single incident is sufficient. He would further submit that here is a Chief Minister, who is personally involved in horse trading, as is established through the sting operation. There was, therefore, material in this case, which positively proved horse trading, and unlike in the Bommai's case and Rameshwar Prasad's case, this case is distinct; in that, the petitioner, who is the former Chief Minister, was caught on tape, both audio and visual committing acts, which ill-behove a Chief Minister. Therefore, the Central Government was justified. In regard to Article 212, he would, in the first place, submit that it is directed against the courts. In other words, the taboo against interference with the affairs of the Legislature is confined to the courts. As far as the Central Government and the President acting under Article 356 is concerned, if it is found that there has been a violation of the Constitution or if there is any illegality committed, the Speaker cannot immunise his actions on the basis of Article 212. This cannot detract from the power of the authority under Article 356. Even as far as the courts are concerned, the protective shield can be worn only against matters of procedure. The mandate is limited to matters of procedure only. In this regard, he relied on the decision of the Apex Court in the case of **Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & others, reported in (2007) 3 SCC 184** and other case-law, which we will discuss.

30. The learned Attorney General would submit that this is a case, where the Governor, actually, had given a long rope to the petitioner. Petitioner made use of that to indulge in horse trading. The case of Shri B.L. Arya is pressed. The sting operation is emphasized. The disqualification proceeding against the 9 dissident members culminating in disqualification on 27.03.2016 is alluded to. The

composition of the House on 28.03.2016 was not the alter ego of the House on 18.03.2016. There had been a radical change by virtue of the disqualification ordered by the Speaker in a hasty manner, which betrayed unequal operation of the same law. All this together justify the action. At any rate, excluding everything else, the event on 18.03.2016 was, by itself, sufficient. He also placed reliance on the judgments of the Apex Court in the cases of **State of Punjab v. Satya Pal Dang & others, reported in AIR 1969 SC 903**; **Madras Bar Association v. Union of India and another, reported in (2014) 10 SCC 1**;**Yitachu v. Union of India & others, reported in AIR 2008 Gauhati 103**; and **K.A. Mathialagan v. P. Srinivasan & others, reported in AIR 1973 Madras 371**, all for the proposition that Article 212 cannot deprive even the courts when it comes to a violation of a substantive nature or an infraction of a constitutional mandate. In this case, the action of the Speaker was completely destructive of the very basis of democracy, namely, the right to vote in the Assembly in accordance with the rules binding on the Speaker. The Speaker cannot run riot. In fact, he referred to the judgments of the Apex Court in the cases of State of Punjab v. Satya Pal Dang & others (supra), as also K.A. Mathialagan v. P. Srinivasan & others (Full Bench); besides Yitachu v. Union of India & others (supra). He would submit that, if the Cabinet thought it fit to rely on the circumstances to impose President's Rule, the Court may not interfere. It is his contention that, in fact, the Appropriation Bill was actually not passed on 18.03.2016.

31. Mr. Harish Salve, learned Senior Counsel appeared on behalf of the second respondent. No counter affidavit has been filed by the second respondent. However, he submitted that he would make submissions on the questions of law. He submitted that this is a case, where there were materials. What happened on 18.03.2016 was sufficient. He would submit that the contours of judicial review in respect of action under Article 356 are limited. He sought to draw support from the judgment of the Apex Court in the cases of **Madhav Rao Scindia v. Union of India & another, reported in (1971) 1 SCC 85** and **M.R. Balaji and others v. The State of Mysore & others, reported in AIR 1963 SC 649**. He would submit that this cannot be treated as a case, where the Central Government could stand accused successfully of having acted for attainment of collateral purposes. He pointed out that the Court is not in possession of sufficient power to interfere with the exercise of the discretionary power vested in the highest constitutional authority. He submitted that it is only a suspension and not a dissolution.

32. We also permitted Mr. Dinesh Dwivedi, learned Senior Counsel, to appear in the matter on behalf of the 9 dissident Members of Congress. He would submit that, even though the power under Article 356 may be described as extra-ordinary, it only means that the concerned authority must be circumspect. He also reiterated that, as long as there is some material, which is relevant, the Court would not substitute its views with that of the highest constitutional authority. If two views are possible, certainly the Court would not substitute its views, where there were materials, both in the form of what happened on 18.03.2016 and the sting operation. He also

requested that the Court may not make any observation, which may impact pending litigation launched by them against the disqualification before the learned Single Judge.

33. Mr. Tushar Mehta, learned Additional Solicitor General for the Union of India, would submit that, actually, the convention is that, when a Money Bill is defeated, the Government falls. There is a duty to resign. In this regard, he relied on Law Commission of India Report No. 170, wherein it is, inter alia, stated as follows:

"7.1.3. Though its term is co-terminus with the life of the House, it can be defeated or it may fall, on many counts. For example, a defeat on a money bill or a cut motion will, according to conventions, established in U.K. and followed in this country would oblige the Government to resign. It is indeed a case of rendering accountability on a daily basis. At any time, the opposition can bring a no-confidence motion and if it is approved by the House, the Government has to resign. In view of what has happened at the Centre in 1979, 1990 and in the recent years, it should make us all think of way."

34. He also relied on Parliamentary System in India by S.G. Deogaonkar, wherein the author has stated as follows:

"Parliamentary Control Over the Exercise Parliamentary control over the executive is exercised by controlling the Ministry. In fact the real control is by the House of the People i.e. the Lok Sabha and not the Rajya Sabha as the Ministry has to resign only if it losses the confidence of the Lok Sabha. Usually the following occasions are considered as indicative of loss of confidence.

(i)

(ii) If a Money Bill is lost on cases suggested by Private Members in the Budget are approved by the House, it amounts to no-confidence."

35. He further referred to Introduction to the Constitution of India, Seventh Edition, by Brij Kishore Sharma, wherein it is, inter alia, stated as follows:

"10.42. Collective Responsibility of the Ministers. In England, the Cabinet system is based on conventions. The framers of our Constitution considered it fit to incorporate the system in the Constitution. The principle of collective responsibility finds place in Article 75(3) where it is stated that the Council of Ministers shall be collectively responsible to the Lok Sabha. In other words, this provision means that a Ministry which loses confidence of the Lok Sabha is obliged to resign. The loss of confidence is expressed by rejecting a Money Bill or Finance Bill or any other important policy measure or by passing a motion of no-confidence or rejecting a motion expressing confidence in the Ministry. When a Ministry loses confidence of the Lok Sabha the whole of the Ministry has to resign including those Ministers who are from the Rajya Sabha. The Ministers fall and stand together. In certain cases the Ministry may advice the President to dissolve the Lok Sabha and call for fresh

elections.

Collective responsibility also means that when a decision has been taken by the Cabinet all ministers are bound by it. They have to defend it in the Parliament and outside. Differences are to be aired in the Cabinet in party forum or with the Prime Minister. If the minister feels that he cannot subscribe to the decision taken by the cabinet he has to resign from the ministry. In 1956 C.D. Deshmukh resigned because he did not agree of with the Prime Minister in regard to status of Bombay."

36. He further relied on the judgment of Punjab & Haryana High Court in the case of **Prakash Singh Badal & others v. Union of India & others, reported in AIR 1987 Punjab & Haryana 263 (FB)**. Paragraphs 26 & 158 of the said judgment read as follows:

"26. Apart from the provisions of the Constitution, the Lok Sabha and the Ministry, in carrying out their functions, have to observe a large number of unwritten conventions. There is no provision in the Constitution which requires the President to appoint a leader of the majority party as Prime Minister, or the one requiring the cabinet of the majority party to resign if a money Bill sponsored by it is defeated. These matters obviously are guided by well-known conventions. Similarly, it is a well-established convention that if any important bill on policy matter is defeated, the cabinet usually resigns. As noticed by Cecil S. Emden in his book "The People and the Constitution", a convention has grown up, though it is not altogether of a rigid character, for members to retire or to seek re-election, if they change their party allegiance or their view regarding some vital political issue. Even in the eighteenth century, conscientious scruples occasionally led members to resign their seats on altering their political tenets. So, by the proposed amendment, whatever was expected to be achieved by convention, is sought to be enforced by letter of law when conventions failed to achieve the desired results and the menace of defections grew to such enormous proportions as to threaten the very existence of democratic set up."

158. When clause (b) of sub-paragraph(1) of paragraph 2 of Tenth Schedule is to be interpreted, keeping in view the above principles of interpretation and when in my view, the purpose of enacting paragraph 2 could be no other than to insure stability of the democratic system, which in the context of Cabinet/Parliamentary form of Government on the one hand means that a politically party or a coalition of political parties which has been voted to power, is entitled to govern till the next election, and on the other, that opposition has a right to censure the functioning of the Government and even overthrow it by voting it out of power if it had or abstaining from voting by a Member contrary to any direction issued by his party would to any direction issued by his party would by necessary implication envisage voting or abstaining from voting in regard to a motion or proposal, which if failed, as a result of lack of requisite support in the House, would result in voting the Government out of power, which consequence necessarily follows due to well established

constitutional convention only when either a motion of no-confidence is passed by the House or it approves a cut-motion in budgetary grants. Former because of implications of Article 75(3) of the Constitution and latter because no Government can function without money and when Parliament declines to sanction money, then it amounts to an expression of lack of confidence in the Government. When so interpreted the clause(b) of sub-paragraph (1) of paragraph 2 would leave the Members free to vote according to their views in the House in regard to any other matter that comes up before it."

37. The learned Senior Counsel for the petitioner would, in fact, point out that the majority judgment is contained in paragraph 26; whereas, paragraph 158, relied on by the respondents, was the minority view.

38. The first respondent would, therefore, contend that there is clearly a convention. He would submit that the status of a convention in Indian constitutional law is that of a constitutional provision itself. In this regard, he relied on the judgments of the Apex Court in the cases of **Supreme Court Advocates-on-Record Association & others v. Union of India, reported in (1993) 4 SCC 441**, and **Madras Bar Association v. Union of India & another, reported in (2014) 10 SCC 1**. He would, therefore, submit that, indeed, it must be treated that the Government had actually fallen on 18.03.2016 in terms of the convention and it had no legs to stand on after 18.03.2016. Its continuance was unconstitutional. He would submit that the Court should not sit in judgment over the political wisdom of the Central Government and the President. There are various elements in the decision, which are not amenable to judicial review, and the Court should not substitute its wisdom for that of the authority.

39. Mr. M.C. Pant, an Advocate of this Court, sought to intervene and he relied on the judgments of the Apex Court in the cases of **Gujarat Assembly Election Matter, In Re., reported in (2002) 8 SCC 237**; Lokayukta, Justice **Ripusudan Dayal (Retd.) & others v. State of Madhya Pradesh & others, reported in (2014) 4 SCC 473**; and **Sahara India Real Estate Corporation Limited & others v. Securities and Exchange Board of India & others, reported in (2013) 1 SCC 1.**

40. Mr. Abhishek Manu Singhvi, learned Senior Counsel for the petitioner, would submit that, at every stage, only 27 BJP MLAs had asked in writing.

Findings:

Suppression of material facts, misleading statements and twisted facts:

41. A large body of case-law was cited by the learned Attorney General. Some of the case-law related to proceedings under Article 136 of the Constitution. Some others related to the proceedings under Article 226. The judgments in the cases of **K.D. Sharma v. Steel Authority of India Limited & others, reported in (2008) 12 SCC 481**, and **Prestige Lights Ltd. v. State Bank of India, reported in (2007) 8 SCC 449**,

specifically relate to Article 226. We would, first, refer to the judgment in Prestige Lights Ltd. v. State Bank of India (supra), wherein it has been held as under:

"A prerogative remedy is not available as a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

There is still one more reason why the appellant Company should be denied equitable relief under Article 136 of the constitution. The appellant has not come with clean hands. It has suppressed and concealed material facts from the Court. Though the appellant Company has approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

42. Next, we would refer to the judgment in K.D. Sharma v. Steel Authority of India Limited & others (supra), wherein it has been held as under:

"The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner I guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

"A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses any material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of

the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

As per settled law, the party who invokes the extraordinary jurisdiction of the Supreme Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and eek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in the disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of the writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts". An applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court ha inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of court."

43. It is, undoubtedly, true that a writ applicant must approach the Court with clean hands. His conduct must match up to the exacting standards expected of a person, who seeks discretionary and extra-ordinary relief. It is not as if, even if a person has a clear-cut case, he is inflexibly entitled to relief. It is a discretion ultimately vested in the court to turn the person off the gates on the basis of the conduct. This principle is premised on the functional need of the court to keep the stream of justice pure and to enable it to administer justice effectively and fairly. Courts are over-loaded with work. It is, therefore, all the more reason that the person, who approaches the court, should take the court into confidence in respect of material facts; should place the facts in a fair manner; and leave the decision to the court. The fact that, if a particular fact is placed in a particular fashion, it may ultimately persuade the court to decline relief, should not weigh with the applicant, as the applicant, who ordinarily is assisted by a legal counsel, should place entirety of material facts before the court. But, the question in this case is whether, in the admitted facts, this principle must be harnessed to discountenance the plea against the imposition of President's Rule. Petitioner is a former Chief Minister, who stood dislodged by the imposition of President's Rule. What is at stake is not only the personal interest of the petitioner. What is at stake would be democracy at large, if we find merit

otherwise in the case of the petitioner. What is the soul of the matter is whether, in the federal / quasi-federal set-up we have, it is open to the Central Government to get rid of State Governments uprooting the democratically elected Governments and introduce the attendant chaos in the system undermining the confidence of a little man, who stands with a little white paper, in the words of Sir Winston Churchill, to cast his precious vote battling snow, the scorching heat and the rain. When the stakes are as high as this, should we throw out the petition on this ground? Even when we look at the facts, it is true that the representation given by the 27 BJP MLAs was not referred to as such in the writ petition. The petitioner has produced the communication by the OSD to the Speaker. In that communication, there is reference to the representation. Therefore, the petitioner would contend that the petitioner had nothing to gain by suppressing the representation. What is more clear in a manner of speaking, in a comedy of errors, the representation had actually been produced as Annexure P-3 in this case. It would appear that both, the petitioner and the respondents, were unaware of it. The discovery came rather late in the course of hearing. Therefore, this is not a case, where the representation was actually not produced, as was originally complained of by the first respondent. But, even then, it is true that much greater care should have been taken.

44. In regard to the case set-up from paragraphs 16 to 22 of the writ petition that the Bill was passed by voice vote and, thereafter, the demand was made for division of votes; there is a case for the first respondent that, if the representation had been produced as having emanated in the morning of 18.03.2016 and through the medium of the Governor being forwarded, then, at the stage of obtaining the interim order, the learned Single Judge may have thought it fit to decline the interim order on the ground that the representation was before the Speaker as forwarded by the Governor for division and, therefore, the voting could not have been carried out as voice vote. The case of the petitioner is that it is a bona fide error, as is bound to happen when a case is prepared in a tearing hurry. The fact that the case had been filed within 24 hours of the action is not in dispute. No doubt, here also, the learned Attorney General would point out that, in the second writ petition, which was filed latter, the very same error was repeated. But, as we noted, apparently, the petitioner was proceeding on the basis that he was not privy to the representation, as it had been addressed to the Speaker. We are not fully satisfied with that, as the petitioner has produced the covering letter; but, the representation was not actually produced as such. However, the fact remains that the petitioner has actually produced it, no doubt, describing it as a representation given after the representation given by the 34 MLAs at 11:00 p.m. on 18.03.2016; whereas, actually, the representation had been given in the morning of 18.03.2016 and had been received by the Speaker. The petitioner was the Chief Minister and he has produced the other communications. As we have noted, having regard to the totality of facts in this case, we would think that we cannot decline the judicial review proceedings of the Proclamation under Article 356 on this ground. The non-production of one

page from the Proclamation also does not appear to us to be deliberate.

Scope of Judicial Review:

45. We have already extracted the relevant paragraphs from the judgments in Bommai's case (supra) and Rameshwar Prasad's case (supra). It is to be remembered that the power under Article 356 came in for considerable misuse. Incidentally, we may notice that the Party to which the petitioner belongs has not exactly covered itself with glory in actions, which were taken in the first 40 years of the Republic. Nearly 100 cases of dissolution took place. The philosophy of the courts during that era was that, with a Proclamation under Article 356, a political question is being resolved; the highest constitutional authority has applied its mind; and the courts should adopt a hands-off attitude. The courts found solace in the fact that the Proclamation would have to pass muster at the hands of the Parliamentarians for it to continue. It was not a matter, which presented manageable standards for the courts. This was the philosophy, which substantially precluded the courts from practically interfering in action taken under Article 356. The Sarkaria Commission gave its report. It listed various situations and the abuses. It is, then, that the Nine Judges of the Supreme Court in Bommai's case (supra) sat to consider the true scope of judicial review in matters relating to Proclamation under Article 356. We have already referred to the case-law and the relevant paragraphs. Undoubtedly, under the written Constitution, in which the Preamble proclaims India to be a democratic, sovereign and socialist republic, there is little space for un-reviewable powers. There are areas like the making of a treaty or a decision to go for war or foreign policy, where there are no objective criteria, which would provide the basis for the courts to strike at the executive action. It was in this strain that, in Bommai's case (supra), the learned Judges proclaimed a new approach to judicial review. Our understanding is that the power under Article 356 is, indeed, extra-ordinary. It is to be used as a matter of last resort. It can be used only when the Government cannot be run in accordance with the Constitution. It points to a certain level, where it is quite impossible to run the Government in the manner provided in the Constitution. There must be material. The material must be verified. It is not any material that will suffice. The material must be relevant for the formation of the satisfaction. The satisfaction, undoubtedly, is subjective satisfaction. It is the subjective satisfaction not of the President, but of the Cabinet for all legal purposes. No doubt, there is a modicum of power with the President having regard to Article 74 to always ask the Cabinet to reconsider any advice. If, after reconsideration, the same advice is re-tendered, it binds the President. The material cannot be irrelevant or extraneous. It cannot be mala fide. Every act of a public functionary at any level must be bona fide. It is, therefore, that, even in an action under Article 356, the action is liable to be visited with invalidation if it is done mala fide. When mala fide is attributed to the Government, the mala fide is malice in law or legal malice. Attainment of a collateral purpose, though it may appear to be intended to secure a legitimate purpose, is impermissible. The issue of judicial

review of action under Article 356 must also be seen on a larger canvas. This is because India, i.e. Bharat, is the Union of States, declares Article 1 of the Constitution. Running as a golden thread through the provisions of the Constitution is the spirit of federalism. In a federal structure, the authority at the Centre and the States, are virtually sovereign in their own respective areas. In fact, Article 356 is a foray into the pure form of federalism, as, in a pure form of federalism, there would be no power, ordinarily, to interfere in the affairs of the State Government. But, the founding fathers, in their wisdom, have thought that there would, indeed, be rare occasions, where the Government cannot be conducted in accordance with the provisions of the Constitution. In the Sarkaria Commission's report, there is reference to situations caused by internal rebellion, internal disturbances, political issues, among the situations, which may warrant imposition of Article 356. We also understand that Article 356 is not confined in its employment to a situation arising from disregard by a State to the direction issued by the Central Government under Article 257 leading to the emergence of a situation under Article 365. We cannot, in fact, exhaustively lay down the situations. But, one thing is clear that it should be used as a matter of last resort and it should be used with the greatest care. This we say for the reason as we deem it appropriate to deal with another argument of the learned Attorney General, as also Mr. Harish Salve, that what is involved in this case is only a suspension of the Assembly and not the dissolution. We are of the view that, be it suspension or dissolution, the fact is that toppling of a democratically elected Government breeds cynicism in the hearts of the citizens, who had participated in the democratic process. It undermines the foundations of federalism. A Government in a State, which has been democratically elected, is usually engaged in the enunciation of policy and the transmission of policy into legislation. The carrying out of the policies, ordinarily, in accordance with the manifesto, which Parties may take to an electorate, is an important function, which is to be carried out by the persons, who are elected. They stand in the danger of being worsted at the hustings should they fail before the people during the time they have been given. Any interference, which is not made legitimately, therefore, will essentially work out as an interference with the life of the common man, who has trusted his destiny with his representatives whom he has elected. It is this democratic principle, which would become the first victim when action under Article 356 is not legally and constitutionally premised. Argument that the Governor has, in this case, not recommended Article 356:

46. The satisfaction under Article 356 is to be entered by the Central Government. The Governor sends report / reports. The felicity of expression of the Governor, or, rather, lack of it cannot possibly determine the boundaries of the jurisdiction of the competent authority. It may, in a particular case, be that all the details, which warrant the imposition of President's Rule, may be present in the reports. As if a magical incantation, the words borrowed from Article 356 may be conspicuous by its absence. This, in our humble view, may not be decisive in itself of the issue as to

whether the President's Rule is to be issued. Undoubtedly, we do agree that, ordinarily, when the Governor sends a report and he intends that it should culminate in a Proclamation under Article 356, he would allude to the fact that a situation has emerged, which warrants imposition of President's Rule. We will refer to more of this in the course of our judgment. We only say that, in a given case, if the other elements are present, which warrant the imposition of President's Rule, the mere lack of requisite phraseology used by the Governor, by itself, would not be decisive.

The Materials:

47. It is apposite now for us to look at the material. When we refer to the word "material", we may notice that there is an application seeking privilege from disclosure under Section 123 of the Indian Evidence Act, 1872. The law of privilege under Section 123, read with Section 162 of the Indian Evidence Act, came up for consideration before Five-Judge Bench in **State of Punjab v. Sodhi Sukhdev Singh, reported in AIR 1961 SC 493**. The matter further engaged the attention of the Larger Bench in **S.P. Gupta & others v. President of India & others, reported in AIR 1982 SC 149**. Therein, the court took the view that, in an open democratic society, there is little scope for claiming right to withhold documents. The trend should be towards disclosure of information. It is crucial in the efficient working of a mature democracy. We are making this observation with another object also in mind. We notice that, after the Right to Information Act has been passed by the Parliament, there is a change brought about. It is true that in Bommai's case (supra) and in Rameshwar Prasad's case (supra), the court has taken a view that it is open to the Government to raise the claim under Section 123. We only wish to notice that, under the Right To Information Act, 2005 Section 8(1)(i) reads as follows:
"8. Exemption from disclosure of information.-(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen.-

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed."

48. Therefore, after the enactment of the said law in keeping with the inclination of the people to know more about the affairs of the State, without which their right under Article 19(1)(a) itself would be considerably obstructed, the Parliament has brought about this change. We are highlighting this aspect only to point out that, under this provision, as and when the Council of Ministers takes a decision, it would

appear to be the duty to make public the material and also the reasons for the decision of the Council of Ministers. This will result in opening up of the windows and allowing in the sunlight of information and knowledge, which, by far, is the best disinfectant for killing all kinds of ills that are plaguing our body polity.

49. Having said that, we now pass on to the consideration of the material from the counter affidavit on the file. In fact, we put it to the learned counsel appearing on behalf of the State as to whether we could advert to the material in the file, which was made available to us with the request not to make it available to the other side, in the course of our judgment. It was mentioned by the Attorney General that we could advert to it and, hence, we proceed to consider the same.

50. The first communication is dated 19.03.2016. It reads as follows:

"No. 100/Raj Bhawan/CG

19th March, 2016

Confidential

A detailed special report on facts available so far about the events pertaining to the proceedings of Uttarakhand Legislative Assembly at Dehradun on March 18th is being given below.

The Budget Session of Third Vidhan Sabha of Uttarakhand commenced on 9th March 2016 with the Address of the Governor. A total of 8 sittings have been upto 18th of March.

On 18th of March, as per agenda, demands for grants for various Ministers/Departments and the Appropriation Bill for the F.Y. 2016-17 were to be passed. The proceedings of the Assembly continued smoothly throughout the day, except that towards the end of the listed items, when the Appropriation Bill was taken up, the Leader of Opposition, Shri Ajay Bhatt (BJP) reportedly asked for a division.

It may be mentioned here that earlier in the day, a letter had been submitted, signed by 27 MLAs of the BJP, addressed to the Governor, requesting for a vote by division for the Appropriation Bill. (copy attached). This letter was forwarded to the Speaker of the Assembly. Directions for audio/video recording of the proceedings for submission to the Governor (copy attached) were also conveyed.

Though I have on telephone asked the Speaker and the Leader of the House (Chief Minister) to send to me their reports about the proceedings of the 18th March in the House immediately, these are yet to be received. The audio/video recording has also not been forwarded to my office so far.

The Leader of Opposition had also submitted a letter dated 18th March to the Governor regarding arrest (in Shaktiman horse affair) of one of their MLAs Shri

Ganesh Joshi, and requested to issue directions to the concerned officer to allow the arrested MLA to participate in the proceedings of the House. The letter was immediately sent to the Secretary of the Legislative Assembly for necessary action, but apparently no action was taken on this.

It is understood that about 7:30 p.m., as soon as Shri Ajay Bhatt, Leader of Opposition, rose demanding a division, the Speaker made an announcement that the Appropriation Bill had been passed, and thereafter left the Assembly Chamber.

Immediately, this was followed by a pandemonium and an abusive scuffle in the well of the House in which amongst some of the members of the cabinet could also be seen.

Shri Ajay Bhat, Leader of Opposition (BJP) informed me on telephone at about 8 p.m. that the Government had fallen and he was coming to Raj Bhawan with his supporters. He also mentioned to me that a very large number of Congress workers outside the Assembly were blocking his way, and of those, accompanying him. DGP was accordingly directed to make adequate security arrangements for the MLAs. At about 11:30 PM, Shri Ajay Bhatt, Leader of Opposition (BJP) along with 34 MLAs, called on the Governor at Raj Bhawan and handed over a letter signed by 35 MLAs (9 of Congress and 26 of BJP). The letter (copy enclosed) states that Appropriation Bill had not been passed in the House as the proceedings were being carried out in an undemocratic manner. It was also mentioned that the Appropriation Bill not having been passed, the Government had fallen and needed to be dismissed.

On the other hand, the Speaker, as per known facts, had declared the Appropriation Bill passed by a voice vote, and as such his decision to that effect ha a finality. This has also been the view of the courts as well as the apex court, where it has been held that the decision of the Speaker about the proceedings in the House cannot be questioned.

Further, they also submitted photo copies of Resolutions under 266 of the Uttarakhand Vidhan Sabha Rules, expressing No Confidence in the Speaker Shri Govind Singh Kunjwal and Shri Anusuyia Prasad Maikhuri, Dy. Speaker. The resolution was submitted to the Secretary of the Legislative Assembly and a receipt has been obtained in the date of 18th March. The party-wise break-up at the commencement of proceedings yesterday morning was as follows:-

1.	Congress	:	36
2.	B.J.P.	:	28

3.	BSP	:	02
4.	UKD	:	01
5.	Independent	:	03
6.	Nominated	:	01

The House has been adjourned by the Speaker and will now reconvened on the 28th March.

The Chief Minister along with the Minister for Parliamentary affairs have sought time and would be meeting the Governor this evening.

A copy of the Press Note issued to the Media last night is being enclosed for favour of information.

This is only a preliminary account of the events as they unfolded on 18th March.

With

Yours sincerely,

Encl: As above

Sd/-

((Dr. K.K. Paul))

Shri Pranab Mukherjee

Hon�ble President of India

Rashtrapathi Bhawan,

New Delhi

Copy to:-

1. Shri Narendra Modi, Hon�ble Prime Minister of India, South Block, New Delhi

2. Shri Raj Nath Singh, Hon�ble Union Home Minister, North Block, New Delhi.

Sd/-

((Dr. K.K. Paul))"

51. It appears that there is a communication dated 20.03.2016, which we intend to refer to. It is addressed by the Governor to the President. Therein, it is stated that, on 19.03.2016, the petitioner had been asked to seek vote of confidence from the Legislature at the earliest, but not later than 28.03.2016, the date on which the House had already been convened by the Speaker. The petitioner had subsequently called on the Governor in the evening and gave his version of the events. The Governor writes that he has advised the petitioner to seek vote of confidence at the earliest and without any delay. We also have the letter dated 19.03.2016, which is also produced in the writ petition, asking the petitioner to seek vote of confidence.

52. The next letter is dated 21.03.2016 written by the Governor and we deem it appropriate to extract it as under:

"No. 108/Raj Bhawan/CG

21st March, 2016

Confidential

Respected Rashtrapati Ji,

Pursuant to my letter to the Chief Minister yesterday morning emphasising that the Vote of Confidence be taken at the earliest, I had been informed that he also wanted to see me in the afternoon. Accordingly, the Chief Minister along with the Parliamentary Affairs Minister, Smt. Indiria Hridyesh met last evening in my office Chamber.

At the outset, the Chief Minister was clearly told that there were reports of law and order problem at the residences of some Congress MLAs, who were accompanying the Leader of Opposition, when they had come to Raj Bhawan on the 18th March evening. The Chief Minister assured that necessary action would be taken.

Further, the Chief Minister was very firmly advised and in no uncertain terms, that the Vote of Confidence be taken within the next two-three days, as I had been repeatedly emphasising that it had to be done at the earliest. The Chief Minister expressed his inability in the matter, and then I told him that as the Leader of the House as well as the Chief Minister, he had a responsibility for the urgent business of Vote of Confidence at the earliest, due to certain irregularities in the proceedings. The CM expressed his inability to intervene at this stage when the Speaker had already initiated the process. He also mentioned that there was no irregularity in the House. At that point, the proceedings of the Assembly, where it is mentioned that the Leader of Opposition had stood up and wanted a division, but which was not undertaken, were shown to him. It was also mentioned to him that several MLAs are clearly visible in the video CD making this demand, but thereafter the Camera did not record. The division as desired by them was disallowed. His contention was that Speaker's decision was final in this matter.

On the 18th evening, 35 MLAs had met me at Raj Bhawan and given a written letter to that effect, copy of which has already been conveyed as enclosure to my letter of 19th March. List of these 35 MLAs who had met the Governor on 18th evening and submitted the signed letter, is enclosed once again. It is pertinent that at that particular moment, only 68 Members (out of 71) were present for voting in the House. Shri Ganesh Joshi, MLA (BJP) was in judicial custody, Shri Bheem Lal Arya of BJP and Shri Sarwat Karim Ansari of BSP were absent.

Smt. Indira Hridyesh, who was waiting outside, was then called in. She herself raised the issue of No Confidence Resolution against the Speaker and the Dy. Speaker and said that a 14 days period was essential. She was conveyed that there are constitutional provisions pertaining to this issue, which needed to be followed in letter and spirit.

In the meantime, three MLAs of Congress; Shri Vijay Bahuguna, Shri Harak Singh Rawat and Smt. Amrita Rawat have submitted a letter yesterday, stating that there was a breakdown of Constitutional machinery as the majority of the MLAs present at the time of voting, had voted against the Money Bill.

Late last night, the CM has replied to my letter of advising him to seek a vote of confidence at the earliest and not later than 28th, stating that this has been conveyed to the Speaker who has informed that the next session of the Assembly will commence on 28th at 11 a.m.

Separately, the legal issues connected with Article 181 of the Constitution, in the matter of No Confidence Motion against the Speaker and the Dy. Speaker are being got examined.

With warm regards.

Yours sincerely,

Sd/-

((Dr. K.K. Paul))

Shri Pranab Mukherjee

Hon�ble President of India

Rashtrapathi Bhawan,

New Delhi

Encl:-

1. Photo copies of relevant proceeding of the House.

2. Letter signed by 35 MLAs.

3. Letter signed by three MLAs"

53. Still further, there is a communication dated 20.03.2016 from Mr. Vijay Bahuguna and Mr. Harak Singh Rawat, wherein it is, inter alia, stated that there is a Government, which should have resigned or has been dismissed since majority voted against the Money Bill and declaring a defeated Money Bill as passed establishes the breakdown of the constitutional machinery and the further continuance of the Government is failure of constitutional machinery. It is also stated that the Government will use the next one week to convert the minority into majority either by horse trading or by disqualification. Then, there is communication dated 19.03.2016 by Shri Ajay Bhatt to the Governor and, therein, it is stated that the Governor was requested to dismiss the Government to prevent illegal and unconstitutional acts and to prevent horse trading of BJP MLAs, which was being carried out by the petitioner. There is reference to communication dated 21.03.2016 by All India Congress Committee addressed to the President. There is Message dated 23.03.2016 under Article 175(2), which we have already extracted above. We also deem it necessary to refer to communication dated 25.03.2016 from the Governor to the President. It reads as follows:

"No. 122/Raj Bhawan/CG

25th March, 2016

Confidential

Respected Rashtrapati Ji,

I invite a reference to my D.O. No. 108/Raj Bhawan/CG dated 21st March, 2016 and previous related correspondence, through which I have been conveying the current political situation in the State.

2. As already mentioned vide D.O. No. 108 dated 21st March, the Chief Minister will be seeking a Vote of Confidence from the House on 28th Mach, when it meets after the vacation. It would not be out of place to mention that the Speaker had adjourned the House at the end of the day�s proceedings on 18th March, up to 11 a.m. on 28th March.

3. In this context a Message under Article 175(2) of the Constitution has already been sent to the Speaker.

4. In the meantime, on a petition of the Chief Whip and Minister of Parliamentary Affairs, Smt. Indira Hridyesh, the Speaker had issued show cause notices to 9 Congress MLAs under the Anti Defection Law and specifically under the "Uttarakhand Vidhan Sabha Sadasya (Dal Parivartan Ke Adhar Par Nirharta) Niymavali, 2005. These notice were issued on 19th March u/s 8(1)(3) [k, they are returnable by 26th March.

5. Further, I had called the Secretary of the Vidhaan Sabha and given him detailed directions in light of my Message under Article 175(2) of the Constitution.

With warm regards

Yours sincerely,

Sd/-

((Dr. K.K. Paul))

Shri Pranab Mukherjee

Hon�ble President of India Rashtrapathi Bhawan,

New Delhi"

54. Then, there is a few newspaper cuttings relating to the political developments. There is communication dated 26.03.2016 by the Governor. The same is extracted as under:

"No. 128/Raj Bhawan/CG

26th March, 2016

Confidential

Respected Rashtrapatiji,

I have been keeping you informed of political developments for the last few days in the State of Uttarakhand. These are summarised in the following paragraphs:

1(a) The Budget Session of Third Vidhan Sabha of Uttarakhand commenced on 9th March 2016 with the Address of the Governor. A total of 8 sittings had been held upto 18th March.

(b) On the 18th of March, as per agenda, demands for grants for various Ministries/Departments and the Appropriation Bill for the F.Y. 2016-17 were to be passed. The proceedings of the Assembly continued smoothly throughout the day, except that towards the end of the listed items, when the Appropriation Bill was taken up, the Leader of Opposition, Shri Ajay Bhatt (BJP) reportedly asked for a division.

(c) It may be mentioned here that earlier in the day, a letter had been submitted, signed by 27 MLAs of the BJP, addressed to the Governor, requesting for a vote by division for the Appropriation Bill. (copy attached). This letter was forwarded to the Speaker of the Assembly. Directions for audio/video recording of the proceedings for submission to the Governor (copy attached) were also conveyed.

(d) The Leader of Opposition had also submitted a letter dated 18th March to the Governor regarding arrest (in Shaktiman horse affairs) of one of their MLAs Shri Ganesh Joshi, and requested to issue directions to the concerned officers to allow the arrested MLA to participate in the proceedings of the House. The letter was immediately sent to the Secretary of the Legislative Assembly for necessary action,

but apparently no action was taken on this.

(e) At about 7:30 p.m., as soon as Shri Ajay Bhatt, Leader of Opposition rose, demanding a division, the Speaker made an announcement, in the prevailing pandemonium, that the Appropriation Bill had been passed, and thereafter left the Assembly Chamber after adjourning the House up to 28th March. Immediately, this was followed by chaos and an abusive scuffle in the well of the House, in which some of the members of the cabinet also got involved.

(f) The unruly conduct of MLAs the events at the Vidhan Sabha, outside the House, and the slogan shouting by the rebel Congressmen, against the Government/Party were well covered by the Media, both electronic and Print, the next day. Some of the press clippings are enclosed for ready reference.

(g) Shri Ajay Bhatt, Leader of Opposition (BJP) informed me on telephone at about 8 p.m. that the Government had fallen and he was coming to Raj Bhawan with his supporters. He also mentioned to me that a very large number of Congress workers outside the Assembly were blocking his way, and of those, accompanying him. DGP was accordingly directed to make adequate security arrangement for the MLAs.

(h) At about 11:30 PM, Shri Ajay Bhatt, Leader of Opposition (BJP) along with 34 MLAs, called on the Governor at Raj Bhawan and handed over a letter signed by 35 MLAs (9 of Congress and 26 of BJP). The letter (copy enclosed) states that the Appropriation Bill had not been passed in the House as the proceedings were being carried out in an undemocratic manner. It was also mentioned that the Appropriation Bill not having been passed, the Government had fallen and needed to be dismissed. According to thee MLAs, there were only 68 members present in the House while 35 were with them, opposing the Appropriation Bill. It was also mentioned that in addition to it, they had the support of at least three more MLAs namely Shri Ganesh Joshi, BJP (in judicial custody), Shri Bheem Lal Arya, BJP an Shri Sarwat Karim Ansari, BSP. This had cast serious doubts on the passing of the Appropriation Bill. On the other hand, the Speaker, as per known facts, had declared the Appropriation Bill passed by a voice vote, and as such his decision to that effect had a finality. Also, as per the law on the subject, the Speaker's decision with regards to proceedings in the House is final. It may be mentioned that to date the Appropriation Bill 2016-17, has not been forwarded by the Speaker to the Governor. Further, they also submitted photo copies of Resolutions under 266 of the Uttarakhand Vidhan Sabha Rules, expressing No Confidence in the Speaker Shri Govind Singh Kunjwal and Shri Anusuyia Prasad Maikhuri, Dy. Speaker. The resolution was submitted to the Secretary of the Legislative Assembly and a receipt had been obtained in the date of 18th March.

2. In the light of the above developments, consultations were undertaken from a legal and constitutional angle and the Chief Minister was asked on the 19th afternoon to seek a vote of confidence from the House at the earliest, but not later

than 28th March i.e. the day on which the Speaker had already convened the Session. This was also communicated to the Chief Minister, verbally, when he had come to see me later that day. However, since no formal acknowledgment or confirmation had been received from his office, another letter had been sent on 20th morning, again advising him to seek the vote of confidence at the earliest. Later, this confirmation was received on 20th evening.

3. In the meantime, I also examined the proceedings of the Uttarakhand Vidhan Sabha of March 18, as conveyed by the Speaker under his signature, along with the video recording of the relevant time.

A perusal of the proceedings makes it clear that at the time of passing of Uttarakhand Appropriation Bill 2016-17, a demand was made under rule 296(1) for a vote by division, but neither a division took place, nor voting by show of hands, as provided in the rules. The Appropriation Bill was passed in din and chaos without any specific vote in favour or against the Motion getting recorded.

4. Separately, on a petition of the Chief Whip and Minister of Parliamentary Affairs, Smt. Indira Hridyesh, the Speaker had issued show cause notices to 9 Congress MLAs under the Anti Defection Law and specifically under the "Uttarakhand Vidhan Sabha Sadasya (Dal Parivartan Ke Adhar Par Nirharta) Niyamavali, 2005. These notices were issued on 19th March u/s 8(1)(3) [k, they are returnable by 26th March. Out of the 9 MLAs, who had been issued show cause notice, 8 MLAs had gone to the High Court at Nainital on 25th March where their petitions were rejected.

5. In order to ensure that the proceedings in the Assembly at the time of Chief Minister's vote of confidence take place smoothly, and as per Constitutional propriety, morality and decorum, a detailed Message under Article 175(2) (copy enclosed for ready reference) also sent to the speaker. This message specifically included that the voting has to be by division.

6(a). This morning at about 11 a.m., a closed cover was received at Raj Bhawan from the office of Shri Bahuguna, MLA. The closed cover had a representation addressed to the Governor, by Shri Harak Singh Rawat, MLA, one of the disgruntled Congressmen. The letter also had a pen drive attached with it. The representation indicates threat to the rebel MLAs and their families. Accordingly, the chief Secretary has been asked to do the needful.

(b) The pen drive contains, inter alia, three audio conversations and one video. The transcript of the video conversation is also attached with the representation. In this, the Chief Minister Shri Harish Rawat is clearly visible but the other person, in conversation with him, and claimed to be one Umesh Sharma, is not clearly visible/identifiable. The conversation is indicative of monetary and other allurements being discussed. The contents of the pen drive have to be analysed for their veracity.

(c) This representation in original, along with the pen drive and transcript have already been forwarded to you by a special messenger.

7. It may be mentioned here that the floor test in the Assembly is scheduled for Monday the 28th March. The DGP ha been asked to ensure adequate arrangements for the Assembly Session so that access is unhindered for bona fide visitors/members. Today is the last date for filing replies to the show cause notices under the Anti Defection Rules.

8(a). As a fall out of the above developments since the 18th, the Chief Minister has taken some decisions which can be seen as hitting at the rebel Congressmen. Shri Harak Singh Rawat, Cabinet Minister has been dismissed.

(b) The Advocate General, a close relative of a dissident MLA, has also been removed. Some political position in Corporations and Boards have also changed hands.

(c) Shri Bhim Lal Arya, MLA (BJP) has been made Vice President of Ambedkar Jayanti Samaroh Samiti, and is being attempted to be won over to support the Chief Minister.

9. As the date of the floor test in the Assembly approaches, the political atmosphere is getting charged up with claims and counter claims.

The Congress workers have also been reportedly indulging in sloganeering against the rebels and burning their effigies. At some places, their residences have also came under hostile protests. Earlier, it appears that the Congress Party was inclined to have sate-wide protests against the BJP, but as per this morning's reports in the media, this plan has since undergone a change.

10. Even though the veracity of the video presented in the pen drive, is yet to be fully established, it is prima facie obvious that plans have been afoot to indulge in horse trading of MLAs and the Chief Minister is a party to such machinations. Such behaviour runs contrary to the expected standards of probity from a Chief Minister.

11. The political atmosphere is likely to get further vitiated, as the MLAs start returning to the State Capital for the Vote on 28th. In the given situation and the surcharged atmosphere, it is possible that the Assembly proceedings on 28th March, may be unruly, chaotic and violent.

With warm regards,

Yours sincerely,

Sd/-

(Dr. K.K. Paul)

Shri Pranab Mukherjee

Hon�ble President of India

Rashtrapathi Bhawan, New Delhi"

55. Next, we find letter dated 26.03.2016 sent by the BJP through its office bearers. It reads as follows:

"Bhartiya Janata Party

Date: 26/03/2016

His Excellency, The President of India

Rashtrapati Bhawan,

Delhi

Subject: Request for imposition of President�s Rule in the State of Uttarakhand

This is in continuation of our earlier representation dated 21st and personal meeting our senior leaders had with your Excellency wherein we had apprised you of the constitutional crises in the state of Uttarakhand when the Financial Bill 2016 was introduced on the floor of the House on 18/3/2016 was defeated by majority members present in voting and resulted in the state Government being reduced to the minority.

The Governor did not act on the request of the majority of the legislature to dismiss the state Government and on the contrary granted 10 days' time i.e. 28/3/2016 to prove majority on the floor of the House. Such a long time has given an opportunity to the Chief Minister to indulge in illegal, unconstitutional practices including horse trading to convert a minority into majority.

In a shocking event a press conference was held today morning by the Congress Leaders wherein a CD has been released by Sh. Harak Singh Rawat in which the Chief Minister is clearly seen alluring the MLAs by offering huge sums of monies and ministerial berths for seeking support to muster the required numbers for voting to be held on 28/3/16, such an act has put the nation to shame and it is imperative that your Excellency exercises the constitutional powers vested in your good-self and impose President Rule in the State of Uttarakhand.

In a desperate attempt to clinch to power undemocratically and unconstitutionally, Shri Harish Rawat has tarted approaching the Legislators belonging to Indian National Congress as well as Bhartiya Janata Party and the other parties offering them crores of rupees to support him in the floor test. The horse-trading is not only going on continuously, the Members of the Assembly and their family members are being threatened by/on behalf of Shri Harish Rawat. This phenomenon is going on an hourly basis and the members of the Assembly and their family members are living under constant threats.

In another glaring incident the BJP legislature Sh. Bhim Lal Arya has been kept in illegal confinement for the last several days and has also been made Vice President of The Ambedkar Samarho Samiti, a Government body which is headed by Sh. Yaspal Arya a senior cabinet minister as its President. Further, a proposed medical college in Rudrapur has also been named after Pandit Ram Sumer Shukla father of Sh. Rajesh Shukla a sitting BJP MLA from Kichha. It is apparent from the above acts of CM that he is leaving no stone unturned and adopting all possible methods to convert minority into majority. It has also been learnt that the Speaker in connivance with CM has refused to share the documents and give a personal hearing to the rebel Congress MLAs which is mandatory as per Uttarakhand Vidhan Sabha (Anti defection) Rules.

Sir, this clearly demonstrates that there is Constitutional break down in the State of Uttarakhand and hence it is a fit and just case for exercise of powers for imposition of Presidents Rule in the State of Uttarakhand.

Thanking you in anticipation,

1. Shri Vinay Shastrabudhe (Vice President)

2. Shri Shyam Jaju (Vice President)

3. Shri Kailash Vijayvargiya (General Secretary)

4. Shri Anil Jail (General Secretary)

5. Shri Shrikant Sharma (National Secretary)

6. Shri Bhagat Singh Koshyari (MP, Lok Sabha)"

56. Finally, we come to the Cabinet Note. We have had the occasion to peruse the Cabinet Note. We notice that there is a reference to allurement of a BJP Member. There is reference to events of 18.03.2016. Then, there is reference to gaining time by the Chief Minister; double standards by the Speaker; the petition against Shri B.L. Arya being pending; and also horse trading. The Note appears to clearly suggest that, though there was a disqualification petition against Shri B.L. Arya, no decision had been taken by the Speaker.

57. We would like to, first, deal with some material, which we would consider do not represent the major bone of contention of the parties; but, still, in view of the law laid down by the Supreme Court, we would have to consider them also. We notice that, in communication dated 26.03.2016 by the Governor, at paragraphs 8(a) & 8(b), it has been mentioned that the Advocate General, who is related to one of the dissident Members, has been removed and the petitioner has hit at the rebel Congressmen and dismissed a Minister. We are at a total loss, to say the least, to understand how the removal of the Advocate General is a material, which is relevant for deciding the issue of imposition of President's Rule under Article 356. The aspect of removal of the Ministers, who can continue on the confidence of the Chief

Minister, is also baffling, to say the least. We do not see what nexus it bears to the satisfaction that the Government cannot be carried out in accordance with the Constitution. Likewise, there is reference to seeking time extension by the petitioner for holding the floor test. It is to be noted that the events on 18.03.2016 triggered the entire action. The Speaker had adjourned the House to 28.03.2016. A perusal of the letter dated 28.03.2016 would show that the petitioner had called on the Governor on 19.03.2016. It would appear to show that the Governor had advised the petitioner to take vote of confidence at the earliest and that it may be done without any delay. It would also appear that the petitioner had informed the Governor that the date had been fixed as 28.03.2016 and that he would seek the vote of confidence then. The letter dated 19.03.2016 would show that the petitioner was asked to seek vote of confidence at the earliest, but not later than 28.03.2016. It may be true that there may have been verbal requests to hold the meeting at the earliest. We also notice that, on 20.03.2016, the Governor writes, no doubt, asking the petitioner to take vote of confidence at the earliest. Ultimately, we would think that the matter should rest with reference to the Message sent under Article 175(2) on 23.03.2016. It may be possible to reconcile the request of the Governor to hold the meeting at the earliest with the ultimatum that it should not go beyond 28.03.2016; but the substance of the matter is that, if the time limit fixed in the communication and in the Message under Article 175(2) was not exceeded, can the petitioner be blamed or can Article 356 be imposed on that basis? We would clearly think that, after having given time till 28.03.2016 to seek vote of confidence, subject to our findings on the other issues, the fact that the vote of confidence was not sought earlier could not be put at the doorstep of the petitioner by way of blaming him and, that too, going beyond visiting the State with the imposition of President's Rule. This is not a matter between an individual and the Government. It is a matter between an elected Government and another elected Government.

58. Next we come to the letter of the BJP. Starting from 18.03.2016, the BJP had, even according to the learned Attorney General, "come out in the open with the 9 dissident Members of Congress". When they write a letter to the President, we do not see how it can at all be taken at its face value. We do not think that it can be the material in the first place de hors any other objective material, for the imposition of President's Rule. It would, if it has been taken into consideration, be entirely extraneous and irrelevant, as the imposition of President's Rule would obviously be to the advantage of the BJP. We intend to deal with the issue relating to the CD and the horse trading separately. Therefore, de hors that, we would think that there would be absolutely no basis to act on the representation. It is quite clear that the said party had a direct interest in seeing that President's Rule is imposed. In the communication dated 26.03.2016 by the Governor to the President, at paragraph 11, there is a hint that the political atmosphere is likely to get further vitiated, as the MLAs start returning to the State Capital for the vote on 28.03.2016 and, in the surcharged atmosphere, it is possible that the Assembly proceedings may be unruly,

chaotic and violent. We may notice that the learned Attorney General, as such, did not rely on this; but, Mr. Tushar Mehta, Additional Solicitor General, would pointedly submit that the material was there. We referred to this for the reason that, in Bommai's case (supra), it is true that the only recognised exception (see paragraph 119) to holding the floor test is in a situation, where, because of violence, it becomes impossible. We do not see any basis at all for this as forming the material by the Governor and it is, apparently, the expression of a view by the Governor without any supporting material. It is also important to notice that the principle that a person cannot take advantage of his own wrong must also be borne in mind.

59. The next minor point, which we must deal with, is relating to the disqualification of the 9 dissident MLAs belonging to the Congress Party. The disqualification of the 9 dissident MLAs belonging to the Congress Party commenced on a petition filed on 19.03.2016. Seven days' time was granted. They responded and the matter stood listed on 26.03.2016 before the Speaker. The Speaker has taken a decision disqualifying them. The Government of India could not possibly have taken the disqualification of the 9 dissident Congress MLAs at all as a relevant material for deciding to impose President's Rule. In the first place, when the Cabinet met in the night on 26.03.2016, the Speaker had not yet taken the decision. Assuming for a moment that they could divine what was coming in the way of 9 dissident MLAs, we would think that it is completely irrelevant for the Central Government to weigh it in the scales for deciding to impose the President's Rule. What would happen to the Members of the Congress Party for their alleged acts or omissions is entrusted to the constitutional functionary, namely, the Speaker to decide. What will happen if they are disqualified and, therefore, what would be the composition of the House on 28.03.2016 when the floor test would take place, surely could not have been the lookout of the Central Government. The Government, when it takes action under Article 356, is expected to be completely non-partisan. It cannot have any kind of bias. Therefore, we would think that the fate of the 9 dissident Congress MLAs was an entirely irrelevant and extraneous matter. This is for the reason that this has got nothing to do with the petitioner as such. This is the result of the supervening circumstances flowing from the alleged conduct of those 9 dissident MLAs, which is enjoined upon the body polity by way of introduction of the Tenth Schedule to the Constitution. It is a constitutional sin to defect. If defection has taken place, they paid for their sin by disqualification. This is an inexorable process of law. It is settled law that a petition for disqualification cannot even be withdrawn once it is filed.

60. We say all this only in the context of this becoming a factor, apparently, in the mind of the Central Government. We make it crystal clear that we must not be treated as having said anything in a manner, which should trammel the court, which is deciding the fate of their disqualification. The said court will be free to completely disregard what we have said in this judgment, when it decides their fate. The court will take a decision in the matter on the basis of material and the law applicable in the said case.

61. Having disposed of these aspects, which tend to show that there was no material or the material was highly irrelevant, as we have already said, we now pass on to the main points, which engaged us in the debate before us. They are the incidents of 18.03.2016, the sting operation and the horse trading, which involved Shri B.L. Arya; besides the unequal treatment, which was meted out to the Congress dissidents vis-à-vis Shri B.L. Arya, who had defected, according to the first respondent, from the BJP to the Congress Party.

62. We will take the last point first, namely, the allegation in regard to Shri B.L. Arya. It was argued before us by the learned Attorney General that the action was taken under Article 356 for the reason, apparently, that the Speaker was uneven and he was not taking any action in regard to the disqualification petition filed against Shri B.L. Arya. Yesterday, the learned Senior Counsel for the petitioner pointed out the facts in regard to the filing of the disqualification petition, namely, that it was filed only on 05.04.2016 and we have already set out what transpired thereafter. We had asked the learned counsel for the Government of India to get instructions on this point. The learned Assistant Solicitor General on behalf of respondent No. 1, who is present today, in fact, fairly submitted, on instructions, that what was said in the Cabinet Note in regard to Shri

B.L. Arya about there being double standards by the Speaker was a mistake of fact. Mr. Rakesh Thapliyal, learned Assistant Solicitor General handed over the communication received from the learned Attorney General and requested that the same may be taken on record. It reads as follows:

"To,

Rakesh Thapliyal,

Asst. Solicitor General of India Uttarakhand

Date: 21-04-2016

Sub: Writ Petition No. 795 of 2016, Harish Chandra Singh Rawat v. Union of India and another.

My Dear Thapliyal,

1. Please convey to the Hon'ble Court that on 7.04.2016, while the matter was getting posted for final arguments on behalf of Respondents on 18.04.2016, a statement was made by me that if any action was to be taken by the Respondents during the recess (April 8th-April 17th) the same would be informed to the Hon'ble Court. In other words, such a statement was necessitated only due to the recess.

2. I am not in a position to continue the said statement, which was to operate only till the resumption of Court proceedings on 18.04.2016. Significantly, no contention was raised by the Petitioner for any interim order when I was present in the Court on 18.04.2016 and 19.04.2016 (till lunch recess).

3. It has been the submission on behalf of the Respondents that no interim order can be passed restraining the Hon�ble Governor or the Hon�ble President of India from carrying on with their constitutional duty. Para 115 of the SR Bommai�s case lays down that there can be no interim order except staying of elections in a case of dissolution (because it is irreversible in the nature) and also that the court has power while passing the final judgment, to undo something which may have happened in the interregnum. The political process of democracy cannot be stultified by interim orders.

4. Last, it is true that it is mentioned in the cabinet note that the Speaker used differential yardsticks in the exercise of power under the Tenth Schedule. It now transpires that such a statement seems to be a mistake of fact. The same would constitute "irrelevant material in terms of Bommai judgment and would have to be separated and ignored.

Thanking you,

Yours Faithfully

Sd/-

(Mukul Rohtagi)"

63. This means that, what was hotly contested before us by the Attorney General on the basis of there being laxity on the part of the Speaker reflecting double standards and also opening the doors to action under Article 356, was without any basis at all. It was a completely non-existent material. There was, in other words, no material. We are, in fact, shocked that the decision taken at the highest level and the matter, which, apparently, influenced the decision, and which engaged the counsel and the Court in this litigation, has been done without due care and without any basis. It was totally without any factual foundation. It was, in fact, a blatant falsehood.

64. Then, we come to the question relating to Shri B.L. Arya being lured by way of making him the Vice President of Ambedkar Jayanti Samaroh Samiti. The petitioner has a definite case that it was by following a convention that the Vice President should belong to the opposition party that he was made the Vice President of the Ambedkar Jayanti Samaroh Samiti. We would think that this is, again, another instance of a clearly irrelevant and extraneous material. Furthermore, as has been established in Bommai's case (supra), in all such cases, it is a floor test, which, alone, is the proper method to determine the question as to whether the incumbent commands the confidence of the House. Therefore, we would think that the said material is liable to be completely eschewed.

65. Next we are left with two points. We would take-up the issue relating to the sting operation. It is true that there is a material available in the form of a CD. The material was sent by the Governor to the Central Government. The Cabinet met in the night of 26.03.2016. As at the time when the Cabinet met in the night, the first

thing we must notice is that the CD had not been verified. From the records, it is clear that it was sent by hand from Delhi to Chandigarh and it was received by the office at Chandigarh on 27.03.2016. So, at the time when the advice was given by the Cabinet, it had not verified the genuineness of the CD. But the argument of the learned Attorney General is that the fact that the subsequent report of the CFSL has shown that there is no morphing and that it is genuine would, in other words, fortify the Government of India in the decision it took and the Court need not go further.

66. At this juncture, it probably is apposite that we must notice that, on 25.03.2016, the writ petition filed by the 9 dissident MLAs belonging to the Congress Party stood dismissed. On 26.03.2016, apparently, the Governor writes; the Cabinet, apparently, meets on the basis of the same in the night on the same day; the proceedings for disqualification were to culminate on 27.03.2016; and the floor test was to take place on 28.03.2016. Therefore, we cannot brush aside the argument of Mr. Abhishek Manu Singhvi, learned Senior Counsel for the petitioner, that this is an extra-ordinary case and first time in the history of India, by action under Article 356, there is a double whammy by hitting at the authority of the Speaker under the Tenth Schedule, as also the Governor, who had fixed the date of floor test as 28.03.2016. This is for the reason that the effect of the Notification under Article 356 is that it prevents the holding of the floor test on 28.03.2016, as ordered by the Governor, and also appears to cloud the authority of the Speaker.

67. Proceeding further with the issue relating to the sting operation, we would think that we must recapitulate the contention of the petitioner at this juncture. In the first place, the contention of the petitioner is that it is disputed. There is a case that there is an entrapment. It is a solitary instance. Contrast this, he submits, with several instances of horse trading, which allegedly took place, in the facts of the case from Rameshwar Prasad's case (supra). First, learned Senior Counsel for the petitioner refers to the following paragraphs from Bommai's case (supra):

"118. In view of the conclusions that we have reached with regard to the parameters of the judicial review, it is clear that the High Court had committed an error in ignoring the most relevant fact that in view of the conflicting letters of the 7 legislators, it was improper on the part of the Governor to have arrogated to himself the task of holding, firstly, that the earlier 19 letters were genuine and were written by the said legislators of their free will and volition. He had not even cared to interview the said legislators, but had merely got the authenticity of the signatures verified through the Legislature Secretariat. Secondly, he also took upon himself the task of deciding that the 7 out of the 19 legislators had written the subsequent letters on account of the pressure from the Chief Minister and not out of their free will. Again he had not cared even to interview the said legislators. Thirdly, it is not known from where the Governor got the information that there was horse-trading going on between the legislators. Even assuming that it was so, the correct and the proper course for him to adopt was to await the test on the floor of the House which

lest the Chief Minister had willingly undertaken to go through on any day that the Governor chose. In fact, the State Cabinet had itself taken an initiative to convene the meeting of the Assembly on April 27, 1989, i.e., only a week ahead of the date on which the Governor chose to send his report to the President. Lastly, what is important to note in connection with this episode is that the Governor at no time asked the Chief Minister even to produce the legislators before him who were supporting the Chief Minister, if the Governor thought that the situation posed such grave threat to the governance of the State that he could not await the result of the floor-test in the House. We are of the view that this is a case where all cannons of propriety were thrown to wind and the undue haste made by the Governor in inviting the President to issue the Proclamation under Article 356(1) clearly smacked of mala fides. The Proclamation issued by the President on the basis of the said report of the Governor and in the circumstances so obtaining, therefore, equally suffered from mala fides. A duly constituted Ministry was dismissed on the basis of material which was neither tested nor allowed to be tested and was no more than the ipse dixit of the Governor. The action of the Governor was more objectionable since as a high constitutional functionary, he was expected to conduct himself more fairly, cautiously and circumspectly. Instead, it appears that the Governor was in a hurry to dismiss the Ministry and dissolve the Assembly. The Proclamation having been based on the said report and so-called other information which is not disclosed, was therefore liable to be struck down.

119. In this connection, it is necessary to stress that in all cases where the support to the Ministry is claimed to have been withdrawn by some Legislators, the proper course for testing the strength of the Ministry is holding the test on the floor of the House. That alone is the constitutionally ordained forum for seeking openly and objectively the claims and counter-claims in that behalf. The assessment of the strength of the Ministry is not a matter of private opinion of any individual, be he the Governor or the President. It is capable of being demonstrated and ascertained publicly in the House. Hence when such demonstration is possible, it is not open to bypass it and instead depend upon the subjective satisfaction of the Governor or the President. Such private assessment is an anathema to the democratic principle, apart from being open to serious objections of personal mala fides. It is possible that on some rare occasions, the floor-test may be impossible, although it is difficult to envisage such situation. Even assuming that there arises one, it should be obligatory on the Governor in such circumstances, to state in writing, the reasons for not holding the floor-test. The High Court was, therefore, wrong in holding that the floor test was neither compulsory nor obligatory or that it was not a pre-requisite to sending the report to the President recommending action under Article 356(1). Since we have already referred to the recommendations of the Sarkaria Commission in this connection, it is not necessary to repeat them here.

295. Since the commencement of the Constitution, the President has invoked Article 356 on as many as ninety or more occasions. Quite a performance for a provision

which was supposed to remain a ''dead-letter''. Instead of remaining a ''dead-letter'', it has proved to be the ''death-letter'' of scores of State Governments and Legislative Assemblies. The Sarkaria Commission which was appointed to look into and report on Center-State relations considered inter alia the manner in which this power has been exercised over the years and made certain recommendations designed to prevent its misuse. Since the Commission was headed by a distinguished Judge of this Court and also because it made its report after an elaborate and exhaustive study of all relevant aspects, its opinions are certainly entitled to great weight notwithstanding the fact that the report has not been accepted so far by the Government of India.

391. We must also say that the observation under point (7) is equally misplaced. It is true that action under Article 356 is taken on the basis of satisfaction of the Union Council of Ministers but on that score it cannot be said that ''legal mala fides'' of the Governor is irrelevant. When the Article speaks of the satisfaction being formed on the basis of the Governor''s report, the legal mala fides, if any, of the Governor cannot be said to the irrelevant. The Governor''s report may not be conclusive but its relevance is undeniable. Action under Article 356 can be based only and exclusively upon such report. Governor is a very high constitutional functionary. He is supposed to act fairly and honestly consistent with his oath. He is actually reporting against his own government. It is for this reason that Article 356 places such implicit faith in his report. If, however, in a given case his report is vitiated by legal mala fides, it is bound to vitiate the President''s action as well. Regarding the other points made in the judgment of the High Court, we must say that the High Court went wrong in law in approving and upholding the Governor''s report and the action of the President under Article 356. The Governor''s report is vitiated by more than one assumption totally unsustainable in law. The Constitution does not create an obligation that the political party forming the ministry should necessarily have a majority in the Legislature. Minority governments are not unknown. What is necessary is that Government should enjoy the confidence of the House. This aspect does not appear to have been kept in mind by the Governor. Secondly and more importantly, whether the council of ministers has lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere else except the floor of the House. The principle of democracy underlying our Constitution necessarily means that any such question should be decided on the floor of the House. The House is the place where the democracy is in action. It is not for the Governor to determine the said question on his own or on his own verification. This is not a matter within his subjective satisfaction. It is an objective fact capable of being established on the floor of the House. It is gratifying to note that Sri R. Venkataraman, the former President of India has affirmed this view in his Rajaji Memorial Lecture (Hindustan Times dated February 24, 1994).

395. The High Court, in our opinion, erred in holding that the floor test is not obligatory. If only one keeps in mind the democratic principle underlying the

Constitution and the fact that it is the legislative assembly that represents the will of the people - and not the Governor - the position would be clear beyond any doubt. In this case, it may be remembered that the Council of Ministers not only decided on April 20, 1989 to convene the Assembly on 27th of that very month i.e., within 7 days, but also offered to prepone the Assembly if the Governor so desired. It pains us to note that the Governor did not choose to act upon the said offer. Indeed, it was his duty to summon the Assembly and call upon the Chief Minister to establish that he enjoyed the confidence of the House. Not only did he not do it but when the Council of Minister offered to do the same, he demurred and chose instead to submit the report to the President. In the circumstances, it cannot be said that the Governor''s report contained, or was based upon, relevant material. There could be no question of the Governor making an assessment of his own. The loss of confidence of the House was an objective fact, which could have been demonstrated, one way or the other, on the floor of the House. In our opinion, wherever a doubt arises whether the Council of Ministers has lost the confidence of the House, the only way of testing it is on the floor of the House except in an extraordinary situation whether because of all-pervasive violence, the Governor comes to the conclusion - and records the same in his report - that for the reasons mentioned by him, a free vote is not possible in the House.

396. We make it clear that what we have said above is confined to a situation where the incumbent Chief Minister is alleged to have lost the majority support or the confidence of the House. It is not relevant to a situation arising after a general election where the Governor has to invite the leader of the party commanding majority in the House or the single largest party/group to form the government. We need express no opinion regarding such a situation."

68. Next, the learned Senior Counsel refers to paragraphs 69, 147 & 148 of the judgment in Rameshwar Prasad&#65533;s case, which we have already extracted in the earlier part of this judgment.

69. Therefore, the argument is that the law has been laid down in paragraphs 118 & 119 of the judgment in Bommai&#65533;s case (supra) that there must be a floor test in all such cases. Both, the learned Attorney General and Mr. Dinesh Dwivedi, would attempt to contrast Bommai&#65533;s case (supra) with the facts of this case. According to Mr. Dinesh Dwivedi, in Bommai&#65533;s case (supra), it was a case, where, even deducting the 17 MLAs, who had apparently walked out of the BJP and out of which 7 returned, there had been no floor test, as had happened in this case because, according to them, it must be treated as there being floor test when the Appropriation Bill was presented, declared passed, but had actually failed. Therefore, this is a case, where there was no need for a further floor test. Therefore, the facts are distinguished. We also do notice paragraph 148 of the judgment in Rameshwar Prasad&#65533;s case to suggest that, if there are "very cogent material", then the fact that there is horse trading going on may warrant interference under Article

356.

70. In the first place, as on 26.03.2016, when the Cabinet met, the audio-video from the sting had not even been verified through the CFSL, Chandigarh. Clearly, the CFSL received the same only on 27.03.2016. Therefore, it was the unverified material, which was acted upon and was also made the basis for the cabinet decision. There is also the case for the petitioner that, in Rameshwar Prasad's case (supra), the allegation relating to horse trading was spread over a long period. Petitioner disputes the sting operation. There is also appeal made to the higher normative values of democracy and federalism and the larger issue of the impact of toppling a democratically elected Government. In view of the fact that the parties were all proceeding on the basis that floor test was to be held on 28.03.2016 and the fact that the petitioner stood deprived of the said opportunity as he was not given the opportunity by way of the imposition of President's Rule, we should go by the principles laid down by the Apex Court in paragraph 118 of the judgment in Bommai's case (supra), which clearly appears to lay down that, even if there is horse trading, floor test must be resorted to, besides paragraph 119.

71. Therefore, we would think that, having regard to the fact that the floor test was to take place on 28.03.2016, the sting operation, in view of the law laid down in Bommai's case (supra) and in Rameshwar Prasad's case (supra), would fade into irrelevance. It also, therefore, would be a case, where there was no warrant for a legitimate inference being drawn from the facts that the floor test should be avoided and, instead, the draconian provisions of Article 356 should be invoked.

72. In regard to the sting operation, there is another dimension, no doubt, which we cannot overlook that a former Chief Minister is found in the sting operation allegedly. No doubt, there is a verification by the CFSL subsequently. This aspect goes to the standards expected of the writ applicant throughout the case. It is true that corruption is an issue, which we are completely aghast at. It is not to be taken as an endorsement of any kind of wrongdoing. India has had enough of it. It is, no doubt, true that this is an issue, which continues to plague our body polity and we have absolutely no sympathy for those, who indulge in corruption at any level and if, indeed, it has happened, whatever we may say in the judgment otherwise will not preclude any action, which he would be otherwise subjected to in accordance with law. But, that is not to say that the discretion should be declined, as we have noted that it is not an individual fight. We must see it in the larger canvas of values of democracy, federalism and also rule of law. We bear in mind the words of Sri Winston Churchill "it has been said that democracy is the worst form of Government except all the others that have been tried". Viewed in the said perspective, we would think that, merely for the reason that the petitioner figures in the alleged sting operation, which is disputed by him, we cannot refuse to pronounce on the validity of the action under Article 356. There are cases, where Judges are confronted with the plight of not having black and white issues. Individuals pale into relative

insignificance and what emerge as more relevant are the greater values, which, in this case, include democracy and federalism. In the light of this, the upshot of the above discussion is that we would not dismiss the writ petition on the basis of the said dimension present.

73. Now we come to issues arising from the Appropriation Bill. In this matter, there are a few aspects. The first aspect is the aspect relating to Article 212. Article 212 reads as follows:

"212. Courts not to inquire into proceedings of the Legislature-. (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

74. This has been the subject matter of considerable case law. In the case of **MSM Sharma v. Shree Krishna Sinha, reported in (1961) 1 SCR 96**, the Apex Court was dealing with a case of a journalist, who was faced with action by the Privilege Committee of the Legislature, and the court had this to say:

"10. It now remains to consider the other subsidiary questions raised on behalf of the petitioner. It was contended that the procedure adopted inside the House of the Legislature was not regular and not strictly in accordance with law. There are two answers to this contention, firstly, that according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business. Possibly, a third answer to this part of the contention raised on behalf of the petitioner is that it is yet premature to consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be observed that once it has been held that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for interference by this Court under Article 32 of the Constitution. Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere

non-compliance with rules of procedure cannot be a ground for issuing a writ under Article 32 of the Constitution vide **Janardan Reddy v. State of Hyderabad, (1951) SCR 344."**

75. In the case of **State of Punjab v. Satya Pal Dang & others, reported in AIR 1969 SC 903**, the facts were a little bit more convoluted. In short, in the Punjab Assembly, the Speaker adjourned the proceedings of the Assembly on 06.03.1968 by two months to May, 1968. The financial life of the State would come to a grinding halt, if the Appropriation Bill was not passed. The Governor intervened. The court noted that the Governor could not possibly recall the adjournment effected by the Speaker. The Governor could not, equally also, persuade the Council of Ministers to act in the matter. The constitutional way out was to invoke the power under Article 174 and prorogue the House, which the Governor did. The Governor did this by a Gazette Notification on 11.03.1968. Thereafter, he asked the Assembly to meet and he passed an Ordinance in exercise of power under Article 213. In terms of that Ordinance, the matter was taken up. At that time, the Speaker purported to disregard the Ordinance passed by the Governor, without resorting to the procedure under Article 213(2)(a), i.e. by trying to get a resolution passed to disapprove the Ordinance, and, instead, adjourned the matter. At this stage, the Deputy Speaker took over. The proceedings were conducted. This was done as the Ordinance provided that, in view of the urgency, the affairs of the Assembly could not be adjourned except by the majority agreeing to it. Therefore, the business was transacted. The Ordinance was challenged. The Apex Court, in the context of these facts, proceeded to consider two aspects. Firstly, it was a case, where the Deputy Speaker proceeded to occupy the Chair in view of the action of the Speaker. The question arose whether the Deputy Speaker could do so in view of Article 199. The court took the view that it was a directory provision and, in particular, it would cause grave disquiet and inconvenience to the public. The court also had occasion to rule on the aspect of Article 212, wherein the court held as follows:

"30. Further again, there is Article 212 clause (1) which provides that the validity of any proceeding in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. This clause was invoked in respect of a Money Bill in Patna Zilla Brick Owners Association and others v. State of Bihar and others(1) following a case of this Court in **M/s. Mangalore Ganesh Beedi Works v. The State of Mysore & Another, AIR 1963 SC 589**. We are entitled to rely upon this provision. Our conclusion gets strength from another fact. There is no suggestion even that the Appropriation Bills were not Money Bills or included any matter other than that provided in Article 199 or were not passed by the Assembly. It is also significant that the Speaker wrote to the Chairman of the Legislative Council that there was no certificate by him and that he had adjourned the Assembly when the Bills were adopted but the Legislative Council in spite of objection considered and passed the two, Bills and the Governor assented to them. We are of opinion that the two Bills were duly certified."

76. It is noteworthy that an argument was raised that this case warranted invocation of Article 356. That was repelled and the court held as follows:

"17. ⁄ To suggest that the President⁄s rule should have been imposed instead, it is to suggest a line of action which a party not in majority would have obviously preferred but it would have cut at the root of parliamentary Government to which our country is fortunately committed. If by adopting the present course parliamentary Government could be restored there was neither an error of judgment nor a mala fide exercise of power. There was nothing colourable about it. It was intended to achieve a definite purpose by using the constitutional power of the Governor. We are therefore quite clear that the action of prorogation cannot be questioned on any of the grounds suggested by the respondents."

77. **K.A. Mathialagan v. P. Srinivasan & others, reported in AIR 1973 Madras 371 (Full Bench)**, was also a case, where there was a Message under Article 175(2) sent by the Governor and item no. 8 was "any other business", which was pending. One of the items was a proposal to remove the Speaker for which motion had been given. The censure motion was allowed to be taken up by the Speaker, though it was not in the list included in the Message under Article 175(2). The Speaker relied on a rule, which entitled him to say that he must fix a date for consideration of his removal. The said Rule was overlooked in the light of the Message under Article 175(2). The court held that these are all matters covered by Article 212. We deem it appropriate to refer to the following paragraphs of this judgment:

"38. The Legislative Assembly of a State is undoubtedly the fountain source of its power and the rules framed under Article 208 of the Constitution being the creatures of such power are succeptible to modification or deviation at the discretion of the majority of the members of the Assembly. The power to make a rule implies a power to deviate from the rule if the exigencies of circumstances require and if the party vested with the power is inclined to so act. B.W. Ridges in his book "Constitutional Law of England" dealing with the subject ⁄what is the precise meaning of the term ⁄proceedings in Parliament⁄ would say-

"Another collective right of the House is to settle its own code of procedure. This is such an obvious right-it has never been directly disputed-that it is unnecessary to enlarge upon it except to say that the House is not responsible to any external authority for following the rules it lays down for itself, but may depart from them at its own discretion⁄⁄This holds good even where the procedure of a House or the right of its members or officers to take part in its proceedings is dependent on statute. For such purposes the House can ⁄practically change or practically supersede the law."

39. The same author dealing with "jurisdiction of courts of law in matters of privileges" at page 176, 18th Edn observes-

"The problem thus became one of reconciling law of privilege with the general law. The solution gradually marked out by the courts is to insist on their right in principle to decide all questions of privilege arising in litigation before them with certain large exceptions, in favour of parliamentary jurisdiction. Two of these, which are supported by a great weight of authority, are the exclusive jurisdiction of each House over its own internal proceedings, and the right of either House to commit and punish for contempt."

40. It is therefore well settled that over its own internal proceedings the jurisdiction of the House was exclusive and absolute and cannot be interfered with by Courts. Again, another learned author, Hood Phillips in his ‘Constitutional and Administrative law’ 3rd Edn at page 184, dealing with ‘exclusive right to regulate its own proceedings’ says-

"The courts must presume that so august an Assembly as the House of Commons discharges its functions lawfully and properly. They will therefore not take cognizance of matters arising within the walls of the House, and they will accept the interpretation put by the Commons upon a statute affecting their internal proceedings."

41. The petitioner’s case is that the dispensation of Rule 53 by invoking Rule 244 is a specific departure from the set procedure. But if the House is prompted to deviate from the rules of procedure for purposes of managing its internal affairs as the situation requires it, then it is clear that the hands of the process of Court cannot extend so as to catch the alleged impropriety therein and deal with it as if it is justifiable. It is this that is reiterated in firm terms in Article 212(2) which is extracted for ready reference:

"The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure."

48. The principles laid down by the Supreme Court and by other courts in our country as above are indeed a pointer to the sovereignty of our Legislatures. Such plenary powers are countenanced in the various Articles of the Constitution including Article 212. The course of such power and the manner in which it is channelised by the source of authority cannot either be stemmed or interfered with by a process of Court even under Article 226 of the Constitution. Such a collective privilege contemplated under the provisions of the Constitution, which has to be liberally interpreted and not with a sense of pedantism, prompts us to hold that when the motion for the removal of the Speaker was taken up for consideration in the instant case and when at that moment of time the Deputy Speaker was put in office as a substitute for the Speaker and if the Deputy Speaker thereof conducted the proceedings resulting in the challenged resolution of the Assembly; they are all matters which the Assembly has the privilege to deal with and decide upon. They are therefore neither illegal nor unconstitutional. As the accredited parliamentary

practise enables the House to decide what it will discuss and how it will settle its internal affairs and what code of procedure it intends to adopt, it follows that it may even depart if it is so compulsive from the rules of procedure laid down by itself, and this it could do at its discretion and as Prof. Erskine May says, such a departure will not render its responsibility to be scrutinised by any external authority for not following the rule which is laid down by itself."

78. **Raja Ram Pal v. Hon�ble Speaker, Lok Sabha & others, reported in (2007) 3 SCC 184**, was a case, which related to the expulsion of Members from the Legislature and the question was whether it was permitted and what was also the scope of judicial review in the matter. The Court held as under:

"360. The question of extent of judicial review of Parliamentary matters has to be resolved with reference to the provision contained in Article 122 (1) that corresponds to Article 212 referred to in Pandit Sharma (II). On a plain reading, Article 122 (1) prohibits "the validity of any proceedings in Parliament" from being "called in question" in a court merely on the ground of "irregularity of procedure". In other words, the procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the legislature. But then, ''procedural irregularity'' stands in stark contrast to ''substantive illegality'' which cannot be found included in the former. We are of the considered view that this specific provision with regard to check on the role of the judicial organ vis-`-vis proceedings in Parliament uses language which is neither vague nor ambiguous and, therefore, must be treated as the constitutional mandate on the subject, rendering unnecessary search for an answer elsewhere or invocation of principles of harmonious construction.

366. The touchstone upon which Parliamentary actions within the four-walls of the Legislature were examined was both the constitutional as well as substantive law. The proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity thus cannot be held protected from judicial scrutiny by Article 122 (1) inasmuch as the broad principle laid down in Bradlaugh acknowledging exclusive cognizance of the Legislature in England has no application to the system of governance provided by our Constitution wherein no organ is sovereign and each organ is amenable to constitutional checks and controls, in which scheme of things, this Court is entrusted with the duty to be watchdog of and guarantor of the Constitution.

378. With reference to the above-quoted observations recognising the permissibility of scrutiny in a court of law on allegation that the impugned procedure was illegal or unconstitutional, the learned Additional Solicitor General submitted that these observations need to be clarified and the expression "illegality" must necessarily mean "unconstitutionality", that is violation of mandatory constitutional or statutory provisions."

79. Thereafter, referring to Smt. Indira Nehru Gandhi v. Raj Narain & another (supra), which we have referred to in the earlier part of this judgment, Chief Justice Y.K. Sabharwal held as follows:

"383. In our considered view, the question before the court in the case of Indira Nehru Gandhi essentially pertained to the lawfulness of the session of Parliament that had passed the constitutional amendment measure. The concern of the court did not involve the legality of the act of the legislative body. As regards the views based on the holding in the case of Pandit Sharma, it has already been observed that it was rather premature for the court to consider as to whether any illegality vitiated the process of the legislative assembly.

386. Article 122(1) thus must be found to contemplate the twin test of legality and constitutionality for any proceedings within the four walls of Parliament. The fact that the case of UP Assembly dealt with the exercise of the power of the House beyond its four-walls does not affect this view which explicitly interpreted a constitutional provision dealing specifically with the extent of judicial review of the internal proceedings of the legislative body. In this view, Article 122(1) displaces the English doctrine of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction. Any attempt to read a limitation into Article 122 so as to restrict the court''s jurisdiction to examination of the Parliament''s procedure in case of unconstitutionality, as opposed to illegality would amount to doing violence to the constitutional text. Applying the principle of "expressio unius est exclusio alterius" (whatever has not been included has by implication been excluded), it is plain and clear that prohibition against examination on the touchstone of "irregularity of procedure" does not make taboo judicial review on findings of illegality or unconstitutionality."

80. **Yitachu v. Union of India & others, reported in AIR 2008 Gauhati 103** was a case cited before us, which involved Notification under Article 356. That was a case, where the decision turned on facts, which render the decision distinguishable.

81. This question has also engaged the attention of the Apex Court in the case of **Yogendra Kumar Jaiswal & others v. State of Bihar & others, reported in (2016) 3 SCC 183**. Therein, the decision arose from a challenge to the Orissa and Bihar Special Courts Acts and the issue related to the constitutionality of the introduction of the Bills as Money Bills. Therein the Court held as follows:

"38. First, we shall take up the issue pertaining to the introduction of the Bill as a Money Bill in the State Legislature. Mr. Vinoo Bhagat, learned counsel appearing for some of the appellants, has laid emphasis on the said aspect. Article 199 of the Constitution defines "Money Bills." For our present purpose, clause (3) of Article 199 being relevant is reproduced below:

"199(3) If any question arises whether a Bill introduced in the legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of

the Legislative Assembly of such State thereon shall be final." We have extracted the same s we will be referring to the authorities as regards interpretation of the said clause.

39. Placing reliance on Article 199, the learned counsel would submit that the present Act which was introduced as a Money Bill has remotely any connection with the concept of Money Bill. It is urged by him that the State has made a Sisyphean endeavour to establish some connection. The High Court to repel the challenge had placed reliance upon Article 212 which stipulates that the validity of any proceedings in the legislature of a State shall not be called in question on the ground of any irregularity of procedure.

40. The learned counsel for the appellants has drawn inspiration from a passage from Powers, Privileges and immunities of State Legislature, In re, Special Reference No. 1 of 1964 AIR 1965 SC 745, wherein it has been held that Article 212 (1) lays down that the validity of any proceedings in the legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure and Article 212 (2) confers immunity on the officers and Members of the legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. The Court opined that Article 212 (2) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is not more than that the procedure was irregular. Thus, the said authority has made a distinction between illegality of procedure and irregularity of procedure.

41. Our attention has also been drawn to certain paragraphs from the Constitution Bench decision in **Raja Ram Pal v. Lok Sabha (2007) 3 SCC 184**. In the said case, in paras 360 and 366, it has been held thus: (SCC pp 347 & 350)

"360. The question of extent of judicial review of parliamentary matters has to be resolved with reference to the provision contained in Article 122 (1) that corresponds to Article 212 referred to in **M.S.M. Sharma v. Shree Krishna Sinha, AIR 1960 SC 1186** [Pandit Sharma (2)]. On a plain reading, Article 122 (1) prohibits ‘the validity of any proceedings in Parliament’ from being ‘called in question’ in a court merely on the ground of ‘irregularity of procedure’. In other words, the procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the legislature. But then, ‘procedural irregularity’ stands in stark contrast to ‘substantive illegality’ which cannot be found included in the former. We are of the considered view that this specific provision with regard to check on the role of the judicial organ vis-à-vis proceedings

in Parliament uses language which is neither vague nor ambiguous and, therefore, must be treated as the constitutional mandate on the subject, rendering unnecessary search for an answer elsewhere or invocation of principles of harmonious construction.

* * *

366. The touchstone upon which parliamentary actions within the four walls of the legislature were examined was both the constitutional as well as substantive law. The proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity thus cannot be held protected from judicial scrutiny by Article 122 (1) inasmuch as the broad principle laid down in **Bradlaugh v. Gossett, (1884) LR 12 QBD 271** acknowledging exclusive cognizance of the legislature in England has no application to the system of governance provided by our constitution wherein no organ is sovereign and each organ is amenable to constitutional checks and control, in which scheme of things, this Court is entrusted with the duty to be watchdog of and guarantor of the Constitution.

42. In this regard, we may profitably refer to the authority in **Mohd. Saeed Siddiqui v. State of U.P., (2014) 11 SCC 415**, wherein a three-Judge Bench while dealing with such a challenge, held that Article 212 precludes the courts from interfering with the presentation of a Bill for assent to the Governor on the ground of non-compliance with the procedure for passing Bills, or from otherwise questioning the Bills passed by the House, for proceedings inside the legislature cannot be called into question on the ground that they have not been carried on in accordance with the Rules of Business. Thereafter, the Court referring to Article 199 (3) ruled that the decision of the Speaker of the Legislative Assembly that the Bill in question was a Money Bill is final and the said decision cannot be disputed nor can the procedure of the State Legislature be questioned by virtue of Article 212. The Court took note of the decision in **Raja Ram Pal v. Lok Sabha, (2007) 3 SCC 184** wherein it has been held that the proceedings which may be tainted on account of substantive or gross irregularity or unconstitutionality are not protected from judicial scrutiny. Eventually, the Court repelled the challenge."

82. Therefore, the position at law can be summarised as that Article 212 is intended to protect the Legislature and the officers of the Legislature when attack is made on the ground of irregularity of procedure. It would not offer a shield when what is at stake is action, which is in violation of constitutional guarantees or of mandatory provisions of a statute. The attempt of the petitioner was to ward off action under Article 356 on the basis that, in view of Article 212, where the courts themselves cannot interfere, how would it be open to the Central Government to interfere. The answer of the learned Attorney General would appear to be that Article 212, in specific and express terms, is directed only against the courts and why should the courts import any limitation on the otherwise extensive power of imposition of

President's Rule should conditions otherwise justify action under Article 356. This is one aspect of the matter. At this juncture, we may also notice the judgment of the Apex Court in the case of **M/s Mangalore Ganesh Beedi Works v. The State of Mysore and another, reported in AIR 1963 SC 589**. Relevant paragraph 5 of this judgment reads as follows:

"(5). Two objections were taken to the validity of the tax: Firstly it was argued that by the substitution of 2 naya Paisas in place of 3 pies there was a change in the tax exigible by the Mysore Sales Tax Act and this could only be done if that enactment had been passed according to the procedure for Money Bills in the manner provided by Articles 198, 199 and 207 of the Constitution and as no such Money Bill was introduced or passed for the enhancement of the tax, the tax was illegal and invalid. In our opinion by substitution of new coinage i.e. naya Paisas in place of annas, pice and pies no enhancement of tax was enacted but it was merely a substitution of one coinage by another of equivalent value. Even assuming that it is a taxing measure its validity cannot be challenged on the ground that it offends Articles 197 to 199 and the procedure laid down in Article 202 of the Constitution. Article 212 prohibits the validity of any proceedings in a legislature of a State from being called in question on the ground of any alleged irregularity of procedure and Article 255 lays down that requirements as to recommendation and previous sanction are to be regarded as matters of procedure only. It provides: Article 255 "No Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given if assent to that Act was given-
(a) where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) ..

(c) ."

83. We may now notice the aspect relating to the Appropriation Bill. Under Article 202, the Governor introduces what is called "Annual Financial Statement", which is popularly known as the "budget". Under Article 203, the demands for grant are raised. They are considered by the House. At that stage, it is open to any Member (usually Members of the Opposition) to seek a cut in the grant. It is called a "cut motion". Cut motions are of three kinds. We need not go into the nature and implications of the cuts. Suffice it to say that the success of a cut motion has different results; but, in the case of a cut motion, where a party intends to reduce the amount as a measure of economy, if it is passed, the grant would stand passed subject to the modification brought about by passing of the cut motion. In this case, it is significant for us to note, in the context of the question we are called upon to answer, that, on 17.03.2016, there were number of cut motions moved all by BJP MLAs. On 18.03.2016 also, there were cut motions. The demands for grant were

considered on 17.03.2016 and 18.03.2016. The demands for grant were apparently passed on 17.03.2016 and 18.03.2016 and the cut motions were considered in the process of doing so. Even according to the Governor, the matters went smoothly through the day till about 07:30 p.m. on 18.03.2016. On that day, it is true that we find the state of pleadings of the petitioner also rather unhelpful and it says in paragraph 16 that, after the Appropriation Bill was passed, there was a demand for division by 26 MLAs of the BJP and 9 dissident Members of the Congress Party. Proceedings of the Assembly have been produced before this Court along with the rejoinder affidavit. We cannot help referring to it when it says that the Speaker says that Shri Ajay Bhatt, the Leader of the Opposition, made a demand in writing for division. Thereafter, what is stated in Hindi is that the Bill was passed. We do notice that there is a contradiction in the pleadings of the petitioner and the document produced. According to the petitioner, as we have already noticed, after the passing of the Bill, the demand was made. We are troubled by this conduct of the petitioner in making this statement.

84. We have to consider, firstly, whether we can hold that the Bill was not passed. The Bill is declared to have been passed by the Speaker. It is apposite at this point of time to consider the Rules in question. Rule 296, much relied on by the Government of India, no doubt, provides that a Bill may be carried by voice vote. It further provides that, if a single member demands a division, then division is to be allowed. The proviso, however, provides for the condition that, if the Speaker finds that the demand for division is not warranted, he must then hold vote by show of hands. We must, at this juncture, also consider Rule 185. Rule 185 has already been extracted by us in the earlier portion of this judgment. Rule 185(3) provides that it is open to the Speaker to suspend any Rule.

85. It is very interesting to note that the Rules of the Business are made under Article 208 of the Constitution of India. Article 208 reads as under:

"208. Rules of procedure. – (1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modification and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communication between the two Houses."

86. It is, again, interesting to note that Article 209 provides for a special procedure being devised for the consideration of the Appropriation Bills having regard to the urgency that attends the passing of the Appropriation Bills. It reads as follows:

"209. Regulation by law of procedure in the Legislature of the State in relation to financial business. ‚ The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under clause (1) of article 208 or with any7 rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail."

87. In fact, in State of Punjab v. Satya Pal Dang & others (supra), the court found that the Ordinance made by the Governor in that case was a law within the meaning of Article 209 of the Constitution and, therefore, it was a case, where the Speaker had set his face against the binding statute. We may notice that, in Article 208, what is provided is that the Legislature may make rules for the conduct of business. Article 209 speaks about making of a law. We may consider, if a question arises under Article 19, where Fundamental Rights can be regulated only by a law, whether the law would take in subordinate legislation as well. Certainly, subordinate legislation would suffice for the purpose of Article 19. However, contrasting the two Articles, namely, Articles 208 and 209, which are neighbours, they appear to suggest that there must be a law or Act by the Legislature under Article 209. But, even in the rules made under Article 208, under Rules 185(3), there is a power with the Speaker to suspend any rule. We are referring to this only to point out that what has been laid down as not protected under Article 212 are matters relating to violation of the constitutional provisions or matters relating to a mandatory statutory provision. If a power is lodged with the Speaker to suspend a rule, which would take in also Rule 296, which provides for seeking a division of votes, can it be considered to be mandatory when there is power with the Speaker to suspend that Rule. The scope for debate or modification of an Appropriation Bill is very minimal when the demands for grants are passed, as we have already noted. Therefore, we come to a situation, where, on 18.03.2016, in regard to the Appropriation Bill, indeed, there was a controversy. Earlier in the day, the Governor was approached by 26 BJP MLAs. The Governor forwarded their representation through his OSD. It is ripe now for us to point out that, when the Governor was approached in this matter, in our humble view, it did not lay within the four-walls of the Governor‚s authority to direct the Speaker, who is himself a high constitutional authority, to act in a particular manner. We have also noticed in this regard the nature of the rules that the Speaker has free play in his joints. It is not open to the Governor to control the exercise of discretion vested with another constitutional authority, namely, the Speaker, which, in terms of

the rules, is power given to the Speaker. There is a case for the petitioner that, when the power is exercised under Rule 185(3), there is no need for any express order as such and when action is taken as is taken in violation of any other rule, it involves the presumption that the said rule was relaxed.

88. We may also notice that it is a solitary instance. The question would immediately arise as to what would be the effect of a Money Bill being defeated, if, indeed, it was defeated. It is here that the learned counsel for the respondents were at pains to point out the law relating to the constitutional conventions. Even there, as we have noted, literature is provided to us by the petitioner in the form of an advisory to the Members of Parliament by the House of Commons. Para 2.3 of the said literature reads as follows:

"2.3 Constitutional Practise Relating to Confidence Motion The current constitutional practise requires a Government to resign or seek a dissolution following a defeat in parliament only when it is clearly on a confidence motion. A defeat on any other procedural or substantive motion may lead to confidence motion being tabled by either the Government itself (e.g. 23 July 1993) to demonstrate the House's confidence in the Government notwithstanding the defeat, or by the Opposition seeking to prove that the defeat demonstrated the removal of the House's confidence in the Government. Rodney Brazier has stated that "it used to be the case that a defeat on a major matter had the same effect as if an explicit vote of confidence had carried". However during the 1970s a development in constitutional practise took place. In March 1974, Harold Wilson made a statement to the House concerning how his new minority Government would view defeats in divisions: The Government intend to treat with suitable respect but not with exaggerated respect, the results of any snap Division In case of a Government defeat, either in such circumstances or in a more clear expression of opinion, the Government will consider their position and make a definitive statement after due consideration. But the Government will not be forced to go to the country except in a situation in which every hon. Member in the House was voting knowing the full consequences of his vote What I am trying to say is that a snap division or even, perhaps in some cases, a more substantial one would not necessarily mean, and would not, indeed, immediately mean, any fundamental decision about the future of the Government or about a Dissolution. I am saying that if there were to be anything put to the House which could have those consequences, every hon. Member would have it explained to him in the House by the Government before the voted. During the short 1974 Parliament the Labour Government lost seventeen divisions, and between the second 1974 election and dissolution in 1979 it lost a further forty-two divisions and several major Bills. Even the Thatcher Government with its large majority was defeated at the Commons Second Rading of the Shops Bill in 1986; none of these legislative defeats were treated as matters of confidence by Labour or Conservative governments. Given this narrower current interpretation of what constitutes a loss of confidence in the Government, Marshall commented that "only

votes specifically stated by the Government to be matters of confidence, or votes of no confidence by the Opposition are allowed to count. It may be that this perceived constitutional development is imply a confirmation that what is involved is essentially a Government's ability to carry on in office, and that ultimately must depend on it maintaining the confidence of the House of Commons. A confidence motion is a device which directly tests that confidence. If the result demonstrates that the Government has lost the confidence of the House, and cannot therefore continue to govern effectively, it must resign or seek a dissolution of Parliament. No other parliamentary event requires such an outcome, and suggestions that various other important occasions such as the Queen's Speech or the second reading of the Finance Bill, are tantamount to confidence motions remain speculative. However the Government may choose to resign or seek a dissolution for other reasons, including one or more defeats on motions that are not in themselves confidence motions, or even where it still retains the numerical confidence of the House but has suffered a significant rebellion from within its own ranks (as in the May 1940 vote which led to Chamberlain's resignation). It is always for the Government to decide when and under what circumstances an issue of confidence arises, unless its opponents choose to put down a motion of no-confidence in unambiguous terms This is of particular importance during periods of minority government, and in the past Prime Ministers faced with this situation have indicated which issues they would regard as ones of confidence which would force Parliament to decide whether it wished the Government to remain in office."

89. It is now apposite to refer to the judgments of the Apex Court relied on by the first respondent relating to constitutional conventions. In **Supreme Court Advocates-on-Record Association & others v. Union of India, reported in (1993) 4 SCC 441**, the question arose in the context of the appointment of Judges to the superior courts. The court held as follows:

"337. Two sets of principles, thus, make up the rules of constitutional law. One set of rules is contained in the written Constitution of a country and the other set is referred to as the "conventions of the constitution". Conventions are a means of bringing about constitutional development without formal changes in the law. K.C. Wheare in his book The Statute of Westminster and Dominion Status (Fourth Edition) defines the conventions as under:

"The definition of 'conventions' may thus the amplified saying that their purpose is to define the use of constitutional discretion. To put this in slightly different words, it may be said that conventions are non-legal rules regulating the way in which legal rules shall be applied."

339. The conventions enable a rigid legal framework - laws tend to be rigid - to be kept up with changing social needs and changing political ideas. The conventions enable the men, who govern, to work the machines'

344. K.C. Wheare in his book "Modern Constitutions" gives at least two source of conventions. A course of conduct may be persisted in over a long period of time and gradually attain first persuasive and then obligatory force. According to him a convention may arise much more quickly than this. There may be an agreement among the people concerned to work in a particular way and to adopt a particular rule of conduct. This rule is immediately binding and it is a convention. Sir Ivor Jennings puts it as under:

"The laws provide only a framework; those who put the laws into operation give the framework a meaning and fill in the interstices. Those who take decisions create precedents which others tend to follow and when they have been followed long enough they acquire the sanctity and the respectability of age. They not only are followed but they have to be followed."

345. Every act by a constitutional authority is a "precedent" in the sense of an example which may or may not be followed in subsequent similar cases, but a long series of precedents all pointing in the same direction is very good evidence of convention.

346. The requirements for establishing the existence of a convention have been succinctly laid down by Sir W. Ivor Jennings in ‘The Law and the Constitution’, 5th Edition (1959) as under:

"We have to ask ourselves three questions: first, what are the precedents; secondly, did the actors in the precedents believe that they were bound by a rule; and thirdly, is there a reason for the rule? A single precedent with a good reason may be enough to establish the rule. A whole string of precedents without such a reason will be of no avail, unless it is perfectly certain that the persons concerned regarded them as bound by it."

353. We are of the view that there is no distinction between the "constitutional law" and an established "constitutional convention" and both are binding in the field of their operation. Once it is established to the satisfaction of the court that a particular convention exists and is operating then the convention becomes a part of the "constitutional law" of the land and can be enforced in the like manner."

90. In **Madras Bar Association v. Union of India & another, reported in (2014) 10 SCC 1**, the appellate jurisdiction under tax laws vested in the High Courts was transferred to the National Tax Tribunal under the National Tax Tribunal Act, 2005. The court took the view that the Tribunal’s act is unconstitutional, as, in transferring the power from the traditional court to an alternative Tribunal, salient characteristics of the court were sought to be replaced and not incorporated in the court / tribunal created. The court, in the majority judgment, took the view that the constitutional conventions pertaining to the westminister model do not debar the Legislature from enacting legislation to transfer adjudicatory functions earlier vested in the superior court and the exercise of such power would not violate any

constitutional convention. But, when such transfer is made, the conventions, customs, practices of the court sought to be replaced must be incorporated in the court / tribunal created so that the alternative court / tribunal is no less effective.

91. It may be true that, ordinarily, when a Money Bill is defeated, the Government tenders its resignation. But, what happens if the Government does not tender its resignation. Can it be likened to a situation, where the Government has fallen, which appears to be the line of argument addressed by the learned Attorney General? It was his argument that, after the events of 18.03.2016, the Government had fallen and there could not be continuance of the said Government from 19.03.2016 onwards.

92. We are unable to accept that contention. In fact, quite in line with what is the correct position, the Governor also thought it fit to grant time, as given to the petitioner, to seek vote of confidence in the matter. Correspondence we have already referred to in this regard. We may notice that the Governor, in fact, in his letter dated 19.03.2016, refers to the position that, as per the known facts, the Appropriation Bill had been passed by voice vote and the decision has finality and that this has been the view of the courts and the Apex Court, wherein it has been held that the decision of the Speaker about the proceedings cannot be questioned. It is, on this understanding apparently, that it was thought fit that a floor test must be held. This is for the reason that, admittedly, the petitioner and his Government had not tendered the resignation and they continued. It is also interesting to note that what is stated is that, though a demand for division was made, it was not granted and there was no vote taken. Does it mean that voting actually took place and, therefore, it can be likened to a no confidence motion? We would think that, in the circumstances, when the Governor had listed the matter for testing of confidence on 28.03.2016 and all his correspondence tended to show that he was approbating that position by making all arrangements and directing that arrangements be made, we are mystified how, relying on what had happened on 18.03.2016, what all had transpired thereafter is sought to be brushed aside. We would also think that, in terms of what is laid down in Bommai's case (supra) and in view of what has happened from 19.03.2016 onwards and, particularly, the Message under Article 175(2), we cannot lay store by the argument of the learned Attorney General that whatever the Governor may have done, it is open to the President to take a different view solely based on what had happened on 18.03.2016. We would think that we should proceed on the basis that the Money Bill has been declared as passed. There is no challenge to the same on the judicial side by anyone. We are also not oblivious to the grave danger associated with the acceptance of the learned Attorney General's argument. If this is allowed, it can possibly result in undue interference in the affairs of the State Legislatures leading to unwarranted imposition of President's Rule. The federal framework, within which the country functions, could shrivel-up and breakdown. This does not auger well for the Nation.

93. At any rate, we may also notice that this solitary instance, which is seized upon, may not justify the imposition of President's Rule. On 26.03.2016, when the Cabinet made the recommendation, the question was whether the Government could be carried on. The last date for the assent on the Money Bill was 31.03.2016. So, there is a case for the petitioner that, even though the Money Bill was not dispatched immediately, if the President's Rule had not been imposed on 27.03.2016, there would have been nothing in the way of the Money Bill being given assent to when it had reached, admittedly, on 28.03.2016.

94. We must not be understood as saying that, in no circumstances, a solitary event cannot provide material for successful invocation of Article 356.

95. Regarding the question whether the Government can, despite Article 212, make violations in the Assembly the premise for action under Article 356, we would think that we do not wish to completely rule it out, as there could be situations, where what would fall for consideration may be violation of mandatory statutory provision or a constitutional provision.

96. We may just summarise and state that the present case, which was set into motion with 18.03.2016 as day one and saw an unfolding of events culminating in the Proclamation being issued in less than 10 days on 27.03.2016, brings to the fore a situation, where Article 356 has been used contrary to the law laid down by the Apex Court. We have already discussed the effect of the materials and we have already found them wanting and further justifying us in judicial review in interfering with the Proclamation. We have also noticed the date on which it was issued.

97. The upshot of the above discussion is that the writ petition must succeed. In the light of this, necessarily, the Proclamation dated 27.03.2016 issued under Article 356 will stand quashed. In view of what has been laid down in Bommai's case, we further direct that status quo, as on the date of the Proclamation, must necessarily be restored. This means that the Government led by the petitioner will revive. However, since we are restoring the position status quo ante and, as on the date of the Proclamation, the petitioner was obliged to seek the vote of confidence, the petitioner must necessarily seek the vote of confidence on 29.04.2016.

98. Even though Mr. Rakesh Thapliyal, learned Assistant Solicitor General, requested that the judgment may be kept in abeyance, we are not inclined to accede to the said request. The letter of the learned Attorney General is put on record.

99. There will be no order as to costs.