Major S.N. Tripathi (Retd.) Vs Union of India (UOI) and Others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Dec. 21, 2009

Acts Referred: Constitution of India, 1950 â€" Article 100, 13, 14, 164, 172
GOVERNMENT OF INDIA ACT, 1915 â€" Section 19
Representation of the People Act, 1950 â€" Section 30
Representation of the People Act, 1951 â€" Section 14, 147, 149, 150, 151

Hon'ble Judges: S.P. Mehrotra, J; Anil Kumar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S.P. Mehrotra, J.
The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India making the

following prayers:

1. Writ of Quo-Warranto removing Dr. Manmohan Singh, Opp. No. -2 from the office of the Prime Minister as, he being an agent/ leader of a

private association called UPA[united progressive alliance] is not qualified/ competent to hold the office of the prime minister under guise of the

Article 75[1] by ignoring the mandatory conditions in its clause [3].

2. Order, direction or writ of appropriate nature commanding Opp. No. 3 & 4 to refrain from interfering in the constitutional affairs of the citizen

and their duly elected representatives in the 15th Lok Sabha in the decision making process under Article 75[3] and 100 interalia.

3. Order, direction or writ of appropriate nature declaring the first proviso attached to Sub-section [1] of Section 33 of RP act, 1951, ultra vires

and void ab-initio to the provisions of Article 84, 173 and 327 as also, of the fundamental rights under Article 13[2], 14, 19[1][a], 19[1][c], 19[4]

and 21 of the constitution.

4. Grant any other relief that this Hon''ble court may deem fit under the present circumstances of the affirmed on the memo of the writ petition.

2. As the main prayer in the writ petition is for issuance of writ of Quo-Warranto and the matter has been placed before us sitting in Miscellaneous

Bench as a fresh case, we are proceeding to consider the same.

3. It is, interalia, averred in the writ petition that the normal tenure of five years of the 14th Lok Sabha (House of the People) was scheduled to

expire by the end of May, 2009. The President of India by the Notification issued under Sub-section (2) of Section 14 of the Representation of the

People Act, 1951 (in short "the R.P. Act, 1951") and published in the Gazette of India on 2.4.2009, called upon each of the specified

Parliamentary Constituency in the States and Union Territories to elect members to the House of the People (Lok Sabha). After the said

Notification, issued by the President of India, the Election Commission of India issued Notification dated 2.4.2009 (Annexure-2 to the writ

petition) in pursuance of Sections 30 and 56 of the R.P. Act, 1951, interalia, appointing dates for nomination etc. and fixing time-schedule for poll

in respect of the Parliamentary Constituencies mentioned in the schedule to the said Notification.

4. It is, interalia, further averred in the writ petition that counting in all 543 Parliamentary Constituencies commenced at 08.00 hours on 16th May,

2009 and concluded on the same date by about 20.00 hours. The petitioner has, interalia, further averred that as per the Report of the Electronic

Media, Indian National Congress had won 206 Seats out of 543 total seats in Lok Sabha; and that the Indian National Congress and its allies

called ""United Progressive Alliance"" had won about 274 seats out of 543 total seats in the Lok Sabha; and that thus, the United Progressive

Alliance had clear majority to form the Government headed by the respondent No. 2, who was reported to be the Prime Ministerial candidate of

the United Progressive Alliance and the Indian National Congress from the beginning of the election.

5. It is, interalia, further averred in the writ petition that on 17 & 18.5.2009, the United Progressive Alliance had several meetings and elected

respondent No. 2 as its leader claiming to have the support of over 275 newly elected members of the 15th Lok Sabha. Photocopies of the

extracts of Newspaper Reports dated 21.5.2009 have been filed as Annexures- 3 and 5 to the writ petition. It is, interalia, further averred in the

writ petition that on 22.5.2009, the respondent No. 2 was sworn in as the Prime Minister alongwith 19 other Ministers sworn in on his

recommendation. The petitioner has, interalia, averred that the petitioner being the citizen of India and duly registered as "elector" of 34, Mohan

Lal Ganj Parliamentary Constituency, as per the voter list (Annexure-4 to the writ petition), has full locus and right to maintain the present writ

petition.

6. We have heard Major S.N. Tripathi (Retd.), petitioner in person, and Shri R.P. Shukla, learned Assistant Solicitor General of India appearing

for the respondent No. 1.

7. Written submissions have been filed on behalf of the petitioner as well as on behalf of the respondent No. 1.

8. We have perused the record as well as the written submissions submitted by both the sides.

9. The petitioner has made the following submissions:

1. The writ of Quo-Warranto is maintainable against a person who has illegally usurped any public office. In the present case, the writ of Quo-

Warranto is maintainable against the respondent No. 2 as, according to the petitioner, the respondent No. 2 has been illegally appointed as the

Prime Minister, and he has usurped the said public office. In this regard, the petitioner has placed reliance on the following decisions:

(1) U.N.A. Rao Vs. Smt. Indira Gandhi,

(2) Samsher Singh Vs. State of Punjab and Another,

(3) B.R. Kapur v. State of T.N. and Anr. : 2001 (7) SCC 231.

10. The appointment of the respondent No. 2 as the Prime Minister has been made by the President of India under Clause (1) of Article 75 of the

Constitution of India by ignoring the mandatory condition laid down in Clause (3) of the said Article, namely, Article 75, and thus, the appointment

of the respondent No. 2 as the Prime Minister is illegal.

11. Elaborating his submission, the petitioner has made the following submissions:

(a) Clause (2) of Article 83 of the Constitution of India lays down that the House of the People (i.e. Lok Sabha) unless sooner dissolved, shall

continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as

a disslution of the House. Thus, normal term of the Lok Sabha is five years. However, the President of India has power to prematurely dissolve the

Lok Sabha before expiration of its full term of 5 years under Sub-clause (b) of Clause (2) of Article 85 of the Constitution of India. In case, the

President of India exercises his power to prematurely dissolve the Lok Sabha, then immediately care-taking Prime Minister and care-taking

Government come into being as under the constitutional scheme, there must be a Council of Ministers with Prime Minister as its head at every

moment to aid and advice the President in view of Clause (1) of Article 74 of the Constitution of India. If the Lok Sabha is dissolved by the

President of India, then the President of India has six months" time to constitute new Lok Sabha. Thus, under the constitutional scheme, while there

may be no Lok Sabha in existence for a period of six months but the Council of Ministers with Prime Minster as its head must be in existence

every moment.

(b) Under the constitutional scheme, there is a distinction between "popular" Prime Minister and "care-taking" Prime Minister. Care-taking Prime

Minister functions during the period when the Lok Sabha is dissolved and new Lok Sabha is yet to be constituted. Such a Prime Minister and his

Council of Ministers are evidently not required to fulfil the mandate of collective responsibility to the Lok Sabha as contained in Clause (3) of

Article 75 of the Constitution of India as in such a case, there is no Lok Sabha in existence. However, once the General Election is held, the

person appointed as the Prime Minister is the "popular" Prime Minister and such Prime Minister and his Council of Ministers must fulfil the

mandate of collective responsibility contained in Clause (3) of Article 75 of the Constitution of India. This will be possible only if the appointment

of the Prime Minister and his Council of Ministers is made by the President of India after the new Lok Sabha is constituted and its members take

oath. In case the appointment of Prime Minister and his Council of Ministers is made by the President before the new Lok Sabha is constituted and

its members take oath, such Council of Ministers will not fulfil the mandatory requirement of Clause (3) of Article 75 of the Constitution of India.

12. In the present case, while the term of the 14th Lok Sabha was upto the end of the month of May, 2009, it was dissolved on 19.5.2009, and

thus, its existence came to an end on the said date. Further, even though the result of the General Election had been declared on 16.5.2009 but the

new Lok Sabha, i.e., the 15th Lok Sabha was yet to come in existence. During the intervening period, i.e., the period when the 14th Lok Sabha

had ceased to remain in existence and the 15th Lok Sabha was yet to come in existence, the respondent No. 2 was appointed as the Prime

Minister on 22.5.2009.

13. Thus, the appointment of the respondent No. 2 as the "popular" Prime Minister was made during the period when he could not fulfil the

mandate of collective responsibility as contained in Clause (3) of Article 75 of the Constitution of India as there was no Lok Sabha in existence on

the said date.

(3) Non-citizen and associations have been debarred from expressing their views for securing political system of our country. Right of freedom of

expression is not available to non-citizens which include associations. Reliance in this regard is placed on the following decisions:

(I) State Trading Corporation of India v. The Commercial Tax Officer and Ors. AIR 1963 SC 1811.

(II) Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others,

(III) His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala,

14. A political party or a conglomeration of political parties such as United Progressive Alliance are alien to the Constitution of India and any

appointment made at their behest is illegal and unconstitutional and contrary to the provisions of Articles 13(2), 84, 173, 327 , 246(3) read with

Entry 32 of the State List in the VIIth Schedule to the Constitution of India and the Fundamental Rights guaranteed under Articles 14, 19(1)(a),

19(1)(c), 19(4) and 21 of the Constitution of India.

15. The first proviso to Sub-section (1) of Section 33 of the R.P. Act, 1951, which uses the expression ""recognized political party"", is ultra vires

and non-est being violative of various provisions of the R.P. Act, 1951 and the Constitution of India as mentioned in paragraphs 27, 28 and 29 of

the writ petition.

(5) The petitioner has further placed reliance on the following decisions in support of his various submissions:

(i) U.N.A. Rao Vs. Smt. Indira Gandhi,

(ii) Thiru K.N. Rajgopal Vs. Thiru M. Karunanidhi and Others,

16. In reply, Shri R.P. Shukla, learned Assistant Solicitor General of India has made the following submissions:

1. The writ petition filed by the petitioner is a frivolous one, and the same has been filed without substantiating the allegations. The petitioner has not

been able to show as to how the appointment of the respondent No. 2 is illegal and unconstitutional or as to how the respondent No. 2 is usurper

of the office of the Prime Minister.

2. The Writ Petition is totally vague and discloses no cause of action, even prima-facie. Even details and dates relevant for considering the

submissions made by the petitioner have not been mentioned in the writ petition. Thus, for instance, there is no averment in the writ petition

regarding the date of dissolution of the 14th Lok Sabha or the date regarding the Notification u/s 73 of the 15th Lok Sabha or regarding the date

of taking of oath by the members of the 15th Lok Sabha.

3. There is no word in the Constitution of India like ''popular'' Prime Minister or ''popular'' Government. The distinction sought to be made by the

petitioner between ''popular'' Prime Minister and ''care-taking'' Prime Minister is misconceived, and there is no such distinction contemplated by

the Constitution of India.

4. There is no violation of any provision of the Constitution of India or of the R.P. Act, 1951 in the appointment of the respondent No. 2 as the

Prime Minister . There is nothing in Article 74 or Article 75 of the Constitution of India invalidating the appointment of the respondent No. 2 as the

Prime Minister.

5. Satisfaction of the President of India as to the party enjoying majority after the General Election is subjective satisfaction for inviting such party

to form Government. However, the majority of such party is tested on the floor of the Lok Sabha when the confidence motion in respect of the

Council of Ministers appointed is put to vote in the Lok Sabha. The petitioner having failed to make necessary averments in the writ petition and

having failed to substantiate any illegality in the appointment of the respondent No. 2 as the Prime Minister, the writ petition filed by the petitioner is

liable to be dismissed.

6. Even though the submission of the respondent No. 1 is that the Writ Petition is totally vague and lacks in material particulars and discloses no

cause of action, still in order to resolve the issues on merits, the respondent No. 1 in their written submissions have mentioned the relevant dates

and events. Such dates and events will be referred to at appropriate places hereinafter in this judgment.

7. The Constitution of India no where lays down any eligibility conditions or particular procedure for choosing a Prime Minister by the President. It

is thus solely the discretion of the President as to whom he wants to appoint as Prime Minister. The President''s discretion is unfettered by any

constitutional or statutory provision. It is, therefore, not necessary for the Prime Minister to be even sitting member of the Parliament. The only

condition laid down in clause (5) of Article 75 is that he should become the member of either House of the Parliament within the expiration of six

months'' period from the date of taking oath of the Office. This is also not a sine-qua-non for appointment of a person as the Prime Minister that

the Lok Sabha should be in existence at the time of his appointment.

The only consideration the President is supposed to have in mind while choosing a person for the Office of the Prime Minister, is as to whether

such person would be able to command confidence of majority of members of the Lok Sabha because the Council of Ministers including the Prime

Minister would be collectively responsible to the House of the People (Lok Sabha). If the Lok Sabha expresses its no-confidence in the Council of

Ministers, the Council of Ministers including the Prime Minister would have to go as per Clause (3) of Article 75 of the Constitution of India.

8. On 18.5.2009, the President issued order / proclamation in exercise of the powers conferred by Sub-clause (b) of Clause (2) of Article 85 of

the Constitution of India dissolving the 14th Lok Sabha. Thereafter, the Election Commission of India issued Notification in pursuance of Section

73 of the Representation of the People Act, 1951, interalia, notifying the names of the members elected in respect of various constituencies

indicated in the Schedule enclosed to the said Notification. Section 73 of the R.P. Act, 1951 provides that "upon the issue of such Notification",

the House "shall be deemed to be duly constituted". Therefore, the Lok Sabha stood duly constituted on 18.5.2009 while the respondent No. 2

was sworn in as the Prime Minister on 22.5.2009. Thus, the objection raised by the petitioner in regard to non-existence of Lok Sabha at the time

of swearing in of the respondent No. 2 as the Prime Minister, is not correct in any view of the matter.

9. The Constitution of India adopts parliamentary democracy with political parties. The political parties stand recognized and have been given a

role to play in the constitutional scheme. Xth Schedule to the Constitution of India, inserted by 52nd Constitutional Amendment Act, 1985,

recognizes the existence of political parties in the Indian democracy.

10. The validity of the Representation of the People (Amendment) Act, 1996, whereby the 1st proviso (besides other provisos) was substituted in

Sub-section (1) of Section 33 of the R.P. Act, 1951 was challenged by (1) Social Action for People''s Right and (2) Major Sheshmani Nath

Tripathi (retired), i.e., the petitioner in the present writ petition, by filing a writ petition being Writ Petition No. 5107 (M/B) of 1999. The said Writ

Petition was dismissed by a Division Bench of this Court by the judgment dated 15.7.2004. Copy of the said judgment has been filed as

Annexure-1 to the written submissions filed on behalf of the respondent No. 1.

An application was thereafter filed for review of the said judgment dated 15.7.2004 being Review Application No. 241 of 2004. The said Review

Application was also rejected by the Division Bench of this Court by the order dated 15.12.2004. Copy of the said order dated 15.12.2004 has

been filed as Annexure-1A to the written submissions filed on behalf of the respondent No. 1.

It is submitted that in view of the above, it is no longer open to the petitioner to question the validity of the 1st proviso to Sub-section (1) of

Section 33 of the R.P. Act, 1951, and such challenge is barred by the principles of resjudicata and constructive resjudicata.

11. Reliance has been placed on behalf of the respondent No. 1 in support of its various submissions on the following decisions:

(i) Har Sharan Verma Vs. Shri Tribhuvan Narain Singh, Chief Minister, U.P. and Another,

(ii) U.N.A. Rao Vs. Smt. Indira Gandhi,

(iii) Dr. Janak Raj Jai v. H.D. Deve Gowda, (1997) 10 SCC 462

(iv) Rameshwar Prasad and Others Vs. Union of India (UOI) and Another,

(v) Madan Murari Verma Vs. Choudhuri Charan Singh and Another,

(vi) Har Sharan Varma Vs. Union of India (UOI) and Others,

(vii) Dinesh Chandra Pande v. Chaudhury Charan Singh and Ors. AIR 1980 Delhi 114.

(viii) Har Sharan Varma Vs. Chandra Bhan Gupta and Others,

17. In rejoinder, Major S.N. Tripathi (retd.) has reiterated his submissions made earlier. He has made the following further submissions.

(1) Once the vires of a provision of law are challenged on the ground of violation of the Fundamental Rights guaranteed under the Constitution of

India, this Court cannot dismiss the writ petition in limine. Reliance in this regard is placed on the following decisions:

(a) Madan v. District Magistrate, 1971(3) SCC 867

(b) Shri Anil Kumar Chowdhury Vs. State of Assam and Others,

(c) State Trading Corporation of India Limited v. The Commercial Tax Officer and Ors. AIR 1963 SC 1811.

(2) As regards the submission made on behalf of the respondent No. 1 that as the Notification u/s 73 of the R.P. Act, 1951 was issued by the

Election Commission of India on 18.5.2009, the 15th Lok Sabha stood duly constituted on the said date, the petitioner has made the following

submissions:

(a) It is only when the 15th Lok Sabha became functional that the appointment of the Prime Minister and his Council of Ministers could be made.

(b) The deeming provision contained in Section 73 of the R.P. Act, 1951 would not entitle the President to appoint the Prime Minister and his

Council of Ministers without waiting for the newly elected persons to take oath as member of the House of the People. It is only after the elected

representatives take oath as members of the House of the People (Lok Sabha) under Article 99 of the Constitution of India that the House is duly

constituted. It is only thereafter that the President may appoint the Prime Minister and his Council of Ministers.

(c) The Notification dated 18.5.2009 is not as per law, and the same was issued without following the requirements of Section 73 of the R.P. Act,

1951. Therefore, the swearing in of the respondent No. 2 as the Prime Minister on 22.5.2009 was premature, and was violative of Section 73 of

the R.P. Act, 1951 as well as Articles 99 and 75(3) of the Constitution of India.

(d) The reliefs regarding vires of the 1st proviso to Sub-section (1) of Section 33 of the R.P. Act, 1951 cannot be bypassed by the Court, and the

notice to the Attorney General is required to be issued. Reliance in this regard is placed on the decision in AIR 1941 16 (Federal Court)

18. We have considered the submissions made by the petitioner and the learned Assistant Solicitor General of India appearing for the respondent

No. 1.

19. Before proceeding to consider the submissions made by the petitioner and the Assistant Solicitor General of India on merits, it is necessary to

refer to various RELEVANT PROVISIONS of the Constitution of India as well as the R.P. Act, 1951.

20. Articles 74, 75, 83, 85, 87, 93, 94, 99, 100, 326 and 327 of the Constitution of India are as follows:

74. Council of Ministers to aid and advise President.--(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and

advise the President who shall, in the exercise of his functions, act in accordance with such advice: Provided that the President may require the

Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered

after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

75. Other provisions as to Ministers.--(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the

President on the advice of the Prime Minister.

(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of

members of the House of the People.

(1B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under

paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under Clause (1) for duration of the period commencing

from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to

either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out

for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period

cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so

determines, shall be as specified in the Second Schedule.

83. Duration of Houses of Parliament.--(1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the

members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by

Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and

the expiration of the said period of five years shall operate as a dissolution of the House: Provided that the said period may, while a Proclamation

of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case

beyond a period of six months after the Proclamation has ceased to operate.

85. Sessions of Parliament, prorogation and dissolution.--(1) The President shall from time to time summon each House of Parliament to meet at

such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting

in the next session.

(2) The President may from time to time--

(a) prorogue the Houses or either House;

(b) dissolve the House of the People.

87. Special address by the President.--(1) At the commencement of the first session after each general election to the House of the People and at

the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform

Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to

in such address.

93. The Speaker and Deputy Speaker of the House of the People.-- The House of the People shall, as soon as may be, choose two members of

the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the

House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

94. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.--A member holding office as Speaker or Deputy

Speaker of the House of the People--

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the

Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House:

Provided that no resolution for the purpose of Clause (c) shall be moved unless at least fourteen days'' notice has been given of the intention to

move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first

meeting of the House of the People after the dissolution.

99. Oath or affirmation by members.--Every member of either House of Parliament shall, before taking his seat, make and subscribe before the

President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third

Schedule.

100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.--(1)Save as otherwise provided in this Constitution, all

questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting,

other than the Speaker or person acting as Chairman or Speaker. The Chairman or Speaker, or person acting as such, shall not vote in the first

instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament

shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part

in the proceedings.

(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total

number of members of the House.

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either

to adjourn the House or to suspend the meeting until there is a quorum.

326. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.-The elections to the

House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a

citizen of India and who is not less than [eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the

appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of

non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

327. Power of Parliament to make provision with respect to elections to Legislatures.-Subject to the provisions of this Constitution, Parliament

may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament

or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all

other matters necessary for securing the due constitution of such House or Houses.

21. Sections 14, 33 and 73 of the Representation of the People Act, 1951 are as under:

14. Notification for general election to the House of the People.--

(1) A general election shall be held for the purpose of constituting a new House of the People on the expiration of the duration of the existing

House or on its dissolution.

(2) For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be

recommended by the Election Commission, call upon all parliamentary constituencies to elect members in accordance with the provisions of this

Act and of the rules and orders made there under: Provided that where a general election is held otherwise than on the dissolution of the existing

House of the People, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that House

would expire under the provisions of Clause (2) of article 83.

33. Presentation of nomination paper and requirements for a valid nomination.--

(1) On or before the date appointed under Clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of

eleven o''clock in the forenoon and three o''clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice

issued u/s 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

[Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election form a constituency

unless the nomination paper is subscribed by ten proposers being electors of the constituency: Provided further that no nomination paper shall be

delivered to the returning officer on a day which is a public holiday: Provided also that in the case of a local authorities'' constituency, graduates''

constituency or teachers'' constituency, the reference to ""an elector of the constituency as proposer"" shall be construed as a reference to ten per

cent. of the electors of the constituency or ten such electors, whichever is less, as proposers.]

[(1A) Notwithstanding anything contained in Sub-section (1), for election to the Legislative Assembly of Sikkim (deemed to be the Legislative

Assembly of that State duly constituted under the Constitution), the nomination paper to be delivered to the returning officer shall be in such form

and manner as may be prescribed:

Provided that the said nomination paper shall be subscribed by the candidate as assenting to the nomination, and--

(a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, also by at least twenty electors of the constituency as proposers and

twenty electors of the constituency as seconders;

(b) in the case of a seat reserved for Sanghas, also by at least twenty electors of the constituency as proposers and at least twenty electors of the

constituency as seconders;

(c) in the case of a seat reserved for Sikkimese of Nepali origin, by an elector of the constituency as proposer: Provided further that no nomination

paper shall be delivered to the returning officer on a day which is a public holiday.]

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination

paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or

tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

(3) Where the candidate is a person who, having held any office referred to in [section 9], has been dismissed and a period of five years has not

elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a

certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to

the State.

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate

and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

[Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer

or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in

regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll

or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such

as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing

error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the

electoral roll or in the nomination paper shall be overlooked.]

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a

certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning

officer at the time of scrutiny.

[(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for

election in the same constituency.]

[(7) Notwithstanding anything contained in Sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate

for election,--

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from

more than two Parliamentary constituencies;

(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies),

from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the

State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from

more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously,

from more than two such Assembly constituencies;

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling

more than two such seats;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held

simultaneously, from more than two such Council constituencies.

Explanation.-- For the purposes of this Sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification

calling such bye-elections are issued by the Election Commission u/s 147, Section 149, Section 150 or, as the case may be, Section 151 on the

same date.]

73. Publication of results of general elections to the House of the People and the State Legislative Assemblies.- Where a general election is held for

the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be notified by [the Election Commission] in

the Official Gazette, as soon as may be, after [the results of the elections in all the constituencies (other than those in which the poll could not be

taken for any reason on the date originally fixed under Clause (d) of Section 30 or for which the time for completion of the election has been

extended under the provisions of Section 153) have been declared by the returning officer under the provisions of Section 53 or, as the case may

be, Section 66, the names of the members elected for those constituencies][* * *] and upon the issue of such notification that House or Assembly

shall be deemed to be duly constituted:

Provided that the issue of such notification shall not be deemed--

[(a) to preclude--

(i) the taking of the poll and the completion of the election in any Parliamentary or Assembly constituency or constituencies in which the poll could

not be taken for any reason on the date originally fixed under Clause (d) of Section 30; or

(ii) the completion of the election in any Parliamentary or Assembly constituency or constituencies for which time has been extended under the

provisions of Section 153; or]

(b) to affect the duration of the House of the People or the State Legislative Assembly, if any, functioning immediately before the issue of the said

notification.

22. LET US NOW CONSIDER THE SUBMISSIONS MADE BY THE PETITIONER AND THE LEARNED ASSISTANT SOLICITOR

GENERAL OF INDIA.

(I) The first question to be considered is regarding maintainability of the Writ Petition at the instance of the petitioner.

As noted earlier, the main prayer in the writ petition is for issuance of writ of Quo Warranto against the respondent No. 2.

In order to appreciate the nature of writ of quo-warranto and the conditions to be satisfied for issuance of such writ, it is relevant to refer to the

decision of the Supreme Court in the The University of Mysore and Another Vs. C.D. Govinda Rao and Another, Their lordships of the Supreme

Court held as under (paragraph 7 of the said AIR):

7. As Halsbury has observed*:

* Halsbury''s Laws of England, 3rd Ed. Vol., II, P. 145

An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or

usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be

determined."" Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public

office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that

the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo

warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against

the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen

that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public

office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the

connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly

invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of

quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that

necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

This decision thus lays down that a citizen can claim a writ of quo warranto provided he satisfies the Court that the office in question is a public

office and is held by usurper without legal authority. This necessity leads to the enquiry as to whether the appointment of the said alleged usurper

has been made in accordance with law or not.

In the present case, the petitioner is a citizen of India and he can apply for issuance of writ of quo-warranto to challenge the appointment to a

public office. Office of the Prime Minister is a public office, and the petitioner as a citizen of India may apply for issuance of writ of quo-warranto.

Prima-facie there is nothing on record to show that the petitioner has been set-up by someone else or he is acting out of malice or ill-will. Thus, the

present writ petition seeking issuance of writ of quo-warranto at the instance of the petitioner cannot be said to be not maintainable.

Reference in this regard may be made to the following decisions:

(i) In B.R. Kapoor v. State of Tamilnadu and Anr. : (2001) 7 SCC 231 (supra), the appointment of the second respondent (Ms J. Jayalalitha) as

the Chief Minister of the State of Tamilnadu on 14.5.2001 was challenged on the ground that the second respondent could not in law have been

sworn in as the Chief Minister and could not continue to function as such. Directions in the nature of quo-warranto were sought against the second

respondent.

Their Lordships of the Supreme Court held (see paragraphs 54,59,70 and 79 of the said SCC) that in case the Court came to the conclusion that

the second respondent was disqualified under the Constitution of India to hold public office of the Chief Minister, and her appointment as the Chief

Minister was in violation of the constitutional provisions, the writ of quo-warranto could be issued. Having considered the validity of the

appointment of the second respondent as the Chief Minister of the State of Tamilnadu in the light of various provisions of the Constitution of India,

their Lordships concluded that the appointment of the second respondent as the Chief Minister of the State of Tamilnadu on 14.5.2001 was not

legal and valid, and she could not continue to function as such. The appointment of the second respondent as the Chief Minister of the State of

Tamilnadu was accordingly quashed and set-aside.

(ii) In U.N.A. Rao Vs. Smt. Indira Gandhi, a writ petition was filed by U.N.R. Rao before the Madras High Court praying for issuance of writ of

quo- warranto to the respondent, Smt. Indira Gandhi and for declaration that the respondent had no constitutional authority to hold the Office of

and to function as the Prime Minister of India. The writ petition was dismissed by the Madras High Court whereupon the said U.N.R. Rao filed an

Appeal before the Supreme Court. Their Lordships of the Supreme Court considered the Appeal on merits and dismissed the same. The question

of maintainability of writ of quo-warranto at the instance of U.N.R. Rao against the respondent, Smt. Indira Gandhi was not raised before the

Supreme Court. Therefore, no opinion was expressed by their Lordships of the Supreme Court on the said question, and the case was decided on

merits.

(iii) In S.R. Chaudhuri Vs. State of Punjab and Others, the appellant filed a petition seeking writ of quo-warranto against respondent No. 2, who

had been re-appointed as a Minister of the State of Punjab even though he had remained the Minister for a period of six months and had not been

elected as a member of the Legislature of the State of Punjab till the date of his re-appointment as Minister.

The writ petition was dismissed by the High Court whereupon the Appeal was filed before the Supreme Court. The Supreme Court allowed the

Appeal, and held (see paragraphs 1,44 and 45 of the said AIR) that the re-appointment of the respondent No. 2 as Minister in the State of Punjab

was invalid and unconstitutional.

The above decisions thus support the conclusion that the petitioner may apply for issuance of writ of quo-warranto to challenge the appointment of

the respondent No. 2 as the Prime Minister.

Before closing discussion on the question of maintainability of the writ petition, it is relevant to refer to another decision of the Supreme Court.

In B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees'' Association and Others, their Lordships of the

Supreme Court held as under : (paragraph 81 of the said AIR):

81. In our opinion, the finding of legal mala fides is unsustainable being based on a misunderstanding of the law and facts. When a competent and

experienced officer of an outstanding merit is appointed to a higher post on contract basis after his superannuation from service in larger public

interest does not suffer from legal malice at all. The decision of the then Chief Minister, Shri S.M. Krishna, recorded in the file which is also

extracted by the High Court at page 69 of SLP Paper Book, Vol. II. In the context of the note put up by the Secretary of the Department, it is

again extracted at pages 67 and 68 which clearly bring out the fact that the appointment was made in the interest of the Board and the State at a

time when nobody else other than the appellant could have served the interests of the State better. The High Court failed to appreciate the element

of urgency involved in making the appointment because of impending negotiations with the World Bank scheduled for 9.2.2004. The writ petition,

in our opinion, was motivated as respondent No. 1 had lodged a false complaint to the Lokayukta against the appellant which was found to be

baseless by the Lokayukta (Annexure P-9). A petition praying for a Writ of Quo Warranto being in the nature of public interest litigation, it is not

maintainable at the instance of a person who is not unbiased. The second respondent is the President of the first respondent-Union. He has chosen

this forum to settle personal scores against his erstwhile superior officer after his retirement. The proceedings, in our view, is not meant to settle

personal scores by an employee of the department. The High Court, in our view, ought to have dismissed the writ petition filed by respondent No.

1 at the threshold.

This decision, thus, lays down that a writ of quo-warranto being in the nature of Public Interest Litigation, is not maintainable at the instance of a

person who is not unbiased. Such proceedings are not meant to settle personal scores by an employee of the department. The writ petition would

not be maintainable if the same was motivated for settling personal scores.

In the present case, prima-facie, there is nothing on record to show that the petitioner has filed the present writ petition on account of any bias or in

order to settle any personal scores. Therefore, the present writ petition at the instance of the petitioner cannot be said to be not maintainable.

(II) Now, question to be considered is as to whether necessary pleadings have been made by the petitioner in the writ petition.

A perusal of the writ petition shows that the petitioner has not pleaded various details and dates relevant for raising the submissions made by him.

Neither copy of the Notification dated 18.5.2009 issued by the Election Commission of India u/s 73 of the R.P. Act, 1951 was filed alongwith the

writ petition nor was the date of the said Notification mentioned in the writ petition. Even though in his submissions the petitioner alleged that the

14th Lok Sabha was dissolved on 19.5.2009, no such averment in the writ petition has been brought to our notice. There is no mention in the writ

petition of the date on which the oath was administered to the newly elected members of the Lok Sabha even though the petitioner has sought to

make submissions regarding the appointment of the respondent No. 2 as the Prime Minister prior to the newly elected members of the Lok Sabha

having taken oath. There is no mention in the writ petition as to the date on which the first Session of the Lok Sabha was summoned after the

General Election. The petitioner having failed to give the relevant details and dates for laying factual foundation for making his submissions, the writ

petition is liable to be dismissed on the said ground.

However, as the learned Assistant Solicitor General of India has brought the said dates and details on record in his written submissions, we are

proceeding to consider the submissions of the petitioner regarding validity of the appointment of the respondent No. 2 as the Prime Minister on

merits. Relevant dates and details, as mentioned in the Written Submissions filed on behalf of the respondent No. 1, are as under:

15.6.2007 : The respondent No. 2 was elected as the member of the Council of States (i.e., Rajya Sabha). Copy of the Notification issued by the

Election Commission of India has been filed as Annexure-2 to the Written Submissions.

2.4.2009 : The Election Commission of India issued Notification for holding General Elections, 2009 for constituting 15th Lok Sabha. Copy of the

Notification has been filed as Annexure-2 to the Written Submissions.

18.5.2009 : The President issued order/ proclamation in exercise of power conferred under Sub-clause (b) of Clause (2) of Article 85 of the

Constitution of India dissolving the 14th Lok Sabha. (Had the 14th Lok Sabha been not dissolved, the normal term of the 14th Lok Sabha would

have expired on 1.6.2009 as per Article 83(2) of the Constitution of India). Copy of the said order/ Notification has been filed as Annexure-3 to

the Written Submissions.

18.5.2009 : Thereafter the Election Commission of India issued Notification in pursuance of the provisions of Section 73 of the R.P. Act, 1951

notifying the names of the members elected in respect of various constituencies as per the Schedule enclosed to the said Notification. Copies of the

said Notification and the Schedule thereto have been filed as Annexures - 4 and 5 to the Written Submissions.

22.5.2009 : The respondent No. 2 was sworn in as the Prime Minister alongwith 19 Cabinet Ministers by the President. Copy of the Notification

dated 22.5.2009 issued by the Cabinet Secretary has been filed as Annexure-6 to the Written Submissions.

Let us now consider the submissions made by the petitioner regarding validity of appointment of the respondent No. 2 as the Prime Minister on

22.5.2009:

(1) In Samsher Singh Vs. State of Punjab and Another, it has been laid down (see paragraphs 27,28,99, 138 & 149 of the said SCC) that our

Constitution embodies generally the parliamentary or cabinet system of Government of the British model. Under this system, the President is the

constitutional or formal head of the Union and he exercises his powers and functions conferred on him by or under the Constitution on the aid and

advice of his Council of Ministers.

In U.N.A. Rao Vs. Smt. Indira Gandhi, it was laid down as follows (paragraph 10 of the said AIR):

10. Now comes the crucial clause three of Article 75. The appellant urges that the House of People having been dissolved this clause cannot be

complied with. According to him it follows from the provisions of this clause that it was contemplated that on the dissolution of the House of

People the Prime Minister and the other ministers must resign or be dismissed by the President and the President must carry on the Government as

best as he can with the aid of the Services. As we have shown above, Article 74(1) is mandatory and, therefore, the President cannot exercise the

executive power without the aid and advice of the Council of Ministers. We must then harmonise the provisions of Article 75(3) with Article 74(1)

and Article 75(2). Article 75(3) brings into existence what is usually called ""Responsible Government"". In other words the Council of Ministers

must enjoy the confidence of the House of People. While the House of People is not dissolved under Article 85(2)(b), Article 75(3) has full

operation. But when it is dissolved the Council of Ministers cannot naturally enjoy the confidence of the House of People. Nobody has said that

the Council of Ministers does not enjoy the confidence of the House of People when it is prorogued. In the context, therefore, this clause must be

read as meaning that Art 75(3) only applies when the House of People does not stand dissolved or prorogued. We are not concerned with the

case where dissolution of the House of People takes place under Article 83(2) on the expiration of the period of five years prescribed therein, for

Parliament has provided for that contingency in Section 14 of the Representation of the People Act, 1951.

23. Thus, in U.N.R. Rao case, it has been laid down that Article 74(1) is mandatory and, therefore, the President cannot exercise the executive

power without the aid and advice of the Council of Ministers. Hence, there must be a Council of Ministers with the Prime Minister as its head in

existence every moment to aid and advice the President of India in view of Clause (1) of Article 74 of the Constitution of India. The requirement of

collective responsibility as contained in Clause (3) of Article 75 of the Constitution of India remains operational when the Lok Sabha is in Session.

In case, the Lok Sabha has been prorogued under Sub-clause (a) of Clause (2) of Article 85 of the Constitution of India or dissolved by the

President of India under Sub-clause (b) of Clause (2) of the said Article, then there is no occasion for showing the fulfilment of the requirement of

Clause (3) of Article 75 of the Constitution of India. Hence, after the General Election, the occasion to show the fulfilment of the requirement of

collective responsibility by the newly appointed Prime Minister and his Council of Minsters as contemplated in Clause (3) of Article 75 of the

Constitution of India will arise when the session of the Lok Sabha is summoned by the President of India under Clause (1) of Article 85 of the

Constitution of India. Therefore, the appointment of the Prime Minister and his Council of Ministers after the General Election cannot be deferred

till the new Lok Sabha becomes functional as contended by the petitioner. Notification u/s 73 of the R.P. Act, 1951 was issued on 18.5.2009, and

thus, the 15th Lok Sabha would be deemed to be duly constituted on 18.5.2009. The respondent No. 2 was sworn in as the Prime Minister on

22.5.2009. Thus, the swearing in of the respondent No. 2 as the Prime Minister took place after the 15th Lok Sabha had been duly constituted on

18.5.2009. Thus, the submission made by the petitioner that the respondent No. 2 was appointed as the Prime Minister during the period when no

Lok Sabha was in existence, is not correct.

(2) The further submission made by the petitioner that the appointment of the respondent No. 2 as the Prime Minister and the appointment of his

Council of Ministers could be made only after the 15th Lok Sabha became functional, in our view, cannot be accepted. Once the 15th Lok Sabha

stood duly constituted on 18.5.2009, the President of India was required to appoint the Prime Minister under Clause (1) of Article 75 of the

Constitution of India after being satisfied as to which party or coalition of parties enjoyed majority, and who was the leader of such party or

coalition. On the advice of the person appointed as the Prime Minister, the President of India was required to appoint the other Ministers under

Clause (1) of Article 75 of the Constitution of India. This exercise of the appointment of the Prime Minister and the other Ministers could not wait

till 15th Lok Sabha became functional. This is evident from the following:

(a) In view of Clause (5) of Article 75 of the Constitution of India, a person can be a Minister for any period of six consecutive months without

being a member of either House of Parliament.

Certain judicial decisions may be referred to in this regard:

(i) In Har Sharan Varma Vs. Chandra Bhan Gupta and Others, this Court has laid down (see paragraph 5 of the said AIR) that the word

''Minister'' occurring in Clause (4) of Article 164 of the Constitution of India includes the Chief Minister, and as such, a Chief Minister like any

other Minister can hold Office for six months without being a member of the legislature.

(ii) In Har Sharan Verma Vs. Shri Tribhuvan Narain Singh, Chief Minister, U.P. and Another, it has been laid down (see paragraphs 2,3,4,5,6 & 7

of the said AIR) that in view of Clause (4) of Article 164 of the Constitution of India, the appointment of a person as Chief Minister could not be

challenged on the ground that he was not a member of either House of Legislature of the State at the time of his appointment.

(iii) In Har Sharan Varma Vs. Union of India (UOI) and Others, , this Court has laid down (see paragraphs 2 and 3 of the said AIR) that in view

of Article 75(5) of the Constitution of India, a person, who is not a member of one of the Houses of Parliament, may be appointed as a Minister in

the Council of Ministers, and such appointment would cease on the expiry of six months unless before the expiry of the said period, such person

becomes a member of one of the Houses of the Parliament.

(iv) In Dr. Janak Raj Jai v. H.D. Deve Gowda, (1997) 10 SCC 462 it has been held (see paragraphs 2,3 & 5 of the said SCC) that our

Constitution permits a non-member to be appointed a Chief Minister or a Prime Minister for a short duration of six months. Reliance has been

placed on the decision of the Supreme Court in S.P. Anand Vs. H.D. Deve Gowda and others,

(v) In S.R. Chaudhuri Vs. State of Punjab and Others, their Lordships of the Supreme Court have laid down (see paragraph 18 of the said AIR)

that the absence of the expression "from amongst members of the legislature" in Article 164(1) of the Constitution of India is indicative of the

position that whereas under that provision a non-legislator can be appointed as a Chief Minister or a Minister but that appointment would be

governed by Article 164(4), which places a restriction on such a non-member to continue as a Minister or the Chief Minister, as the case may be,

unless he can get himself elected to the legislature within the period of six consecutive months from the date of his appointment.

The above decisions, thus, show that in view of Clause (5) of Article 75 of the Constitution of India, a person can be appointed a Minister or the

Prime Minister, as the case may be, for a period of six months without being a member of either House of Parliament. Therefore, it follows that

being a member of the Lok Sabha or taking oath as member of the Lok Sabha after being elected, is not a pre-condition for the appointment as

the Prime Minister or as a Minister. Hence, the submission made by the petitioner that the appointment of the respondent No. 2 as the Prime

Minister could be made only after the 15th Lok Sabha became functional, is evidently not correct.

(b) Clause (1) of Article 87 of the Constitution of India, interalia, provides that at the commencement of the first Session after each General

Election to the House of the People, the President of India shall address both Houses of Parliament assembled together and inform Parliament of

the causes of its summons. This clearly implies that the appointment of the Council of Ministers with the Prime Minister as its head after the General

Election must precede the first Session of the House of the People after the General Election.

(3) In the Written Submission submitted by the petitioner, reliance has been placed on the Constituent Assembly Debates, Book No. 3, Volume-

VIII, page 130-133 in regard to Article 81 of the Draft Constitution, now Article 99 of the Constitution of India. It is submitted by the petitioner

that in view of the contents of the said Debates, it is evident that taking up of the oath by the newly elected members is a part and parcel of

constituting the House of the People. Therefore, so long as the oath is not administered to the newly elected members, the House cannot be said to

have been duly constituted.

We have considered the submissions made by the petitioner.

Article 99 of the Constitution of India provides that every member of either House of Parliament shall, before taking his seat, make and subscribe

before the President, or some person appointed in that behalf by him, a oath or affirmation according to the form set-out for the purpose in the

Third Schedule to the Constitution of India. Thus, after the election to the Lok Sabha, every newly elected member is required to make and

subscribe oath or affirmation before such newly elected member can take his seat in the Lok Sabha. Such oath or affirmation is to be made and

subscribed before the President or some person appointed in that behalf by him. Normally, after the General Elections, the President appoints one

person from amongst the senior and leading members of the Lok Sabha as Pro-tem Speaker who administers oath to the newly elected members.

Article 75 of the Constitution of India, which precedes Article 99, deals with the formation of the Council of Ministers. Clause (1) of Article 75

provides that the Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of

the Prime Minister. There is, thus, no requirement that the Prime Minister or other Ministers must be members of either House of Parliament.

Clause (5) of Article 75, in fact, permits a person to continue as Minister for a period of six consecutive months without being a member of either

House of Parliament.

It will, thus, be seen that the appointment of the Prime Minister and the other Ministers is not dependent on the constitution of Lok Sabha after the

General Elections.

Article 327 of the Constitution of India provides that subject to the provisions of the Constitution, Parliament may, from time to time, by law make

provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of

the legislature of a State including the preparation of Electoral Rolls, the de-limitation of constituencies and all other matters necessary for securing

the due constitution of such House or Houses. In exercise of the power conferred by Article 327, the Parliament has enacted the R.P. Act, 1950

and the R.P. Act, 1951.

Section 73 of the R.P. Act, 1951 lays down as under:

73. Publication of results of general elections to the House of the People and the State Legislative Assemblies .--

Where a general election is held for the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be

notified by [the Election Commission] in the Official Gazette, as soon as may be, after [the results of the elections in all the constituencies (other

than those in which the poll could not be taken for any reason on the date originally fixed under Clause (d) of Section 30 or for which the time for

completion of the election has been extended under the provisions of Section 153) have been declared by the returning officer under the provisions

of Section 53 or, as the case may be, Section 66, the names of the members elected for those constituencies][* * *] and upon the issue of such

notification that House or Assembly shall be deemed to be duly constituted:

Provided that the issue of such notification shall not be deemed--

[(a) to preclude--

(i) the taking of the poll and the completion of the election in any Parliamentary or Assembly constituency or constituencies in which the poll could

not be taken for any reason on the date originally fixed under Clause (d) of Section 30; or

(ii) the completion of the election in any Parliamentary or Assembly constituency or constituencies for which time has been extended under the

provisions of Section 153; or]

(b) to affect the duration of the House of the People or the State Legislative Assembly, if any, functioning immediately before the issue of the said

notification.

24. In view of the provisions of Section 73 of the R.P. Act, 1951, it is evident that upon issuance of Notification u/s 73, the House of the People

(Lok Sabha) shall be deemed to be duly constituted. Such Notification, as noted above, was issued on 18.5.2009.

25. It is noteworthy that Section 73 of the R.P. Act, 1951 has been enacted by the Parliament in exercise of its power under Article 327 of the

Constitution of India. There is nothing in Article 99 or any other provision of the Constitution of India laying down any specific date when the Lok

Sabha would be deemed to be duly constituted. Article 99 of the Constitution of India deals with the making and subscribing oath or affirmation by

the newly elected members before taking their seats in the Lok Sabha. The occasion for making and subscribing oath or affirmation or for taking

seat in the Lok Sabha would arise only when the Lok Sabha has already been duly constituted. There is nothing in Article 99 to suggest that the

Lok Sabha is not duly constituted unless the Oath is taken by the newly elected members as contended by the petitioner.

26. In this regard, it is pertinent to refer to the decision of the Supreme Court in Rameshwar Prasad and Others Vs. Union of India (UOI) and

Another,

27. Examining the scope of Section 73 of the R.P. Act, 1951, their Lordships of the Supreme Court held as under (paragraphs 30 to 39 of the

said AIR):

30. The aforesaid constitutional provision stipulates that five years term of a Legislative Assembly shall be reckoned from the date appointed for its

first meeting and on the expiry of five years commencing from the date of the first meeting, the Assembly automatically stands dissolved by efflux of

time. The duration of the Legislative Assembly beyond five years is impermissible in view of the mandate of the aforesaid provision that the

Legislative Assembly shall continue for five years and "no longer". Relying upon these provisions, it is contended that the due constitution of the

Legislative Assembly can only be after its first meeting when the members subscribe oath or affirmation under Article 188. The statutory deemed

constitution of the Assembly u/s 73 of the R.P. Act, 1951, according to the petitioners, has no relevance for determining due constitution of

Legislative Assembly for the purpose of Constitution of India.

31. Reference on behalf of the petitioners has also been made to law existing prior to the enforcement of the Constitution of India contemplating

the commencement of the Council of State and Legislative Assembly from the date of its first meeting. It was pointed out that Section 63(d) in the

Government of India Act, 1915 which dealt with Indian Legislature provided that every Council of State shall continue for five years and every

Legislative Assembly for three years from the date of its first meeting. Likewise, Section 72(b) provided that every Governor"s Legislative Council

shall continue for three years from its first meeting. The Government of India Act, 1919, repealing 1915 Act, provided in Section 8(1) that every

Governor"s Legislative Council shall continue for three years from its first meeting and in Section 21 provided that every Council of State shall

continue for five years and every Legislative Assembly for three years from its first meeting. Likewise, the Government of India Act, 1935

repealing 1919 Act, had provision identical to Article 172 of the Constitution.

32. Section 73 of the R.P. Act 1951, in so far as relevant for our purposes, is as under:

73. Publication of results of general elections to the House of the People and the State Legislative Assemblies.- Where a general election is held for

the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be notified by (the Election Commission) in

the Official Gazette, as soon as may be after (the results of the elections in all the constituencies) (other than those in which the poll could not be

taken for any reason on the date originally fixed under Clause (d) of Section 30 or for which the time for completion of the election has been

extended under the provisions of Section 153) have been declared by the returning officer under the provisions of Section 53 or, as the case may

be Section 66, the names of the members elected for those constituencies and upon the issue of such notification that House or Assembly shall be

deemed to be duly constituted.

33. In the present case, Notification u/s 73 of the RP Act, 1951 was issued on 4th March, 2005. The deemed constitution of the Legislative

Assembly took place u/s 73 on the issue of the said notification. The question is whether this deemed constitution of Legislative Assembly is only

for the purpose of the RP Act, 1951 and not for the constitutional provisions so as to invoke power of dissolution under Article 174(2)(b). The

stand of the Government is that in view of aforesaid legal fiction, the constitution of the Legislative Assembly takes place for all purposes and, thus,

the Legislative Assembly is deemed to have been ''duly constituted'' on 4th March, 2005 and, therefore, the Governor could exercise the power of

dissolution under Article 174(2)(b).

34. Section 73 of the RP Act, 1951 enjoins upon the Election Commission to issue notification after declaration of results of the elections in all the

constituencies. The superintendence, direction and control of elections to Parliament and to the Legislature of every State vests in Election

Commission under Article 324 of the Constitution. Article 327 provides that Parliament may make provision with respect to all matters relating to,

or in connection with, elections to the Legislative Assembly of a State and all other matters necessary for securing the ''due constitution'' of the

House of the Legislature. Article 329 bars the interference by courts in electoral matters except by an election petition presented to such authority

and in such manner as may be provided for by or under any law made by the appropriate Legislature. Article 327 read with Section 73 of the RP

Act, 1951 provide for as to when the House or Assembly shall be ''duly constituted''. No provision, constitutional or statutory, stipulates that the

''due constitution'' is only for the purposes of Articles 324, 327 and 329 and not for the purpose of enabling the Governor to exercise power under

Article 174(2)(b) of the Constitution. In so far as the argument based on Article 172 is concerned, it seems clear that the due constitution of the

Legislative Assembly is different than its duration which is five years - to be computed from the date appointed for its first meeting and no longer.

There is no restriction under Article 174(2)(b) stipulating that the power to dissolve the Legislative Assembly can be exercised only after its first

meeting. Clause (b) of proviso to Section 73 of the RP Act, 1951 also does not limit the deemed constitution of the Assembly for only specific

purpose of the said Act or Articles 324, 327 and 329 of the Constitution. The said clause provides that the issue of notification u/s 73 shall not be

deemed to affect the duration of the State Legislative Assembly, if any, functioning immediately before the issue of the said notification. In fact,

Clause (b) further fortifies the conclusion that the duration of the Legislative Assembly is different than the due constitution thereof. In the present

case, we are not concerned with the question of duration of the Assembly but with the question whether the Assembly had been duly constituted or

not so as to enable the Governor to exercise the power of dissolution under Article 174(2)(b). The Constitution of India does not postulate one

''due constitution'' for the purposes of elections under Part XV and another for the purposes of the executive and the State Legislature under

Chapters II and III of Part VI. The aforenoted provisions existing prior to the enforcement of Constitution of India are also of no relevance for

determining the effect of deemed constitution of Assembly u/s 73 of the RP Act, 1951 to exercise power of dissolution under Article 274(2)(b).

35. In K.K. Aboo Vs. Union of India (UOI) and Others, a learned Single Judge of the High Court rightly came to the conclusion that neither

Article 172 nor Article 174 prescribe that dissolution of a State Legislature can only be after commencement of its term or after the date fixed for

its first meeting. Once the Assembly is constituted, it becomes capable of dissolution. This decision has been referred to by one of us (Arijit

Pasayat, J.) in Special Reference No. 1 of 2002 (popularly known as Gujarat Assembly Election matter) Ref. by President, No provision of the

Constitution stipulates that the dissolution can only be after the first meeting of the State Legislature.

36. The acceptance of the contention of the petitioners can also lead to a breakdown of the Constitution. In a given case, none may come forth to

stake claim to form the Government, for want of requisite strength to provide a stable Government. If petitioners'' contention is accepted, in such

an eventuality, the Governor will neither be able to appoint Executive Government nor would he be able to exercise power of dissolution under

Article 174(2)(b). The Constitution does not postulate a live Assembly without the Executive Government.

37. On behalf of the petitioners, reliance has, however, been placed upon a decision of a Division Bench of Allahabad High Court in the case of

Udai Narain Sinha Vs. State of Uttar Pradesh and Others, Disagreeing with the Kerala High Court, it was held that in the absence of the

appointment of a date for the first meeting of the Assembly in accordance with Article 172(1), its life did not commence for the purposes of that

article, even though it might have been constituted by virtue of notification u/s 73 of the RP Act, 1951 so as to entitle the Governor to dissolve it by

exercising power under Article 174(2). It was held by the Division Bench that Section 73 of the RP Act, 1951 only created a fiction for limited

purpose for paving the way for the Governor to appoint a date for first meeting of either House or the Assembly so as to enable them to function

after being summoned to meet under Article 174 of the Constitution. We are unable to read any such limitation. In our view, the Assembly, for all

intents and purposes, is deemed to be duly constituted on issue of notification u/s 73 and the duration thereof is distinct from its due constitution.

The interpretation which may lead to a situation of constitutional breakdown deserves to be avoided, unless the provisions are so clear as not to

call for any other interpretation. This case does not fall in the later category.

38. In Gujarat Assembly Election Matter, 2002 AIR SCW 4492, the issue before the Constitution Bench was whether six months" period

contemplated by Article 174(1) applies to a dissolved Legislative Assembly. While dealing with that question and holding that the said provision

applies only to subsisting Legislative Assembly and not to a dissolved Legislative Assembly, it was held that the constitution of any Assembly can

only be u/s 73 of the RP Act, 1951 and the requirement of Article 188 of Constitution suggests that the Assembly comes into existence even

before its first sitting commences.

39. In view of the above, the first point is answered against the petitioners.

28. This decision, thus, supports the conclusion drawn above regarding the effect of Notification u/s 73 of the R.P. Act, 1951, namely, that the

House shall be deemed to be duly constituted upon issuance of Notification u/s 73 of the R.P. Act, 1951, and the House comes into existence

even before its first sitting commences.

29. As regards, the Constituent Assembly Debates, relied upon by the petitioner, the said debates, when read in entirety, do not support the

submissions made by the petitioner. Relevant portions of the said Debates are as under:

The Honourable Dr. B.R. Ambedkar : Sir, I am sorry to say that I cannot accept the amendment moved by my Friend Professor Shah. I think

Prof. Shah has really misunderstood the sequence of events, if I may say so, in the life of a candidate who has been elected until the time that he

becomes a member of the House. If Prof. Shah were to refer to article 81 and also note the heading ""Disqualifications of Members"" the first thing

he will realise is that merely because a candidate has been elected to Parliament, does not entitle him to become a member of Parliament. There

are certain, what I may call, ceremonies that have to be gone through before a duly elected candidate can be said to have become a Member of

Parliament. One such thing which he has to undergo is the taking of the oath. He must first take the oath before he can take his seat in the House.

Unless and until he takes the oath he is not a member and so long as he is not a member he is not entitled to take a seat in the House. That is the

provision. Unless candidates take their oath and take their seats they do not become members and they do not become entitled to elect the

Speaker. That is the sequence of events,- election, taking of the oath, becoming a member and then becoming entitled to the election of the

Speaker. Therefore, the election of the Speaker must be preceded by the taking of the oath....

The Honourable Dr. B.R. Ambedkar : I think there is nothing wrong or derogatory, for the simple reason that the constitution of the House, its

making up, the legal form of the House is a matter which is outside the purview of the Speaker. The Speaker is in charge of the affairs of the

Parliament when the Parliament is constituted and the Parliament is not constituted unless the oath is taken by the members. Therefore the taking up

of the oath is really a part and parcel of constituting the House in accordance with the provision and so far as that is concerned I think that authority

does not belong to the Speaker and need not belong to the Speaker.

30. The above-quoted portions of the Debates show that the same dealt with the procedure to be followed for administering oath to the newly

elected members and for election of the Speaker etc.. The above-quoted portions did not consider the appointment of the Prime Minister and his

Council of Ministers. The sentence occurring in the above-quoted portions, namely, "the Parliament is not constituted unless the oath is taken by

the members" is to be read in the context in which it occurs in the above-quoted portions.

(4) Before closing discussion on the question of validity of appointment of the respondent No. 2 as the Prime Minister, it will be relevant to refer to

a decision of a Division Bench of the Delhi High Court in Dinesh Chandra Pande v. Chaudhary Charan Singh AIR 1980 Delhi 114. This decision

lays down as under (paragraphs 10, 11, 12 and 26 of the said AIR):

10. The scheme of the Government under the Constitution is its division into three parts, namely the executive, the legislature and the judiciary. It is

not without significance that the constitution of the executive and its powers precedes the constitution of the legislature and their powers. The

reason is that the President heading the executive is elected for a certain term of years. The Parliamentary executive, namely the Council of

Ministers, also has a life which may be longer than the life of any particular Lok Sabha. This is why Article 74 says that there shall be a Council of

Ministers to aid and advise the President. That President and the Council of Ministers precede in time the legislature in the process of Government

is shown by the order in which the clauses of Article 75 are arranged. Under Clause (1) the Prime Minister is appointed by the President first and

the other Ministers subsequently on the advice of the Prime Minister. The Council of Ministers thus comes into being to aid and advise the

President. The Government is thus constituted. Under Clause (2) the Ministers shall hold office during the pleasure of the President. This only

shows that the President is elected for a fixed term and theoretically has the power to dismiss a Minister. But this power would be exercised by the

President only in the context of the other clauses of Article 75.

Under Clause (3) the Council of Ministers shall be collectively responsible to the House of the People. This leads to the following conclusions.

Firstly, there has to be a Council of Ministers before it can become responsible to the House of the People. Thus the appointment of the Council of

Ministers has to precede the vote of confidence which they must win from the House or the vote of non-confidence which they must encounter in

the House. Secondly, the responsibility of the Lok Sabha is to ensure that the Council of Ministers will resign whenever the Lok Sabha expresses

lack of confidence in it. Otherwise the Council of Ministers will continue being only theoretically responsible to the Lok Sabha but not so in

practice. But it is only occasionally that such responsibility is tested by vote of confidence or no confidence. Under Clause (5) a Minister has to

become a member of either House of Parliament within six months of his appointment. This shows that the President can appoint a Minister not

only before he becomes responsible to the Lok Sabha but even before he is member of the Lok Sabha. This conclusively shows that the existence

of the Council of Ministers must precede in order of time the vote of confidence or no confidence in the Council of Ministers by the Lok Sabha.

11. In U.N.R. Rao v. Smt. Indira Gandhi 1971 (Suppl) SCR 46 the construction of Article 75(3) came up directly for consideration. The Supreme

Court did not indicate any difficulties in its way of regarding the case as justiciable by the court, but straightway went to decide the issues. The

question was whether the Council of Ministers can continue to exist after the dissolution of the Lok Sabha. The argument there was also the same

as was made before us, namely, that the Council of Ministers is responsible to the House of the People and must enjoy its confidence. After the

dissolution of the House, the Council of Ministers cannot seek the vote of confidence of the House. It was argued, therefore, that it must also go

out of office. This argument was rejected. Article 74 precedes Article 75. Under Article 74 there has to be a Council of Ministers to aid and

advise the President. Merely because the Lok Sabha has been dissolved is no reason why the country should be without a Government. Under

Article 75(2) the Minister holds office during the pleasure of the President. The President has not exercised his pleasure to say that the Ministers

shall not hold office.

In Thiru K.N. Rajgopal Vs. Thiru M. Karunanidhi and Others, the question again was raised whether the Tamil Nadu Ministry could continue in

office after the dissolution of the State Assembly. The Supreme Court followed its previous decision in U.N.R. Rao''s case and held that the

Ministry could continue in office without any constitutional objection. As pointed out above, the exercise of such pleasure itself is dependent on the

Council of Ministers enjoying the confidence of the House The contention of the petitioner that the confidence of the House should be secured

before the Ministers are appointed is contrary to the scheme of Articles 74 and 75. The petitioner is right that the Ministers are responsible to the

Lok Sabha and they must seek the confidence of the Lok Sabha, but the petitioner is not right that the confidence must be sought simultaneously

with the formation of the Government or the appointment of the Prime Minister or the other Ministers.

12. Constitutionally, the Government is a complex structure of many parts. As Justice Holmes observed long ago, ""great constitutional powers

must be administered with caution. Some place must be allowed for the joints of the machine"" Missouri Kansas and Tennesse Railroad v. May

(1903) 194 US 267. It is not only unreasonable but impossible to expect the Council of Ministers to seek the approval of the House immediately

on their appointment.

26. Mr. Latifi had sought to argue that summoning of the session of Lok Sabha should have been prior to or simultaneous to the appointment of

respondent No. 1 as Prime Minister. This is an impossible suggestion. Obviously a Prime Minister has to be appointed by the President before the

Lok Sabha is summoned in order that the Prime Minister may obtain a vote of confidence from the Lok Sabha.

31. This decision, thus, lays down that there has to be a Council of Ministers before it can become responsible to the House of the People. Thus,

the appointment of the Council of Ministers has to precede the vote of confidence which they must win from the House or the vote of no-

confidence which they must encounter in the House. A Prime Minister has to be appointed by the President before the Lok Sabha is summoned in

order that the Prime Minister may obtain a vote of confidence from the Lok Sabha.

32. This decision, thus, supports the conclusion that the appointment of the Prime Minister and his Council of Ministers must precede taking of the

oath by the newly elected members of the House of the People. There was, thus, no illegality in swearing in of the respondent No. 2 as the Prime

Minister on 22.5.2009 while the oath was administered to the newly elected members of the 15th Lok Sabha subsequently.

33. It is well settled that for issuance of writ of quo-warranto, it is necessary to show that the appointment in question is violative of constitutional

provisions or statutory provisions. Reference in this regard may be made to the following decisions:

(i) The University of Mysore and Another Vs. C.D. Govinda Rao and Another,

(ii) The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another,

(iii) High Court of Gujarat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors. AIR 2003 SC 1201 (paragraph 23) : (2003) 4 SCC 712.

(iv) B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees" Association and Others,

34. As discussed above, there is no violation of any constitutional or statutory provision in the appointment of the respondent No. 2 as the Prime

Minister. Therefore, no writ of quo-warranto can be issued in the present case.

(IV) As regards the vires of the first proviso to Sub-section (1) of Section 33 of the R.P. Act, 1951, we are of the opinion that the petitioner

cannot be permitted to raise the said question. The said question has no relevance so far as the validity of the appointment of the respondent No. 2

as the Prime Minister is concerned. While the petitioner may apply for issuance of writ of Quo-Warranto against the respondent No. 2 but the

petitioner cannot be permitted to raise the question of vires of a provision of the R.P. Act, 1951 which has no relevance for deciding the question

of validity of the appointment of the respondent No. 2 as the Prime Minister. Moreover, the petitioner was not one of the candidates in the election

for the 15th Lok Sabha, and he cannot be permitted to question the vires of the first proviso to Sub-section (1) of Section 33 of the R.P. Act,

1951. It is only a person aggrieved by action taken under a provision of law who may challenge the vires of such provision on the ground that the

same is violative of any constitutional provision. The vires of a provision cannot be permitted to be questioned as a mere academic exercise.

35. It is noteworthy that the first proviso to Sub-section (1) of Section 33 of the R.P. Act, 1951 provides that a candidate not set up by a

recognized political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by

ten proposers being electors of the constituency. The petitioner was not one of the candidates in the election for the 15th Lok Sabha. It is not the

case of the petitioner that he submitted any nomination paper for contesting the election for the 15th Lok Sabha from any constituency, and his

nomination paper was rejected on account of the first proviso to Sub-section (1) of Section 33 of the R.P. Act, 1951. In the circumstances, it is

not open to the petitioner to challenge the vires of the said proviso.

36. In view of the above, it is not necessary to examine the validity of the submission made by the petitioner that in case vires of a provision of law

are challenged on the ground of violation of the Fundamental Rights guaranteed under the Constitution of India, the writ petition cannot be

dismissed in limine.

37. There is one more aspect of the matter, as submitted on behalf of the Union of India (respondent No. 1).

38. The validity of the first proviso to Sub-section (1) of Section 33 of the R.P. Act, 1951 was challenged by the petitioner by filing a Writ Petition

being Writ Petition No. 5107 (M/B) of 1999. The said Writ Petition was dismissed by a Division Bench of this Court by the judgment dated

15.7.2004. Application for review of the said judgment dated 15.7.2004 was also rejected by the Division Bench of this Court by the order dated

15.12.2004. Copy of the said judgment dated 15.7.2004 has been filed as Annexure-1 to the written submissions filed on behalf of the respondent

No. 1. Copy of the said order dated 15.12.2004 has been filed as Annexure-1A to the written submissions filed on behalf of the respondent No.

1.

39. Union of India was one of the respondents in the said writ petition. In the circumstances, the petitioner cannot be permitted to again question

the vires of the said provision in the present writ petition.

40. We may reproduce below the relevant portions of the said judgment dated 15.7.2004 wherein the submissions made by the petitioner have

been dealt with:

...It stands well settled after the decisions of the Apex Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others,

G.N. Narayanswami v. G. Pannerslvan and Ors. (1973) 1 SCR 72 ; C. Narayanaswamy Vs. C.K. Jaffer Sharief and Others, People''s Union for

civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another, Jyoti Basu and Others Vs. Debi Ghosal and Others, that electoral rights

though fundamental to parliamentary democracy, are not fundamental rights under Part III of the Constitution and are only Statutory rights. We

think, nothing in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, on which great reliance is being placed by Shri Tripathi,

helps in showing that such rights are fundamental rights under our Constitution.

41. In so far as the grievance of the petitioners against the statutory involvement of the political parties in the context of election to the Parliament or

to the State Assemblies is concerned, we have three authoritative pronouncements of the Apex Court viz. Shri Sadiq Ali and Another Vs. The

Election Commission of India, New Delhi and Others, Hindustan Steelworks Construction Ltd. Vs. C. Rajasekhar Rao, and Rama Kant Pandey

Vs. Union of India, where need and importance of such political parties was highlighted. According to their Lordships, the debate on the floor of

the Parliament on controversial issues would be best achieved by party system and abolishing or ignoring this system would be to promote a

chorus on discordant note, to replace an organized discussion.

42. We find it more appropriate and beneficial to recall the following observations of the Apex Court in Rama Kant Pandey''s case (supra):

Before proceeding to examine the merits of the argument addressed on behalf of the petitioner it will be useful to note that the right to vote or to

stand as a candidate for election is neither a fundamental nor a civil right. In England also it has never been recognised as a common law right. In

this connection, we may usefully refer to the following observations in Jyoti Basu and Others Vs. Debi Ghosal and Others, and 986, which reads

as under (Paras 7 and 8):

The nature of the right to elect, the right to be elected and the right to dispute an election and the scheme of the constitutional and statutory

provisions in relation to these rights have been explained by the Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and

Others, and Jagan Nath Vs. Jaswant Singh and Others, We proceed to state what we have gleaned from what has been said, so much as

necessary for this case. A right to elect, fundamental though it is to democracy, is anomalously enough neither a fundamental right nor a Common

Law Right. It is pure and simple a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no

right to elect, no right to be elected and no right to dispute an election. Statutory creations they are and, therefore, subject to statutory limitation.

43. The objection raised by the petitioner, therefore, must be examined in this background.

The challenge of the petitioner is directed against the differential treatment which the election law in India gives to candidates set up by political

parties. The main thrust of the argument of the learned Counsel is that the party system and the recognition of political parties is itself detrimental to

the cause of real democracy. In any event, no additional advantage ought to have been allowed to candidates set up by political parties. This stand

runs counter to the constitutional scheme adopted by the nation. It has firmly been established that the Cabinet system of Government has been

envisaged by our Constitution and that the same is on the British pattern. See Samsher Singh Vs. State of Punjab and Another, In England where

democracy has prevailed longer than in any other country in recent times, the Cabinet system of Government has been found to be most effective.

In the other democratic countries also the party system has been adopted with success. It has been realised that for a strong vibrant democratic

Government, it is necessary to have a parliamentary majority as well as a parliamentary minority, so that the different points of view on

controversial issues are brought out and debated on the floor of the Parliament. This can be best achieved by the party system, so that the

problems of the nation may be discussed, considered and resolved in a constructive spirit. To abolish or ignore the party system would be to

permit a chorus of discordant notes to replace an organised discussion. In his book ""Cabinet Government"" (2nd Edition, page 16) Sir Ivor Jennings

has very rightly said, ""Party warfare is thus essential to the working of the democratic system"". It is, therefore, idle to suggest that for establishing a

true democratic society, the party system should be ignored. Our Constitution has clearly recognized the importance of this system, which was

further emphasized by the addition of the 10th Schedule to it. The Election Symbols (Reservation and Allotment) Order is also a step in that very

direction.

44. To the same effect were the views of the Apex Court in Kanhiya Lal Omar Vs. R.K. Trivedi and Others, Repelling the contention that

existence of political parties was detrimental to the parliamentary democracy, the Court said:

It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of

democratic form of Government which our country has adopted. The use of a symbol, be it a donkey or an elephant, does give rise to an unifying

effect amongst the people, with a common political and economic programme and ultimately helps in the establishment of a Westminster type of

democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House. The

political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so

profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that

while the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so

organised on party basis - in other words, ""on systematized differences and unresolved conflicts."" That is the essence of our system and it facilitates

the setting up of a Government by the majority. Although till recently the Constitution had not expressly referred to the existence of political parties,

by the amendments made to it by the Constitution (Fifty-Second Amendment) Act, 1985 there is now a clear recognition of the political parties by

the Constitution. The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political

parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his

political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to

recognition, registration etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country.

45. Section 2(f) of the Act of 1951 also accepts and recognizes existence of political parties. Not only this, provisions contained in Xth Schedule

also gave constitutional recognition to the political parties. Provisions (except para -7) contained in Xth Schedule were upheld by the Apex Court

in Shri Kihota Hollohon Vs. Mr. Zachilhu and others,

...The petitioners appear to have formed a faulty impression that impugned provisions involving or recognizing political parties in the context of

elections to the Parliament or to the State Assemblies, have conferred electoral rights on these parties and since according to them, such electoral

rights are enjoyable only by citizens, so the said provisions are unconstitutional and ultra vires the various provisions of the Constitution. According

to them, the scheme provided in the Constitution, does not envisage that such artificial juristic person such as political parties, should enjoy

electoral rights. It is true that such juristic persons as political parties are not citizens so as to have or enjoy right to vote or right to contest an

election. The reason is that such electoral rights belong only to the citizens of the country and not to artificial juristic persons. This much is also

correct that these artificial juristic persons do not enjoy various freedoms as given in Article 19 of the Constitution, as held by the Apex Court in

State Trading Corporation of India v. The Commercial Tax Officer and Ors. AIR 1963 SC 1811.

A perusal of the impugned provisions makes it clear that the same do not give any right to the political parties to vote or to contest at an election.

These only provide for setting up of the candidates at an election and to allot symbol to their candidates. The candidates to be set up by the

political parties, are to be the citizens, fulfilling the legal requirements. So the objection of the petitioners in the context of the involvement or

recognition of the political party in an election to the Parliament or Legislative assemblies, is totally mis-conceived and ill-founded. Their argument

that the Parliament is not competent under Article 327 or under the relevant entires of the Union list of 7th schedule, to create a body like political

party in the context of the elections, also does not appear to be one, which may require any discussion. It is true that Article 326 recognizes adult

suffrage, meaning thereby electoral rights are confined to citizens only, but to say that by enacting the impugned provisions the Legislature has

conferred any such rights on political parties, is not borne out by the said provisions....

46. We are in respectful agreement with the view expressed in the above judgment. For the reasons given in the above judgment, we are of the

opinion that the challenge to the vires of the first proviso to Sub-section (1) of Section 33 of the R.P. Act, 1951 made by the petitioner cannot be

accepted even on merits.

(V) Coming now to prayer No. 2 made in the writ petition, the said prayer is to issue order, direction or writ of appropriate nature commanding

the respondent Nos. 3 and 4 to refrain from interfering in the constitutional affairs of the citizens and their duly elected representatives in the 15th

Lok Sabha in the decision making process under Article 75(3) and 100 of the Constitution of India, interalia.

47. It is submitted by the petitioner that the existence, recognition and functioning of the respondent No. 3 (United Progressive Alliance) and the

respondent No. 4 (Indian National Congress) interfere with the constitutional rights granted under Articles 326 and 84 of the Constitution of India.

It is further submitted that the respondent Nos. 3 and 4 interfere in the constitutional affairs of the citizens and their duly elected representatives in

the decision making process under Articles 75(3) and 100 of the Constitution of India.

48. We have considered the submissions made by the petitioner.

49. The existence of political parties is one of the basic requirements of parliamentary democracy adopted by our Constitution.

50. In the parliamentary system, the political party or coalition of political parties enjoying majority in the House forms the government. The

political party or coalition of political parties which is in minority, sits in the Opposition. The Opposition opposes and criticizes the government.

This is why, parliamentary system has been called a ""government by criticism"".

51. Relevance of political parties in parliamentary democracy has been considered by the Supreme Court in the following decisions, which, as

noted above, have been referred to by this Court in its judgment dated 15.7.2004 in Writ Petition No. 5107 (M/B) of 1999:

(A) Kanhiya Lal Omar Vs. R.K. Trivedi and Others,

(B) Rama Kant Pandey Vs. Union of India,

52. It is pertinent to note that the R.P. Act, 1951 enacted by the Parliament in exercise of its powers under Article 327 of the Constitution of India

recognizes existence of political parties in various provisions of the said Act. Section 2(f) of the R.P. Act, 1951 defines ""Political Party"" as meaning

an association or a body of individual citizens of India registered with the Election Commission as a political party u/s 29A of the R.P. Act, 1951.

Thus, it is the individual citizens of India who form an association or a body which is registered as political party with the Election Commission.

Part-IVA consisting of Sections 29A to 29C of the R.P. Act, 1951 deals with the registration of political parties and other matters. First proviso to

Sub-section (1) of Section 33, Section 39A, Section 52, Section 78A, Section 78B, etc. talk of recognized political parties.

53. Tenth Schedule to the Constitution of India inserted by the 52nd Constitutional Amendment, 1985 recognizes the existence of political party as

part of our parliamentary democracy.

54. Article 326 of the Constitution of India provides for adult suffrage for elections to the House of the People (Lok Sabha) and to the Legislative

Assembly of every State. Accordingly, every person, who is a citizen of India and who is not less than 18 years of age, has a right to be registered

as a voter unless he is otherwise disqualified under the Constitution of India or any law made by the appropriate legislature on the ground of non-

residence, unsoundness of mind, crime or corrupt or illegal practice. In our opinion, the right to be registered as a voter conferred on every citizen

of India fulfilling the requirements of Article 326 of the Constitution of India is not in any manner affected by the existence of the political parties as

part of our parliamentary democracy.

55. Article 84 of the Constitution of India deals with qualification for membership of Parliament. Accordingly, a person besides being a citizen of

India has to fulfil various requirements regarding qualifications for being a member of either of the two Houses of Parliament. The existence of

political parties, in our view, does not in any manner affect the requirements of Article 84 of the Constitution of India. In case a person is set-up by

a recognized political party for contesting election, such person ought to be a citizen of India and should fulfil various requirements laid down in

Article 84 of the Constitution of India. Hence, in our opinion, the existence, recognition and functioning of the respondent No. 4 i.e. Indian

National Congress which is a recognized political party and the United Progressive Alliance, which is an alliance/ coalition of various political

parties do not in any manner affect the requirements of Article 326 or Article 84 of the Constitution of India.

56. Again, Clause (3) of Article 75 of the Constitution of India provides that the Council of Ministers shall be collectively responsible to the House

of the People. This is one of the essential requirements of the parliamentary system of Government. Collective Responsibility is tested on the floor

of the House of the People by a motion of confidence or no-confidence put to vote in the House of the People. Such voting is done by the

members of the House of the People normally on the basis of their allegiance to their respective political parties. In fact, Clause (a) of sub-

paragraph (1) of paragraph 2 of the Xth Schedule to the Constitution of India contemplates giving of direction by a political party to its members in

the House, and such members are bound to follow such direction.

57. This is the manner in which parliamentary democracy functions. No objection can, therefore, be taken in case the respondent No. 4 (Indian

National Congress) and the respondent No. 3 (United Progressive Alliance) which is an alliance of various political parties decide to vote in a

particular manner when confidence / no-confidence vote in respect of Council of Ministers is put to vote on the floor of the House of the People

(Lok Sabha). The submission made by the petitioner is misconceived, and the same is accordingly rejected.

58. Article 100 of the Constitution of India deals with voting in Houses of Parliament, power of Houses to act notwithstanding vacancies and

quorum. This Article, thus, deals with the voting by the members of the Houses of Parliament and other connected matters. As already noted

above, such voting is normally done by the members in accordance with their allegiance to their respective political parties. The political parties

may give directions to their respective members regarding such voting, and such members are required to follow such directions. This again is the

manner of working of the parliamentary democracy, and no objection can be taken in case the respondent No. 4 (Indian National Congress) and

the respondent No. 3 (United Progressive Alliance) which is an alliance/ coalition of various political parties decides to give directions to their

members to vote in a particular manner on any issue under consideration of the House of the People.

59. In view of the above discussion, we are of the opinion that the writ petition filed by the petitioner lacks merits, and the same is liable to be

dismissed with costs of Rupees Ten Thousand.

60. The writ petition is accordingly dismissed with costs of Rupees Ten Thousand on the petitioner.