

NABAM REBIA & BAMANG FELIX V. DEPUTY SPEAKER, ARUNACHAL LEGISLATIVE ASSEMBLY

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The judgment given on the 13th July, 2016 by the five judge constitution bench comprising of Justices J.S. Khehar, Dipak Misra, Madan B. Lokur, P.C. Ghose and N.V. Ramana. This is said to be one of the landmark judgments in the history of democratic India. It was one of the biggest blows to the BJP government when Supreme Court gave the judgment of restoring back Congress-led Nabam Tuki government in the state of Arunachal Pradesh.

The five-judge constitution bench was passing orders after examination of constitutional schemes on the scope of discretionary powers of the Governor. The bench was essentially looking into constitutionality of State Governor J.P. Rajkhowa's move to advance the Arunachal Assembly session, which eventually triggered a political crisis leading to the Congress-led Nabam Tuki government and proclamation of President's rule in the State on January 26, 2016.

Nabam Rebia is a politician from the Indian National Congress (INC) and a former member of the parliament representing Arunachal Pradesh in the Upper House of the Indian Parliament. Bamang Felix is an Indian politician from the state of Arunachal Pradesh. Felix was elected unopposed from the Nyapin seat in the 2014 Arunachal Pradesh Legislative Assembly election, standing as a People's Party of Arunachal candidate.

ISSUES

Whether message addressed by Governor, could extend to subjects on which message was addressed?

1. Whether Governor could address message to Assembly in his own discretion, without seeking aid and advice of Chief Minister and his Council of Ministers?
2. Whether, after having notified dates of sitting of Legislative Assembly in consultation with Chief Minister and Speaker of House, Governor could cancel those dates in exercise of power and discretion under Articles 174(1)¹ and Article 163² of Constitution respectively?
3. Whether Governor could unilaterally alter and reschedule those notified dates in exercise of power under Article 174(1) of Constitution read with Article 163 of Constitution by issuing fresh notification?
4. Whether generally, in exercise of discretion under Article 163(1)³ of Constitution read with Article 174(1) of Constitution and notwithstanding relevant Rules framed by Legislative Assembly, Governor could summon Legislative Assembly without consulting Chief Minister and Speaker?
5. Whether message sent by Governor was constitutionally valid message that ought to have been acted upon by Legislative Assembly?

The main issue involved in the two writ petitions filed was with regards to whether the governor of a given state is to act only on the advice given by the Council of Ministers of that State in all circumstances or the Governor consists of independent and discretionary powers as stated under different articles of the Constitution of India. The other issues relate to the right of the governor to address or give speeches to the ministers in the Legislative Assembly of the state.

¹ Sessions of the State Legislature, prorogation and dissolution. The Governor shall from time to time summon the House or each House of the Legislature of the State 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 Council of Ministers to aid and advise Governor

³ There shall be a council of Ministers with the chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this constitution required to exercise his functions or any of them in his discretion

EVOLUTION INTO A POLITICAL CRISIS

The political crisis started on the 14th of November, 2011 when Nabam Tuki took charge as a chief minister of the state of Arunachal Pradesh. Nabam Rebia is one of Tuki's siblings took the oath of the speaker of the assembly. In the month of December Tukki reshuffled his cabinet, dropped Kalikho Pul (the state's Health and family Welfare cabinet minister). In April 2015 Pul alleges large scale financial fraud within the government. Congress expelled him from the party. Between May-October, 2105 BJP leaders support Congress dissident. Quite a large number of Congress MLA's including the assembly's deputy speaker show their support for Pul. Congress MLA's then made a plan to sack off the assembly's deputy speaker.

In response the BJP government came up with a resolution aimed at removing the speaker, Governor Rajkhowa without any consultation with the chief minister or the cabinet members of the state of Arunachal Pradesh prepones his assembly session to December 16,2015 from January 14,2016. He also accepts the removal of the speaker as the main agenda on the day of the assembly meeting. Tuki government locks the assembly so a corresponding assembly meeting is conducted in a nearby hotel which is attended by thirty-three MLAs. The agenda was thus passed and a new speaker was appointed. Kalhiko Pul is elected as the new Chief Minister by the Modi government by which the Indian national congress moved to the Guwahati High Court. On 19th February, 2017 the chief minister took the oath just after a few hours of the Presidential rule being lifted upon the state of Arunachal Pradesh. 31 MLAs, led by Pul had called on the Governor to stake claim for forming the next government. Pul was accompanied by 19 rebel Congress MLAs along with 11 BJP legislators and two independent members. Congress, which had 47 MLAs in the 60-member Assembly, suffered a jolt when 21 of its lawmakers rebelled. Later, 14 rebel Congress MLAs were disqualified by the Speaker. The apex court revoked status quo order after being satisfied with the Guwahati High Court order staying the disqualification of the 14 rebel Congress MLAs.

CONTENTIONS OF BOTH THE PARTIES

- PETITIONER'S CONTENTIONS

1. The petitioners contended that the governor while sending for the house of the Arunachal Pradesh state legislature is required to perform his duty with the aid and advice of the Council of Minister and the Chief Minister in consultation with the Speaker is made competent to advice the Governor, for summoning the Assembly, under the Rules of Procedure and Conduct of Business of the Arunachal Pradesh Legislative Assembly. But in regard to this case the governor did not take the advice of the Council of Ministers as well as the chief minister of that state while as acting as the head of the state when he preponed the assembly meeting. This act was unworthy of the head of the state to act upon in this way.
2. The power of the Governor to send message to the House was with regards a pending bill in the House and this power under Article 175(2)⁴ can't be used to send message on a pending expulsion of the speaker and subsequently this gives off an impression of being a demonstration of surpassing the jurisdiction.
3. Moreover, in a democratic country like India the Governor has a well-defined role to act upon. If he acts upon his own discretion he has to within the limits of the constitution.
4. The final prayer put forward by the petitioners are either pass a writ of certiorari or quashing of any other orders like the a) order of preponing the assembly session from 14th January to the 16th of December, 2015. b) Governors message dated 09.12.2015 fixing Resolution for removal of Speakers as first item of the business at the purported first sitting of sixth session of the Arunachal Pradesh Legislative Assembly. c) Deputy Speakers order dated 15.12.2015 quashing disqualification of respondent Nos. 3 to 15 made by the Speaker under **Article 191 (2) read with para 2 (1) (a) and 6 (1) & (2) and rule 3 (7) and rule 6** of the Members of Arunachal Pradesh Legislative Assembly (Disqualification) on ground of defection Rules, 1987. d) Declare holing sitting(s) of the indicated 6th session of the Arunachal Pradesh Legislative Assembly outside the House to be illegal and unlawful.

⁴ The Governor may from time to time (a) Prorogue the House or either House; (b) dissolve the Legislative Assembly

- **RESPONDENT'S CONTENTIONS**

1. The respondents refer to Article 174 of the Indian Constitution with regards to the governor to the extent that this power as a Constitutional head must be practiced within a certain jurisdiction and in the way showed and the same can't be unutilized to undermine the position of the other established functionaries of the State.
2. The power presented on the Governor to send messages to the house under Article 175(2) of the constitution of India can't be conjured to set out the Assembly Agenda and the scholarly Senior Counsel fights that the Governor has acted past his allowed jurisdiction
3. In the sacred position of the Governor, who is relied upon to follow up on the guide and exhortation of the Council of Ministers, the learned council calls attention to the fact that the Governor followed up based on the notice given by the opposition party and this under the sacred parameters of the Governor, is lawfully impermissible.
4. The council put forward the fact that first a notice was issued by 16 Congress MLAs for the removal of the Deputy-speaker of the House and in contradiction to that the opposition issued for a notice for the removal of the Speaker of the House by 13 MLAs, thus the Governor prioritised the second notice for discussion in the assembly session rather than the first notice which is undermining the procedure of the House.

JUDGEMENT

The five judge constitution bench ordered “status quo ante as on December 15, 2015” ruled that all the actions of the Governor was violative of article 163 of the Constitution. Citing the landmark case of *S.R Bommai v. Union of India*, the case ruling on the judicial review of the President or the Governor, the bench said it had “all the powers to put the clock back.”

While setting aside the judgment given by the Guwahati High Court and allowing him for an appeal in the Supreme Court of India, the apex court decided that the notice issued by the Governor on 9th of December, 2015 to be unconstitutional.

The Supreme Court in this particular judgment reached to the conclusion that the order of the governor of preponing the assembly session from the January 14, 2016 to 16th December, 2015 violates the constitutional mandate under Article 163 read along with Article 174.

Further, the apex court also found the direction by the governor in the manner of conducting the proceedings of the legislative Assembly liable to be quashed for violating Article 163 and Article 175 of the Constitution. Observing the role of the governor in the present case, while referring to the characteristics of parliamentary democracy from an earlier judgement by itself, the court observed that "the actions of the governor were certainly not in the language of the law or the spirit of parliamentary democracy and responsible government".

The court observed further that the "governor, despite being the 'first citizen' of the State, chose to take no steps to break the impasse caused by a collapse of communications between him and the chief minister; finally, the governor took no steps to resort to the breakdown provisions and obtain impartial advice from the president".

After examining the Constitution, law, practice and recommendations of the various constitutional commissions, the five-judge bench came to the conclusion that-

- (a) the discretionary power of the governor is limited
- (b) to the scope stipulated in Article 163(1)
- (c) its scope is not open to wider
- (d) there should be no conflict of interest involved,
- (e) its exercise is not final and immune from judicial review

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CRITICAL ANALYSIS

The tone and tenor of the decision was superbly in a state of harmony with the blistering comments the bench made against the centre and the governor amidst comprehensive hearing which went on for over a month which it had even brought up that "Arunachal investigation to topple state governments may demonstrate dangerous" and the court had the ability to "set the clock back." The Supreme Court said that it could turn the clock back if the Governor's powers were exercised unconstitutionally leading to the formation of the new government. Out of all the important constitutional questions that came up in this case the author has put more stress on the disqualification of the Governor under Article 179(c) of the constitution of India. The notice was issued under article 179(c) because the Governor was not acting as a neutral person and he was not adhering to the provisions of the Indian Constitution and was not following appropriate administrative procedure while appointing secretarial staff. As soon as the notice was made the members of the BJP called for the Governor to pre-poner the next session of the assembly so that the resolution for the removal of the Speaker could be dealt with expeditiously (the Governor did so under Article 174(1) without consulting the Council of Ministers so as to not waste time- therefore the discretionary power of the Governor was a major issue before the Supreme Court). Additionally, the Governor passed an order that the constituency of the Assembly would not change till the resolution was passed or dismissed by the Assembly.

The speaker in this case, considering the governor's notice to be ultra vires decided to disqualify some of the members along with the Deputy Speaker of the house during the fourteen days' time period as mentioned under the tenth schedule. He disqualified the members on the following grounds -

- (a) This power of the Speaker could not have been exercised after an express direction by the Governor against it,
- (b) This power of the Speaker could not have been exercised after an express direction by the Governor against it,
- (c) This power cannot be exercised while a motion for disqualification of the Speaker was still pending as that would be undemocratic and

(d) That even the Deputy Speaker, who was meant to preside over the assembly during the disqualification voting, had not been spared from this mala fide use of constitutional power

However would this be able to be perused to imply that the energy of the Speaker is great to the point that after notice of determination for his expulsion has been given he can practice the power given to him by the Tenth Schedule? The answer to this can be done by the concepts of harmonious construction and purposive interpretation. We can harmoniously construe that the Speaker cannot exercise his power under the Tenth Schedule as the 14 day proviso was put into the Constitution before the anti-defection amendment came into place. Therefore the 14 day proviso had not been written to allow the Speaker to change the members of the assembly but merely to give him an opportunity to defend himself when the resolution was actually passed in the assembly. As has been mentioned before "Rule of Law" is a fundamental principle that the Speaker has to apply and disqualifying members to tilt the decision in his favour is an undemocratic abuse of power that defies the rule of law principle. Therefore, such an act of the Speaker cannot be allowed.

Criticising the Governor for his choice to prepone the sixth assembly session, it had asked "What might be the change or the distinction if the assembly session procedures would have occurred on pre-booked date ie. January 14, 2016 rather than on December 16, 2015. There must be some important agenda to be accomplished by the Governor by needing to prepone the date. Does it imply that whenever he feels to change the date of the assembly session he can?"

On Governor's contention that his decisions are not open to legal review, the court said that it can't be a quiet onlooker when popularity based procedures are butchered. On the decisions of the governor that democracy is butchered, by what means the court can stay quiet," Justice Khehar, the most vocal of all judges in the seat, had enquired.

The court had asked if the governor's decision was backed by sound constitutional principles. "You can use constitutional discretion only if it is based on and only on a constitutional principle. Was there any constitutional principle out here in this present case? Does advancing the Assembly session come under your discretionary powers? The author would like to go with the order of the apex court regarding whether preponing the assembly session is within the ambits of the powers conferred to the governor of the state of Arunachal Pradesh.

It had heard arguments on the contours of the power and discretion of the governor under the constitution for over a month before reserving its judgment on February 22.

Passing orders after examination of the constitutional schemes on the scope of the governor having independent and discretionary powers, the bench ruled that the Governor does not have power to call assembly session without the aid and advice of chief minister and his council of ministers.

This was a double blow on the Modi-led BJP government as the judgment was just two months after Harish Rawat-led Congress government made a comeback in Uttarakhand after the President's rule imposed there was quashed by state High Court after a floor test was facilitated by the Supreme Court.

However, the fate of restored Tuki's government depends on a floor test, but the judgment has already enriched the constitutional jurisprudence of India, especially in regard to the exercise of Article 356 in general and the role of the governor in particular.