

(1998) 01 AP CK 0001

Andhra Pradesh High Court

Case No: Writ Petition No. 33364 of 1997

D.S.N.V. Prasad Babu and  
Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision:** Jan. 2, 1998

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 74, 75(3), 85(2)

**Citation:** AIR 1998 AP 140 : (1998) 1 ALD 736 : (1998) 1 ALT 366

**Hon'ble Judges:** P. Venkatarama Reddi, Acting C.J.; A.S. Bhate, J

**Bench:** Division Bench

**Advocate:** Parties-in-person, for the Appellant; Advocate-General and Mr. B. Adinarayana Rao, SC for the Cnetral Government, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

P. Venkatarama Reddi, ACJ.

1. An event of momentous significance for the nation is sought to be subjected to judicial scrutiny under Article 226 of the Constitution of India. Two Advocates practising in this Court seek a declaration that the action of the Council of Ministers in passing the resolution on 3-12-1997 recommending the dissolution of XI Lok Sabha as unconstitutional, arbitrary and biased and that all consequential proceedings taken thereafter are void. In other words, the propriety and legality of the action of the Council of Ministers of Ihe Union culminating in the dissolution of the Lok Sabha by the President of India on 4th December, 1997 is being assailed in this public interest litigation.

2. On the factual side, it is the contention of the petitioners that the country cannot afford to face an election involving expenditure of hundreds of crores of rupees even before the Lok Sabha completed half of its term. It is submitted that even after

the election, there is every possibility of the nation facing the situation of hung Parliament and political instability. It is contended that there is no sound basis for the recommendation made by the Council of Ministers to the President to dissolve the Lok Sabha. It is averred, based on the news-paper report, that nearly three hundred members of the Lok Sabha were against the dissolution.

3. On the legal front, the contentions advanced are these :

The advice tendered by the Council of Ministers has no legal sanctity and is not an advice at all within the contemplation of Article 74 of the Constitution of India inasmuch the Council of Ministers resigned even by the date of tendering the advice. The Council of Ministers, which was continued as an interim-arrangement in the role of a care-taker, has no locus standi to advise the President on such an important issue of far reaching consequence more especially when it is impossible to apply the mandate of Article 75(3), which enjoins on the Council of Ministers to be collectively responsible to the House of the People. As a corollary to this argument, the petitioners submit that it was incumbent on the Council of Ministers to consult the members of the House of People before tendering advice on the issue of dissolution of Lok Sabha.

4. These arguments are countered by the learned Advocate General and the learned Standing Counsel for the Central Government by contending that the issues raised in this Writ Petition are non-justiciable, that the power of the President to dissolve the House of the People under Article 85 of the Constitution admits of no limitations or qualifications and that there is no bar for the Council of Ministers to advise the President despite the resignation. In any case, it is submitted that the President has taken the decision in the best interests of the country and the decision cannot be faulted either on the ground of lack of bona fides or arbitrariness or irrationality.

5. We need not tread into the intricate Constitutional questions turning round the justiciability of the presidential action and the effectiveness of the advice tendered by the Council of Ministers donning the robe of caretaker Government on an important national issue of dissolution of the House of People. Nor is it necessary to advert to the British conventions. Even without entering into debatable and controversial areas and even going by the ordinary principles of judicial review of executive action, the Court can safely reach the conclusion that the decision taken by the President is unassailable.

6. The communique caused to be issued by the President speaks for itself. It reveals that the President had gone through the arduous exercise of consulting the leaders and representatives of major political parties including the ruling party and even a group of first-time MPs with a view to explore the possibility of forming a Government that is "lawful, viable and enjoy a reasonable prospect of stability." This is what was assessed by the President as a result of such deliberations and consultations :

"By the evening on 3-12-1997 it had become clear to the President that no political combination in the Lok Sabha was in a position to offer or receive the lawfully valid support of the critical minimum number of MPs required by that combination to secure a majority in the House." Referring to the advice tendered by the Council of Ministers, the communique states that the recommendation" converged with the President's own process of deduction."

7. Then follows the ultimate conclusion of the President which is expressed succinctly and with an element of transparency :

"The President took note of the fact that the people of India need a reprieve from political instability and deserve a dispensation in which the Government is able to discharge its constitutional duties towards the well-being and betterment of the people of India without being deflected from the primary task. He has borne in mind the paramount importance of national cohesion, political integrity and the need to ascertain the democratic will of the people. The President has by a Presidential Order under sub-clause (b) of clause (2) of Article 85 of the Constitution of India dissolved the Eleventh Lok Sabha.

The President has also directed the constitution of the new Lok Sabha by the 15th March, 1998. The official notification in this regard will be published in due course."

8. Thus, the President has approached the issue from all angles within the parametres of his constitutional role and formed his opinion that having regard to the political scenario and the situation facing the country, the dissolution of the House of People and holding a fresh election was the only practicable and desirable alternative, in the larger interests of the nation.

9. It is significant to notice that apart from the advice tendered by the Council of Ministers, the President made his own independent appraisal of the situation by a process of "legal and political consultations" before taking the step of dissolving the Eleventh Lok Sabha and directing the constitution of a new Lok Sabha by 15th March, 1998. The communique makes it clear that the advice of the Council of Ministers tallied with his own assessment of the situation. Thus, the active application of mind by the President apart from the advice tendered by the Union Cabinet was apparent and clearly perceptible. It is therefore futile to contend that the President should not have gone by the advice of Council of Ministers which the petitioners say became incapable of being accountable to the House of People. In fact, the theory that the Council of Ministers which having regard to the rum of events became incapable of fulfilling its role of collective responsibility cannot tender any advice to the President and such advice has no legal sanctity, stands exploded by the decision of the Constitution Bench of the Supreme Court in [U.N.A. Rao Vs. Smt. Indira Gandhi](#), . The further, contention that the Council of Ministers ought not to have tendered the advice on a matter of far-reaching importance and the President should not have been carried away by such advice pales into

insignificance when once it is realised that the President was not solely and merely guided by the advice of the Council of Ministers. As observed already, the pros and cons were considered from all angles and the President made his own assessment which had coincided with the advice tendered by the Council of Ministers.

10. However much the nation would have wished to avoid an election at this juncture, if the President had reached the conclusion on a consideration of all relevant factors and viable alternatives that the dissolution of Lok Sabha and fresh elections is the inevitable and most expedient course, can the decision of the President be faulted on the ground of irrationality or arbitrariness ? The answer, in our view, is clearly in the negative. Even if a different view is possible, it is not for the Court to invalidate the decision taken by the President on a holistic approach to the entire issue.

11. Relying on the news-paper reports that a large number of Parliament Members are against the dissolution, the learned Counsel for the petitioner faintly argued that the verdict of the parliament should have been obtained before dissolving the House. The reports, even taken on their face value, do not per se indicate that the majority was against the dissolution. The vital and crucial issue with which the President was concerned was whether in the absence of dissolution and fresh elections, it was feasible and practicable to instal a stable government having the confidence of the Parliament. In the given fact situation, the President felt that it was not possible.

12. We therefore find no substance in any of the contentions raised by the petitioners. We have no hesitation in dismissing the Writ Petition.

13. Accordingly the writ petition is dismissed.