

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**  
**AND**  
**THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

**+ WRIT PETITION Nos.180 and 181 of 2024**

% Date:07.03.2024

# Dr. Dasoju Sravan Kumar

... Petitioner

**vs.**

\$ The Secretary to Her Excellency,  
The Hon'ble Governor,  
State of Telangana,  
Raj Bhavan, Hyderabad,  
and others.

... Respondents

! Counsel for the petitioner in W.P.No.180 of 2024 :  
Dr. Aditya Sondhi,  
learned Senior Counsel representing  
Mr. V.Murali Manohar

! Counsel for the petitioner in W.P.No.181 of 2024 :  
Mr. B.Mayur Reddy,  
learned Senior Counsel representing  
Ms. V.Dyumani

^ Counsel for the respondent No.1:  
Mr. S.Ashok Anand Kumar,  
learned Senior Counsel representing  
Mr. L.Aravind Reddy

^ Counsel for the respondents No.2 and 3:  
Mr. A.Sudarshan Reddy,  
learned Advocate General

^ Counsel for the respondents No.4 and 5:  
Mr. Avinash Desai,  
learned Senior Counsel representing  
Mr. Kopal Sharraf

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. (2006) 2 SCC 1
2. (2016) 8 SCC 1
3. (2001) 7 SCC 231
4. AIR 1962 All 301 = 1961 SCC OnLine All 16
5. 2012 (6) ALD 435 DB : 2012 SCC OnLine AP 286
6. 2012 SCC OnLine Del 6310
7. 2021 SCC OnLine Bom 1806
8. (1974) 2 SCC 831
9. (2005) 2 SCC 92
10. Manu/SC/1277/2023
11. AIR 1961 SC 493
12. AIR 1963 SC 395
13. (1986) 4 SCC 632
14. (2003) 5 SCC 134
15. (2010) 2 SCC 637
16. 2023 SCC OnLine SC 607
17. AIR 1966 SC 828
18. 2023 SCC OnLine SC 1140
19. (2012) 11 SCC 321
20. (2011) 14 SCC 770
21. 2010 SCC OnLine All 573
22. (2010) 6 SCC 331
23. AIR 1952 Nag 330 = 1950 SCC OnLine MP 67
24. (2013) 3 SCC 1
25. (1976) 1 SCC 671
26. (1993) 3 SCC 499
27. (2006) 8 SCC 381

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**  
**AND**  
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**WRIT PETITION Nos.180 AND 181 OF 2024**

**COMMON ORDER:** *(Per the Hon'ble the Chief Justice Alok Aradhe)*

**(i) INTRODUCTION:**

The State Legislature in Telangana is bicameral in nature. It has two Houses of Legislature, namely Legislative Assembly and Legislative Council. The Andhra Pradesh Legislative Council Act, 2005, was enacted to provide for the creation of Legislative Council for the erstwhile State of Andhra Pradesh and for matters supplemental, incidental and consequential thereto. Section 3 of the said Act provided for creation of Legislative Council for the erstwhile State of Andhra Pradesh. The erstwhile State of Andhra Pradesh was bifurcated into two successor States, namely the State of Telangana and the State of Andhra Pradesh. Section 22 of the Andhra Pradesh Reorganisation Act, 2014, provides that there shall be a Legislative Council for the successor States. Section 23 of the Reorganisation Act, 2014, provides that there shall be 40 seats in the Legislative Council for the State

of Telangana. Out of the aforesaid 40 seats, six are to be filled up by the Governor under Article 171(3) read with Article 171(5) and (6) of the Constitution of India.

2. The core issue involved in these writ petitions is about the scope and power of the Governor under Article 171(5) of the Constitution of India to make nominations for the Legislative Council of State of Telangana. In order to appreciate the grievance of the petitioners, relevant facts which lie in narrow compass need mention which are stated infra.

**(ii) FACTS:**

3. The petitioner in W.P.No.180 of 2024 has LL.B., degree and also has secured two Masters' Degrees namely, Master of Arts with Specialization in Linguistics and Master of Business Administration. He has also worked as Project Associate with Administrative Staff College of India, wherein he was associated with internationally funded research projects. The petitioner has also served as Senior Assistant Professor in Human Resources Management with the Premier Institute of Public Enterprise, Hyderabad and was

awarded Doctorate degree in “Organizational Behavior” from Osmania University. He has also served as Director of Human Resource Development with M/s.Ceeyes Software Technologies Private Limited, and was also associated with M/s.Sierra Atlantic Inc as Associate Director. The petitioner has also served as General Manager (HR) in M/s.Satyam Computer Services Limited. The petitioner, initially, joined in Indian National Congress. However, subsequently, he joined in Telangana Rashtra Samithi, a political party and claims to have functioned as a star campaigner of the party in Hyderabad city. The petitioner in W.P.No.181 of 2024 has Bachelor’s degree in Arts. He was a trade union leader and is a social worker.

4. A meeting of the Council of Ministers was held on 31.07.2023, wherein it was resolved to nominate the petitioners as Members of Legislative Council. However, the Governor by orders dated 19.09.2023 rejected the nomination of the petitioners for the post of Member of Legislative Council under Article 171(5) of the Constitution of India *inter alia* on the following grounds:

(i) There is no apparent fulfillment of the pre-conditions required under Article 171(5) of the Constitution of India.

(ii) The methodology adopted for consideration of the case of the petitioners has not been enclosed.

(iii) No reports from Intelligence and other agencies indicating that the petitioners have not incurred any disqualification under sub-sections 8 to 11(A) of the Representation of People Act, 1951.

(iv) The summary provided by the petitioners does not indicate any special achievements in Literature, Science, Art, Co-operative Movement and Social Service.

5. In the aforesaid factual background, the writ petitions were filed on 07.12.2023. However, the office raised objections with regard to maintainability of the petitions in view of bar contained under Article 361 of the Constitution of India. Thereafter, this Court by an order dated 02.01.2024 directed the office to number the petitions subject to keeping the issue of maintainability of the writ petitions open. The writ petitions were listed for orders on admission on 05.01.2024. On the said date, the learned Senior Counsel for

respondent No.1 made a prayer for adjournment to enable him to file objections with regard to the maintainability of writ petitions. The writ petitions thereupon were directed to be listed on 24.01.2024. On the said date, learned Advocate General for the State of Telangana sought time for filing the counter and the writ petitions, as agreed to by the learned Counsel for the parties, were listed for final hearing on 08.02.2024.

**(iii) SUBSEQUENT EVENTS:**

6. However pending hearing of the writ petitions, the Council of Ministers made recommendation on 13.01.2024 by which it was resolved to nominate respondent Nos.4 and 5 as Members of the Legislative Council. The Governor accepted the recommendation made by the Council of Ministers on 27.01.2024 and on 27.01.2024 itself Gazette Notification was issued.

7. Thereafter, interlocutory applications seeking amendment of the writ petitions on the basis of subsequent events, as well as applications seeking impleadment of (1) Prof. M. Kodanda Rama Reddy and (2) Sri Amer Ali Khan,

namely respondent Nos.4 and 5 were filed. This Court by an interim order dated 30.01.2024 directed the parties to maintain *status quo*. In these writ petitions, the petitioners have assailed the validity of the orders dated 19.09.2023 passed by the Governor, by which the recommendations made in favour of the petitioners for nomination as Members of the Legislative Council under Article 171(5) of the Constitution of India have been rejected. The petitioners have also questioned the validity of the recommendation dated 13.01.2024 made in favour of respondent Nos.4 and 5 as Members of the Legislative Council during the pendency of these writ petitions. In addition, the petitioners have challenged the recommendations made by the Council of Ministers in favour of respondent Nos.4 and 5 as Members of the Legislative Council and Gazette notifications dated 27.01.2024, by which respondent Nos.4 and 5 have been nominated as Members of the Legislative Council.

**(iv) SUBMISSIONS ON BEHALF OF PETITIONER IN W.P.No.180 OF 2024:**

8. Learned Senior Counsel for the petitioner in writ petition No.180 of 2024 submitted that the personal



immunity granted under Article 361 of the Constitution of India to the Governor does not bar judicial review of action of Governor on the ground that the same is *ultra vires*/unconstitutional or suffers from *mala fides*. It is contended that the action of the Governor has to be defended by the State Government and Article 361 of the Constitution of India does not bar the Governor to file an affidavit on her own volition. In support of the aforesaid submissions, reliance has been placed on the decisions of the two Constitution Bench decisions of Supreme Court in **Rameshwar Prasad vs. Union of India**<sup>1</sup> and **Nabam Rebia vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly**<sup>2</sup>. It is submitted that Article 171(5) of the Constitution of India does not either expressly or by necessary implication confer any discretionary power on the Governor, unlike Article 200 or Article 356 of the Constitution of India. Therefore, the Governor while exercising powers under Article 171(5) of the Constitution of India is bound by the aid and advice of the Council of Ministers.

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<sup>1</sup> (2006) 2 SCC 1

<sup>2</sup> (2016) 8 SCC 1

9. It is urged that the petitioner in W.P.No.180 of 2024 is a person belonging to OBC community and has a rich career in social service, art and literature and falls within various categories specified under Article 171(5) of the Constitution of India. It is contended that the nomination of the petitioner to Legislative Council has been rejected on the ground of him being politically aligned as well as on the ground that he has no special achievements. It is argued that grounds of nomination mentioned in the impugned order are *ultra vires* Article 171 of the Constitution of India and there is no prescription of special achievements under Article 171 of the Constitution of India. It is further argued that the petitioner had legitimate expectation for consideration of his nomination under Article 171(5) of the Constitution of India. It is submitted that the impugned order casts a shadow on the reputation of the petitioner and is violative of constitutional legitimate expectation of the petitioner. It is further submitted that during the pendency of the writ petitions, in a hot haste the State Government has proceeded to present a *fait accompli* to this Court. It is pointed out that the allegations of *mala fide* are not traversed by the State

Government. In support of aforesaid submissions, reliance has been placed on the decisions in **B.R.Kapur vs. State of Tamil Nadu**<sup>3</sup>, **Har Sharan Varma vs. Chandra Bhan Gupta**<sup>4</sup>, **V.Venkateshwar Rao vs. Government of Andhra Pradesh**<sup>5</sup>, **Ram Gopal Singh vs. Union of India**<sup>6</sup> and **Ratan Soli Luth vs. State of Maharashtra**<sup>7</sup>.

**(v) SUBMISSIONS ON BEHALF OF PETITIONER IN W.P.No.181 OF 2024:**

10. Learned Senior Counsel for the petitioner in writ petition No.181 of 2024, while inviting attention of this Court in **Shamsher Singh vs. State of Punjab**<sup>8</sup> has submitted that the satisfaction which is required to be recorded by the Governor is not personal satisfaction, but is satisfaction in the constitutional sense. It is contended that if the Governor acts *ultra vires* the constitutional provision, the Court can interdict such an action. It is argued that Article 361 of the Constitution of India, does not protect the *ultra vires* action of the Governor and the Governor cannot act without aid and

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<sup>3</sup> (2001) 7 SCC 231

<sup>4</sup> AIR 1962 All 301 = 1961 SCC OnLine All 16

<sup>5</sup> 2012 (6) ALD 435 DB : 2012 SCC OnLine AP 286

<sup>6</sup> 2012 SCC OnLine Del 6310

<sup>7</sup> 2021 SCC OnLine Bom 1806

<sup>8</sup> (1974) 2 SCC 831

advice of the Council of Ministers. In support of the aforesaid submissions, reliance has been placed in **B.R.Kapur** (supra), **Pu Myllai Hlychho vs. State of Mizoram**<sup>9</sup>, **Nabam Rebia** (supra), **Ratan Soli Luth** (supra) and **State of Punjab vs. Principal Secretary to Governor of Punjab**<sup>10</sup>.

**(vi) SUBMISSIONS ON BEHALF OF THE STATE:**

11. On the other hand, learned Advocate General for respondent Nos.2 and 3 submitted that recommendation was made in favour of the petitioners by the Council of Ministers on 31.07.2023. The first resolution relating to nomination of the petitioners passed by Council of Ministers, was forwarded which was rejected by an order dated 19.09.2023 by the Governor. Thereafter, a subsequent resolution on 13.01.2024 was passed by the Council of Ministers by which the nominations of respondent Nos.4 and 5 were made for Legislative Council by Council of Ministers. The Governor accepted the same on 27.01.2024 and Gazette notifications were issued on 27.01.2024, vide G.O.Ms.Nos.12 and 13, dated 27.01.2024.

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<sup>9</sup> (2005) 2 SCC 92

<sup>10</sup> Manu/SC/1277/2023

12. It is contended that the reliefs sought for by the petitioners cannot be granted in a writ petition under Article 226 of the Constitution of India. It is further contended that the petitioners were neither parties to the resolution nor the order of the Governor was communicated to them. Therefore, the petitioners have no vested right to approach this Court invoking the jurisdiction under Article 226 of the Constitution of India. It is also contended that the petitioners have no *locus* to seek implementation of decision of the Cabinet and the petitioners cannot even be equated with the candidates whose names appear in the select list for appointment to the post. It is urged that since the recommendation in favour of the petitioners has been rescinded, the petitioners cannot seek a relief that previous recommendation of the Council of Ministers be implemented. In support of his submissions, learned Advocate General has placed reliance on the decisions of the Supreme Court in **State of Punjab vs. Sodhi Sukhdev Singh**<sup>11</sup>, **Bachhittar Singh vs. State of Punjab**<sup>12</sup>, **State of Kerala vs.**

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<sup>11</sup> AIR 1961 SC 493

<sup>12</sup> AIR 1963 SC 395

**A.Lakshmikutty**<sup>13</sup>, **J.P.Bansal vs. State of Rajasthan**<sup>14</sup>  
and **Rakhi Ray vs. High Court of Delhi**<sup>15</sup>.

**(vii) SUBMISSIONS ON BEHALF OF RESPONDENT No.1:**

13. Learned Senior Counsel for the respondent No.1, at the outset, submitted that it is for the State to defend the action taken by the Governor. It is further submitted that the nominee whose name is recommended for Legislative Council, neither has any *locus standi* to approach this Court seeking enforcement of a recommendation made by Council of Ministers, nor has any legal right to enforce the recommendation made by the Council of Ministers. It is argued that the Constitution Bench decision in **Nabam Rebia** (supra) does not apply to the facts of the case as the aforesaid decision does not deal with Article 171 of the Constitution of India. It is pointed out that concession with regard to power of the judicial review was given in **Nabam Rebia** (supra). It is further pointed out that the correctness of the view expressed in **Nabam Rebia** (supra) has been referred for consideration to a Larger Bench in **Subhash**

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<sup>13</sup> (1986) 4 SCC 632

<sup>14</sup> (2003) 5 SCC 134

<sup>15</sup> (2010) 2 SCC 637

**Desai vs. Principal Secretary, Governor of Maharashtra**<sup>16</sup>.

It is contended that the decision of the Supreme Court in **Rameshwar Prasad** (supra) applies to the facts of the case. Attention of this Court is also invited to the Rules of Business and it has been argued that there is a wilful omission to refer to the power to make a recommendation for nomination under Article 171(5) of the Constitution of India which implies that discretionary powers are available to the Governor while dealing with the recommendation made by the Council of Ministers.

14. It is argued that the Governor has applied her mind and is entitled to record the satisfaction under Article 171 of the Constitution of India with regard to the recommendations made by the Cabinet. It is contended that nomination is not intended as backdoor appointment for politicians and from press notes no inference of *mala fides* can be drawn. In support of the aforesaid submissions, reliance has been placed on the decisions in **Bachhittar Singh** (supra), **Gadde Venkateswara Rao vs. Government**

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<sup>16</sup> 2023 SCC OnLine SC 607

**of Andhra Pradesh**<sup>17</sup>, **Rakhi Ray** (supra) and **Ratan Soli Luth** (supra).

**(viii) SUBMISSIONS ON BEHALF OF RESPONDENT Nos.4 and 5:**

15. Learned Senior Counsel for the respondent Nos.4 and 5 submitted that no person has a legal right to be nominated to the Legislative Council of a State. It is further submitted that a writ of mandamus cannot be sought against the Governor. It is contended that individuals do not have any justiciable right in respect of a matter pending between the Council of Ministers and the Governor. It is further contended that the petitioners are not entitled to relief of quashment of G.O.Ms.Nos.12 and 13, dated 27.01.2024 as nominations of respondents No.4 and 5 have not been challenged on the ground that they are not qualified. It is also contended that the scope of judicial review is extremely limited. In support of his submissions, reference has been made to a decision of the Supreme Court in **Shamsher Singh** (supra).

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<sup>17</sup> AIR 1966 SC 828



**(ix) REJOINDER SUBMISSIONS ON BEHALF OF PETITIONER IN W.P.No.180 OF 2024:**

16. Learned Senior Counsel for the petitioner in W.P.No.180 of 2024 by way of rejoinder submitted that though the Constitution Bench decision in **Nabam Rebia** (supra) has been referred for consideration to a Larger Bench in **Subhash Desai** (supra), the points of reference do not pertain to the scope of power of judicial review. It is pointed out that even if a judgment is referred for consideration to a Larger Bench, the same retains its character as a binding precedent. It is further pointed out that decision of Supreme Court in **Nabam Rebia** (supra) has been considered subsequently in **Union Territory of Ladakh vs. Jammu and Kashmir National Conference**<sup>18</sup>. It is submitted that under Article 171 of the Constitution of India, the Governor has no discretion, and therefore, the aid and advice of the Council of Ministers is binding on the Governor.

17. It is urged that the decision of Division Bench of Bombay High Court in **Ratan Soli Luth** (supra) is distinguishable as the inaction on the part of the Governor

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<sup>18</sup> 2023 SCC OnLine SC 1140

was an issue in the said case and subsequently, the SLP preferred has been withdrawn by an order dated 11.07.2023 keeping the question of law open. It is contended that petitioner has a legitimate expectation to be considered for the nomination under Article 171(5) of the Constitution of India, in view of the recommendation made in his favour by the Cabinet and the candidature of the petitioner has been rejected by a stigmatic order and therefore, he has locus to question the same.

18. It is further contended that since the nomination of the petitioner has been rejected, the question of withdrawal of the nomination in his favour by the Cabinet subsequently does not arise for consideration. It is submitted that if the initial action of rejection of nomination as Members of the Legislative Council is illegal, all consequential action and subsequent proceeding including the nomination dated 27.01.2024 in favour of the respondent Nos.4 and 5 would fall, as illegality strikes at the root of the matter. In support of his submission, reference has been made to decision of the

Supreme Court in **Ashok Sadarangani vs. Union of India**<sup>19</sup> and **State of Punjab vs. Davinder Pal Singh Bhullar**<sup>20</sup>.

**(x) REJOINDER SUBMISSIONS ON BEHALF OF PETITIONER IN W.P.No.181 OF 2024:**

19. Learned Senior Counsel for the petitioner in W.P.No.181 of 2024 by way of rejoinder submitted that the Governor has no authority to act contrary to the aid and advice given by the Council of Ministers and therefore the impugned order rejecting the nomination of the petitioner is *ultra vires* Article 163(1) of the Constitution of India read with Article 171(5)(e) of the Constitution of India. It is further submitted that petitioner is not seeking enforcement of the recommendation made by the Council of Ministers, but is challenging the impugned order of rejection as being *ultra vires* the Constitution and seeks a declaration from this Court that the Governor is bound to act in consonance with the aid and advice of the Council of Ministers. It is also submitted that a Division Bench decision of the erstwhile High Court of Andhra Pradesh in **V.Venkateshwar Rao** (supra) supports the contention of the petitioner that the

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<sup>19</sup> (2012) 11 SCC 321

<sup>20</sup> (2011) 14 SCC 770

Governor is bound by the advice of the Council of Ministers and has no discretion. It is urged that neither the decision rendered in **Ratan Soli Luth** (supra) nor **K.K.Tripathi vs. the State of Uttar Pradesh**<sup>21</sup> is an authority for the proposition that the Governor is entitled to reject the nomination made by the Council of Ministers.

20. We have considered the rival submissions made on both sides and we have perused the record.

21. Before proceeding further, it is apposite to take note of the position and power of the Governor under the Constitution.

**(xi) THE POSITION AND POWER OF THE GOVERNOR:**

22. The Constitution embodies the Parliamentary or Cabinet system of Government. Article 153 of the Constitution of India provides that there shall be a Governor for each State. Article 154 mandates that executive power of the State shall vest in the Governor and shall be exercised by him under directly or through officers subordinate to him in accordance with the Constitution of India. Article 163(1)

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<sup>21</sup> 2010 SCC OnLine All 573

provides that there shall be a Council of Ministers with the Chief Minister as its head to aid and advise the Governor in exercise of his/her functions, except in so far as he/she is by or under the Constitution required to exercise any of the functions in his/her discretion. Article 166 deals with conduct of business of the Government of a State. Article 168 provides for constitution of Legislatures in the States. Article 168(1) provides that the Legislature shall consist of the Governor.

23. Under the Constitution, the Governor is the constitutional head of each State and holds an independent constitutional office. The Governor is the head of the State executive and exercises executive powers, legislative powers and discretionary powers vested in him/her under the Constitution. The executive power of the Governor includes appointment of Chief Minister, Council of Ministers and other State officials. The aid and advice is a constitutional restriction on the exercise of executive powers of the State by the Governor. The Governor exercises the powers under the Constitution on the aid and advice of Council of Ministers, except where the Governor under the Constitution is

required to exercise his/her functions in his/her discretion. The Governor plays a crucial role in State Legislative process. He/she can summon and prorogue the Session of the State Legislature, address the State Legislature and can also dissolve the State Legislative Assembly under certain circumstances. The Governor has discretionary powers in various matters such as granting pardons, commuting sentences and making recommendation for President's Rule under specific conditions. The Governor also acts as a vital link between the State and the Central Government. The Governor also plays a role in State's financial matters including presenting the State Budget, giving assent to money bills. The Governor's position and power under the Indian Constitution is designed to ensure smooth functioning of the State Government while upholding the principles of federalism and the rule of law.

24. Two Constitution Benches of the Supreme Court in **B.P.Singhal vs. Union of India**<sup>22</sup> and **Nabam Rebia** (supra) have taken note of position of the Governor under the Constitution of India. In **B.P.Singhal** (supra), it has been

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<sup>22</sup> (2010) 6 SCC 331

held that the Governor constitutes an integral part of the Legislature of a State and the executive power of the State is vested in him/her and every executive action of the Government is taken in his/her name. In paragraph 35 of the decision in **B.P.Singhal** (supra), the Supreme Court has held as under:

**35.** The Governor constitutes an integral part of the legislature of a State. He is vested with the legislative power to promulgate ordinances while the Houses of the Legislature are not in session. The executive power of the State is vested in him and every executive action of the Government is taken in his name. He exercises the sovereign power to grant pardons, reprieves, respites or remissions of punishment. He is vested with the power to summon each House of the Legislature or to prorogue either House or to dissolve the Legislative Assembly. No Bill passed by the Houses of the Legislature can become law unless it is assented to by him. He has to make a report where he finds that a situation has arisen in which the Government of the State cannot be carried on in accordance with the Constitution. He thus occupies a high constitutional office with important constitutional functions and duties.

25. Another Constitution Bench of the Supreme Court in **Nabam Rebia** (supra) referred to discretionary powers of the Governor and it was held that the Governor has following

discretionary powers, namely : (i) to give assent or withhold or refer a Bill for Presidential assent under Article 200 of the Constitution of India; (ii) the appointment of the Chief Minister under Article 164 of the Constitution of India; (iii) dismissal of a Government that has lost the confidence of the Legislative Assembly but refuses to quit since the Chief Minister holds office during the pleasure of the Governor; (iv) dissolution of the House under Article 174 of the Constitution of India; (v) Governor's report under Article 356 of the Constitution of India; and (vi) Governor's responsibility for certain regions of the country under Articles 371-A, 371-E and 371-H of the Constitution of India etc.

Thus, from the reading of paragraph 154 of the decision in **Nabam Rebia** (supra), it is evident that so far as exercise of discretionary powers vested with the Governor is concerned, the same is limited to the situations, wherein a constitutional provision expressly so provides that the Governor should act in his/her own discretion. In addition, a Governor can exercise his/her function in his/her own discretion, in situations where interpretation of the constitutional provision concerned should not be construed



otherwise. In all other situations, except the aforesaid, the Governor is required to act on the aid and advice of the Council of Ministers.

**(xii) ISSUES:**

26. After having noticed position and powers of the Governor under the Constitution of India, we may now take note of the issues, which arise for consideration in these writ petitions, which are as under:

- (1) The scope and ambit of immunity granted to the Governor under Article 361 of the Constitution of India and its impact on maintainability of the writ petitions?
- (2) The nature and scope of power under Article 171(5) of the Constitution of India.
- (3) The grounds on which judicial review of action of the Governor is permissible in law.
- (4) Whether the petitioners can be said to be aggrieved persons and have locus to maintain these petitions?
- (5) Whether it is open for the petitioners to seek implementation of the recommendations made by Council of Ministers in these writ petitions?

- (6) The effect of subsequent withdrawal of nomination of the petitioners as Members of the Legislative Council and effect of subsequent nominations made in favour of respondent Nos.4 and 5?
- (7) Whether the orders dated 19.09.2023 passed by the Governor require interference in exercise of powers of judicial review and the reliefs to which the petitioners are entitled to?

27. We now advert to the first issue, namely *the scope and ambit of immunity granted to the Governor under Article 361 of the Constitution of India and its impact on maintainability of the writ petitions.*

27.1. At this stage, it is apposite to notice Article 361 of the Constitution of India, which is extracted below for the facility of reference:

**361. Protection of President and Governors and Rajpramukhs:** (1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61:

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

27.2. The scope of immunity granted to the Governor under Article 361 of the Constitution of India was dealt with by a Division Bench of Nagpur High Court in **G.D. Karkare vs.**

**T.L. Shevde and others**<sup>23</sup>, wherein a writ of *Quo Warranto* was sought against the Advocate General of the State of Madhya Pradesh, who was appointed in exercise of powers under Article 165(1) of the Constitution of India. The Division Bench *inter alia* held that immunity afforded by Article 361 of the Constitution of India to the Governor is personal in nature. It was further held that Article 361 of the Constitution of India does not place actions of the Governor purporting to be done in pursuance of the Constitution, beyond the scrutiny of the Courts. It was also held that the Constitution establishes the supremacy of law and not of men, however high they may be, and unless there is a provision excluding the matter from the purview of the Courts, it is for the Courts to examine, whether any act done is done in pursuance of the Constitution is in conformity with it.

27.3. A Constitution Bench of the Supreme Court in **Rameshwar Prasad** (supra) dealt with challenge to the dissolution of Legislative Assembly on the basis of the report submitted by the Governor and considered the scope and

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<sup>23</sup> AIR 1952 Nag 330 = 1950 SCC OnLine MP 67

ambit of Article 361 of the Constitution of India. In paragraphs 173 and 179, it was held as under:

**173.** A plain reading of the aforesaid article shows that there is a complete bar to the impleading and issue of notice to the President or the Governor inasmuch as they are not answerable to any court for the exercise and performance of their powers and duties. Most of the actions are taken on the aid and advice of the Council of Ministers. The personal immunity from answerability provided in Article 361 does not bar the challenge that may be made to their actions. Under law, such actions including those actions where the challenge may be based on the allegations of mala fides are required to be defended by the Union of India or the State, as the case may be. Even in cases where personal mala fides are alleged and established, it would not be open to the Governments to urge that the same cannot be satisfactorily answered because of the immunity granted. In such an eventuality, it is for the respondent defending the action to satisfy the Court either on the basis of the material on record or even filing the affidavit of the person against whom such allegation of personal mala fides are made. Article 361 does not bar filing of an affidavit if one wants to file on his own. The bar is only against the power of the Court to issue notice or making the President or the Governor answerable. In view of the bar, the Court cannot issue direction to the President or the Governor for even filing of affidavit to assist the Court. Filing of an affidavit on one's own volition is one thing than the issue of direction by the Court to file an affidavit. The personal immunity under Article 361(1) is

complete and, therefore, there is no question of the President or the Governor being made answerable to the Court in respect of even charges of mala fides.

**179.** The position in law, therefore, is that the Governor enjoys complete immunity. The Governor is not answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties. The immunity granted by Article 361(1) does not, however, take away the power of the Court to examine the validity of the action including on the ground of mala fides.

27.4. In **State of Gujarat v. R.A.Mehta**<sup>24</sup>, State of Gujarat had challenged the action of the Governor in appointing Lokayukta. The Supreme Court in the aforesaid decision had an occasion to consider the extent of the immunity conferred on the Governor. In paragraph-68, it was held as under:

**68.** It is evident that the Governor enjoys complete immunity under Article 361(1) of the Constitution, and that under this his actions cannot be challenged for the reason that the Governor acts only upon the aid and advice of the Council of Ministers. If this was not the case, democracy itself would be in peril. The Governor is not answerable to either House of the State, or to Parliament, or even to the Council of Ministers, and his

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<sup>24</sup> (2013) 3 SCC 1

acts cannot be subject to judicial review. In such a situation unless he acts upon the aid and advice of the Council of Ministers he will become all powerful and this is an antithesis to the concept of democracy. Moreover, his actions including such actions which may be challenged on ground of allegations of mala fides are required to be defended by the Union/State. In spite of the fact that the Governor is immune from any liability it is open to him to file an affidavit if anyone seeks review of his opinion, despite the fact that there is a bar against any action of the court as regards issuing notice to, or for the purpose of impleading, at the instance of a party, the President or the Governor in a case, making him answerable.

27.5. In **Nabam Rebia** (supra), another Constitution Bench of the Supreme Court, while dealing with discretionary power of the Governor under Article 163 of the Constitution of India, held in paragraph 154 as under:

**154.** We are, therefore, of the considered view that insofar as the exercise of discretionary powers vested with the Governor is concerned, the same is limited to situations, wherein a constitutional provision expressly so provides that the Governor should act in his own discretion. Additionally, a Governor can exercise his functions in his own discretion, in situations where an interpretation of the constitutional provision concerned, could not be construed otherwise. We, therefore, hereby reject the contention advanced on behalf of the respondents, that the Governor has the freedom to determine when and in which situation, he should take

a decision in his own discretion, without the aid and advice of the Chief Minister and his Council of Ministers. We accordingly, also turn down the contention, that whenever the Governor in the discharge of his functions, takes a decision in his own discretion, the same would be final and binding, and beyond the purview of judicial review. We are of the view that finality expressed in Article 163(2) would apply to functions exercised by the Governor in his own discretion, as are permissible within the framework of Article 163(1), and additionally, in situations where the clear intent underlying a constitutional provision, so requires i.e. where the exercise of such power on the aid and advice, would run contrary to the constitutional scheme, or would be contradictory in terms.

27.6. Thus, from the decisions of the Supreme Court in **Rameshwar Prasad** (supra), **R.A.Mehta** (supra) and **Nabam Rebia** (supra), the following principles with regard to the scope of immunity granted to the Governor under Article 361 of the Constitution of India can be culled out:

(i) The Governor enjoys complete immunity under Article 361 of the Constitution of India and his/her actions cannot be challenged for the reason that the Governor acts only upon the aid and advice of the Council of Ministers.

(ii) The Governor is not answerable to any Court for exercise and performance of powers and duties of his/her



office or for any other act done or purporting to be done by him/her in exercise and performance of those powers and duties.

(iii) The immunity granted to the Governor under Article 361 of the Constitution of India, however, is personal in nature and the same does not take away the power of the Court to examine the validity of the action taken by the Governor including on the grounds of *mala fides*.

(iv) The action of the Governor including the action where the challenge may be based on allegations of *mala fides* are required to be defended by the State Government.

(v) Article 361 of the Constitution of India does not bar filing of an affidavit if one wants to file on his/her own. The bar operates only against the power of the Court to issue notice or making the Governor answerable. The Court cannot issue any direction to the Governor even for filing of an affidavit to assist the Court.

(vi) The Governor does not have the freedom to determine when and in which situation, he/she should take a decision in his/her own discretion without the aid and advice of the Chief Minister and his Council of Ministers.

27.7. It is also noteworthy that there is no express or implicit bar in the Constitution which excludes the power of judicial review in respect of an action taken by the Governor. The immunity granted to the Governor is personal in nature and does not take away the power of the Court to examine the validity of the action taken by the Governor. Therefore, it is held that the immunity granted to the Governor under Article 361 of the Constitution of India which even otherwise is personal in nature has no impact on the maintainability of the writ petitions and the writ petitions are maintainable. Accordingly, the first issue is answered.

28. Now we may advert to the second issue, namely *the nature and scope of power under Article 171(5) of the Constitution of India?*

28.1. Article 163 of the Constitution of India provides for Council of Ministers to aid and advise the Governor, whereas Article 166 deals with the Conduct of business of the Governor of a State. Articles 163 and 166 are extracted below for the facility of reference:

**163. Council of Ministers to aid and advise Governor:-**

(1) 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.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

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

**166. Conduct of business of the Government of a State:-**

(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to

which the Governor is by or under this Constitution required to act in his discretion.

28.2. In exercise of powers under Article 166 of the Constitution of India, Telangana Government Business Rules and Secretariat Instructions (hereinafter referred to as the, “Rules of Business”) have been framed. The Rules of Business provide that executive power shall be exercised by the Governor either directly or through subordinate officers. Rule 15(1) of the Rules of Business provides that all cases referred to in the Second Schedule shall be brought up for consideration at a meeting of the Council. Rule 15 reads as under:

15. (1) All cases referred to in the Second Schedule shall be brought up for consideration at a meeting of the Council:

Provided that where the Secretary of the Department or the Minister in-charge feels that in view of the urgency a decision should be taken in a case either in circulation to all the Ministers, or by the Chief Minister, the connected file shall be circulated to the Chief Minister for a decision regarding the method to be adopted:

Provided further that where a decision is taken in a case without bringing up the matter at a meeting of the council, it shall be placed before the Council at its next meeting for ratification.

Provided also that in cases not falling under Second Schedule, if the Minister concerned considers the matter to be of great importance and requires approval of the Council, prior approval of the Chief Minister shall be taken for bringing it up at the meeting of the Council.

(2) In all cases where a matter is to be brought up at the meeting of the Council or a decision is to be taken through circulation to all the Ministers, the Secretary of the Department concerned shall prepare a Memorandum for the Council of Ministers and circulate it to the Minister concerned for approval through the Chief Secretary.

28.3. The relevant extract of Rules 32 and 34 of the Rules of Business read as under:

32(3) The following classes of cases shall be submitted to the Governor through the Chief Minister before issue of orders:-

...

(vii) All cases relating to summoning and prorogation of dissolution of the Legislative Assembly, removal of disqualification of members at elections and nomination of members to the Legislative Assembly, fixing of date of elections to the Legislative Assembly and other connected matters;

...

(xi) Cases relating to the recommendations of the Governor for presentation to the Legislative Assembly of Annual Financial

Statements and statements relating to supplementary, additional or excess grants and Appropriation Bills.

...

(xvi) Appointment to any post for which specific provision is made in any Law.

34. The Chief Minister shall ---

(a) cause to be furnished to the Governor such papers, records or information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(b) If the Governor so requires, submit for the consideration of the Council any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

28.4. At this stage, it is also apposite to take note of Article 171 of the Constitution of India.

**171. Composition of the Legislative Councils.—**

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

- (a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;
- (b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;
- (c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;
- (d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;
- (e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of

proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art, co-operative movement and social service.

28.5. Article 171 of the Constitution of India deals with composition of the Legislative Councils. Article 171(1) of the Constitution of India mandates that total number of Members in the Legislative Council of a State shall not exceed  $1/3^{\text{rd}}$  of the total number of Members of the Legislative Assembly of that State. Article 171(3)(e) of the Constitution of India provides that remainder of Member i.e., percentage of which would remain after sub-clause (a) and (d) of clause (3) are utilized, shall be nominated by the Governor in accordance with the provisions of Article 171(5) of the Constitution of India. Article 171(5) of the Constitution of India provides that the Members to be nominated by the Governor under clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in



respect of such matters as the following, namely literature, science, art, co-operative movement and social service.

28.6. The object of enactment of Article 171(5) of the Constitution of India appears to be induction of nominated Members to the Legislative Council, who have contributed significantly to the society in their respective fields and have special knowledge and learning in the fields, namely literature, science, art, co-operative movement and social service. The spirit of the provision appears to have the benefit of knowledge and guidance of persons from different walks of life, enumerated in Article 171(5) of the Constitution of India. The object of the aforesaid provision is neither to meet the aspirations of the politicians nor to strengthen the number of the Members of the ruling party in the Legislative Council.

28.7. After having noticed relevant provisions of the Constitution of India and the Rules of Business, we may advert to the decision of the Supreme Court in **Shamsher Singh** (supra), wherein the Supreme Court dealt with the issue of validity of order of termination of judicial officer. The

Supreme Court held that the Constitution embodies generally, the Parliamentary or Cabinet system of Government of the British model both for the Union and the States. It is further held that under the Cabinet system of the Government, as embodied in our Constitution the Governor is the Constitutional Head of the State and exercise all powers and functions conferred on him/her by or under the Constitution on the aid and advice of Council of Ministers except in cases where the Governor is required by or under the Constitution to exercise his/her functions in his/her discretion. In paragraphs 30 and 48, it was held as under:

**30.** In all cases in which the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers he does so by making rules for convenient transaction of the business of the Government of India or the Government of the State respectively or by allocation among his Ministers of the said business, in accordance with Articles 77(3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360 the satisfaction required by the Constitution is not the

personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of Government. The reasons are these. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. Neither Article 77(3) nor Article 166(3) provides for any delegation of power. Both Articles 77(3) and 166(3) provide that the President under Article 77(3) and the Governor under Article 166(3) shall make rules for the more convenient transaction of the business of the Government and the allocation of business among the Ministers of the said business. The Rules of Business and the allocation among the Ministers of the said business all indicate that the decision of any Minister or officer under the Rules of Business made under these two articles viz. Article 77(3) in the case of the President and Article 166(3) in the case of the Governor of the State is the decision of the President or the Governor respectively.

**48.** The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but

the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President or the Governor.

28.8. In another Constitution Bench of the Supreme Court in **Pu Myllai Hlychho** (supra) it was held that there are several powers and duties of the Governor and some of these powers are to be exercised in his/her discretion and some other powers are required to be exercised by him/her with the aid and advice of Council of Ministers. The executive powers of the State are vested in the Governor under Article 154(1) of the Constitution of India. It has been held that whenever Constitution requires the satisfaction of the Governor for exercise of any power or function, the satisfaction required by the Constitution is not personal satisfaction but the satisfaction is in the Constitutional sense under the Cabinet

system of Government. Paragraphs 12, 14 and 15 of the said decision are extracted below for the facility of reference:

**12.** There are several powers and duties for the Governor and some of these powers are to be exercised in his discretion and some other powers are to be exercised by him with the aid and advice of the Council of Ministers. The executive powers of the State are vested in the Governor under Article 154(1). Article 163(1) states that there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under this Constitution, required to exercise his functions or any of them in his discretion.

**14.** Our Constitution envisages the parliamentary or cabinet system of government of the British model both for the Union and the States. Under the cabinet system of government as embodied in our Constitution, the Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of the Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.

**15.** The executive power also partakes the legislative or certain judicial actions. Wherever the Constitution requires the satisfaction of the Governor for the exercise of any power or function, the satisfaction required by the Constitution is not personal satisfaction of the Governor but the satisfaction in the constitutional sense under the cabinet system of government. The Governor

exercises functions conferred on him by or under the Constitution with the aid and advice of the Council of Ministers and he is competent to make rules for convenient transaction of the business of the Government of the State, by allocation of business among the Ministers, under Article 166(3) of the Constitution. It is a fundamental principle of English constitutional law that Ministers must accept responsibility for every executive act. It may also be noticed that in regard to the executive action taken in the name of the Governor, he cannot be sued for any executive action of the State and Article 300 specifically states that the Government of a State may sue or be sued in the name of the State subject to the restriction placed therein. This Court has consistently taken the view that the powers of the President and the powers of the Governor are similar to the powers of the Crown under the British parliamentary system. We followed this principle in *Rai Sahib Ram Jawaya Kapur v. State of Punjab* [(1955) 2 SCR 225 : AIR 1955 SC 549], *A. Sanjeevi Naidu v. State of Madras* [(1970) 1 SCC 443 : (1970) 3 SCR 505], SCR at p. 511 and *U.N.R. Rao v. Indira Gandhi* [(1971) 2 SCC 63] .

28.9. A Constitution Bench of Supreme Court in **Nabam Rebia** (supra) referred to the discretionary powers of the Governor and in paragraph 151 held as under:

**151.** The important observations in the Justice M.M. Punchhi Commission Report, with reference to Article 163(2), are contained in Para 4.5. Relevant extract of the same is reproduced below:

*“4.5. ... Article 163(2) gives an impression that the Governor has a wide, undefined area of discretionary powers even outside situations where the Constitution has expressly provided for it. Such an impression needs to be dispelled. The Commission is of the view that the scope of discretionary powers under Article 163(2) has to be narrowly construed, effectively dispelling the apprehension, if any, that the so-called discretionary powers extends to all the functions that the Governor is empowered under the Constitution. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area, his choice of action should not be nor appear to be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.*

*The Governor's discretionary powers are the following: to give assent or withhold or refer a Bill for Presidential assent under Article 200; the appointment of the Chief Minister under Article 164; dismissal of a Government which has lost confidence but refuses to quit, since the Chief Minister holds office during the pleasure of the Governor; dissolution of the House under Article 174; Governor's report under Article 356; Governor's responsibility for certain regions under Articles 371-A, 371-C, 371-E, 371-H, etc. These aspects are now considered below.”*

(emphasis supplied)

28.10. From a careful reading of the decisions of the Supreme Court in **Shamsher Singh** (supra), **Pu Myllai Hlychho** (supra) and **Nabam Rebia** (supra), the following principles with regard to the discretionary powers of the Governor emerge:

(i) In all cases where the Governor exercises his/her functions under the Constitution with the aid and advice of the Council of Ministers, he/she does so by making rules for convenient transaction of business, namely Rules of Business.

(ii) Wherever the Constitution requires the satisfaction of the Governor, the same is not personal satisfaction of the Governor but satisfaction of the Governor in the constitutional sense under the cabinet system of Government.

(iii) The discretionary powers of the Governor are to give assent or withhold or refer a Bill for Presidential assent.

(iv) Under Article 171(5) of the Constitution of India, the Governor has normally to act on the aid and advice of the Council of Ministers.



(v) The Governor can additionally discharge functions in his/her own discretion, where such intent emerges from legitimate interpretation of the provision concerned and the same cannot be construed otherwise.

28.11. The upshot of the aforesaid discussion is that the Governor is not under an obligation in all circumstances, to accept the recommendation made by the Council of Ministers, but is entitled to examine whether the person in whose favour a recommendation has been made for nomination to the Legislative Council is ineligible or suffers from any disqualification under Article 191 of the Constitution of India or under the Representation of People Act, 1951. The Governor can also request the Council of Ministers to re-examine the recommendation made by it in cases where a person in whose favour such a nomination has been made is otherwise ineligible, namely in case where he is released on bail or criminal cases are pending against him. In such circumstances, which are merely illustrative not exhaustive, the Governor can undoubtedly return the

recommendation for reconsideration to the Council of Ministers. The second issue is accordingly answered.

29. Now we may deal with the third issue, namely *the grounds on which judicial review of an action of the Governor is permissible in law.*

29.1. A Constitution Bench of Supreme Court in paragraph 179 of its decision in **Rameshwar Prasad** (supra), which has already been referred to by us in the preceding paragraphs, has held that the validity of the action taken by the Governor can be examined by the Court, including on the ground of *mala fides*. Another Constitution Bench of Supreme Court in **Nabam Rebia** (supra), held that any discretion exercised beyond the Governor's jurisdictional authority would be subjected to judicial review. Paragraph 155 of the aforesaid decision reads as under:

**155.** We may, therefore, summarise our conclusions as under:

**155.1.** Firstly, the measure of discretionary power of the Governor, is limited to the scope postulated therefor, under Article 163(1).

**155.2.** Secondly, under Article 163(1) the discretionary power of the Governor extends to

situations, wherein a constitutional provision expressly requires the Governor to act in his own discretion.

**155.3.** Thirdly, the Governor can additionally discharge functions in his own discretion, where such intent emerges from a legitimate interpretation of the provision concerned, and the same cannot be construed otherwise.

**155.4.** Fourthly, in situations where this Court has declared that the Governor should exercise the particular function at his own and without any aid or advice because of the impermissibility of the other alternative, by reason of conflict of interest.

**155.5.** Fifthly, the submission advanced on behalf of the respondents, that the exercise of discretion under Article 163(2) is final and beyond the scope of judicial review cannot be accepted. Firstly, because we have rejected the submission advanced by the respondents, that the scope and extent of discretion vested with the Governor has to be ascertained from Article 163(2), on the basis whereof the submission was canvassed. And secondly, any discretion exercised beyond the Governor's jurisdictional authority, would certainly be subject to judicial review.

**155.6.** Sixthly, in view of the conclusion drawn at fifthly above [para 155.5], the judgments rendered in *Mahabir Prasad Sharma v. Prafulla Chandra Ghose* (1968 SCC OnLine Cal 3), and *Pratapsingh Raojirao Rane v. Governor of Goa* (1998 SCC OnLine Bom 351), by the High Courts of Calcutta and Bombay, respectively, do not lay down the correct legal position. The constitutional position declared therein, with reference to Article 163(2), is accordingly hereby set aside.

Thus, from the perusal of the two Constitution Bench decisions of the Supreme Court in **Rameshwar Prasad** (supra) and **Nabam Rebia** (supra) and in the absence of any express or implicit provision in the Constitution placing the action of the Governor beyond the scrutiny of the Courts, it is held that the judicial review of the action of the Governor is permissible when the Governor acts *ultra vires* the constitutional provision or where the action suffers from *mala fides*. Accordingly, third issue is answered.

30. Now we may advert to the fourth issue *whether the petitioners are aggrieved persons and have locus to maintain these writ petitions?*

30.1. Ordinarily a person who is prejudicially affected by an act or omission of authority would be an aggrieved person and would have locus to maintain the writ petition. The right which can be enforced under Article 226 of the Constitution of India can ordinarily be the personal or individual right of the petitioner himself. A three-Judge Bench of the Supreme Court in **Jasbhai Motibhai Desai vs. Roshan Kumar, Haji**

**Bashir Ahmed**<sup>25</sup> examined the requirements of a person to be “an aggrieved person” to have *locus* to file the writ petition under Article 226 of the Constitution of India to seek a writ of certiorari, it was held that though ordinarily only a person whose legal/individual right had been affected would have *locus* to invoke the extraordinary jurisdiction of the Court. It was further held that however, the word ‘ordinarily’ has to be given a flexible definition that even if stranger to the proceeding who has been prejudicially affected would have *locus*. In paragraphs 34 and 35, it was held as under:

**34.** This Court has laid down in a number of decisions that in order to have the *locus standi* to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like *habeas corpus* or *quo warranto* this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a *locus standi* in the matter, (see *State of Orissa v. Madan Gopal Rungta* [1951 SCC 1024 : AIR 1952 SC 12 : 1952 SCR 28] ; *Calcutta Gas Co. v. State of W.B.* [AIR 1962 SC 1044 : 1962 Supp (3) SCR 1]; *Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa* [(1967) 1 SCA 413]; *Gadde Venkateswara Rao v. Government of*

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<sup>25</sup> (1976) 1 SCC 671

*A.P.* [AIR 1966 SC 828 : (1966) 2 SCR 172]; *State of Orissa v. Rajasaheb Chandanmall* [(1973) 3 SCC 739]; *Satyanarayana Sinha Dr v. S. Lal & Co.* [(1973) 2 SCC 696 : (1973) SCC (Cri) 1002] ).

**35.** The expression “ordinarily” indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

30.2. The issue of locus of petitioners and whether they are aggrieved is required to be examined from another angle whether the petitioners have been deprived of their legitimate expectation i.e., consideration of their cases for nomination in accordance with the Constitution of India. The Supreme Court in **Union of India vs. Hindustan Development Corporation**<sup>26</sup> laid down the meaning and scope of the doctrine of legitimate expectation. The Court held as under:

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<sup>26</sup> (1993) 3 SCC 499

a. For legal purposes, the expectation cannot be the same as anticipation. It does not even amount to wish, desire or hope. The legitimate expectation should not be mere anticipation but should be found on customs and established practice.

b. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence.

c. It is widely accepted that legitimate expectation provides the claimant with ample locus standi for judicial review and that the doctrine of legitimate expectation is primarily restricted to the right to a reasonable hearing before a decision is made that results in the negative or removal of a commitment.

Thus, it is axiomatic that the doctrine of legitimate expectation cannot be based on mere hope or anticipation but must be based on established practice or custom. The only right which holder of any legitimate expectation gets is to be considered while decision is made. In **Ram Pravesh Singh vs. State of Bihar**<sup>27</sup>, the Supreme Court dealt with the defences to a plea of legitimate expectation and held that public interest, policy change, the conduct of the expectant or any other valid or bona fide reason given by the decision

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<sup>27</sup> (2006) 8 SCC 381

maker, may be sufficient to negative the legitimate expectation.

30.3. In the backdrop of the aforesaid well settled legal principles, we may revert to the issue whether the petitioners can be termed as aggrieved persons and have locus to maintain the writ petitions. The recommendation was made in favour of the petitioners for their nomination as Members of the Legislative Council by the Council of Ministers on 31.07.2023. The petitioners had legitimate expectation for consideration of the recommendation made in their favour by the Council of Ministers, by the Governor in consonance with the constitutional provisions. According to the petitioners, they have been deprived of the aforesaid legitimate expectation. The denial of legitimate expectation of the petitioners gives them the sufficient *locus standi* to approach this Court by invoking the writ jurisdiction. It is pertinent to examine the aspect of locus of the petitioners from another angle. In case, it is held that the petitioners are neither aggrieved persons nor have any locus to maintain the writ petitions, the right of judicial review of action of Governor



would be rendered nugatory. The petitioners, therefore, are held to be aggrieved persons and have locus to maintain the writ petitions. Accordingly, the fourth issue is answered.

31. Now we deal with the fifth issue, namely *whether it is open for the petitioners to seek implementation of the recommendations made by Council of Ministers and the effect of subsequent events.*

31.1. It may be noticed that learned Senior Counsel for the petitioners have fairly submitted that they are not seeking the enforcement of recommendation made by Council of Ministers but are challenging the rejection of recommendation of Council of Ministers made in their favour for their nomination as Members of Legislative Council on the ground that the same is *ultra vires* the Constitution. It has further been stated by learned Senior Counsel for the petitioners that they are only seeking a declaration that the Governor is bound to act as per the aid and advice of Council of Ministers. Therefore, the issue whether the petitioners can seek implementation of recommendations made by the Council of Ministers does not need any further deliberation.

31.2. Now we deal with the effect of subsequent withdrawal of nomination of the petitioners as Members of the Legislative Council and the effect of subsequent nominations made in favour of respondent Nos.4 and 5. The Supreme Court in **Davinder Pal Singh Bhullar** (supra) in para 107 has held as under:

107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim *sublato fundamento cadit opus* meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

31.3. In view of the aforesaid enunciation of law, it is evident that if the initial order of rejection of nomination of petitioners to the Legislative Council is set aside, the subsequent nomination of respondent Nos.4 and 5 would have no sanction in the eye of law. It is also pertinent to note that the recommendation made in favour of petitioners resulted in passing of orders dated 19.09.2023 by which their nominations to Legislative Council were rejected. Therefore, the recommendations made in favour of the

petitioners did not exist and therefore, could not have been withdrawn by Council of Ministers subsequently. Since the petitioners are not seeking implementation of recommendations made by the Council of Ministers in these petitions and therefore, subsequent withdrawal of nomination of petitioners, and subsequent nominations in favour of respondent Nos.4 and 5 have no impact on the controversy involved in these petitions. The fifth and sixth issues are accordingly answered.

32. Now we deal with the seventh issue, namely validity of orders dated 19.09.2023 passed by the Governor and the reliefs to which petitioners are entitled to. In the preceding paragraphs, we have already held that judicial review of action of the Governor is permissible on the ground that the same is *ultra vires* the Constitution or suffers from *mala fides*. It has also been held that it is open for the Governor to satisfy himself/herself with regard to eligibility or disqualification of a person in whose favour recommendation is made under Article 171(5) of the Constitution of India. The Governor in the circumstances referred to in preceding paragraphs may in his/her discretion, may also return the

recommendations for further action by the Council of Ministers.

33. Before proceeding further, we may take note of the reliefs sought in the writ petitions as well as the orders dated 19.09.2023 passed by the Governor, which read as under:

**(a) Reliefs:**

**W.P.No.180 of 2024:**

For the aforesaid reasons, this Hon'ble Court may be pleased to issue a writ or order more particularly one in the nature of writ of Certiorarified Mandamus calling for records pertaining to the orders dt. 19-09-2023 passed by the Hon'ble Governor, wherein the Hon'ble Governor had rejected the nomination/decision/resolution passed by the Government of Telangana/Hon'ble Chief Minister and Council of Ministers resolving/deciding/nominating the Petitioner as a member of Legislative Council under Governor Quota and:

- (i) Quash the orders dt.19-09-2023 passed by the Hon'ble Governor as the same is unconstitutional, beyond jurisdiction, in violation of rights guaranteed to the Petitioner under Part-III of the Constitution, in violation of the powers and constitutional mandate under Article 163 and 171 of the Constitution and in violation of the basic structure of the constitution, in violation of the principles of natural justice and

- (ii) Declare that the nomination/decision/Resolution Passed by the Hon'ble Chief Minister and the Council of Ministers in July 2023 resolving/deciding/nominating the Petitioner to be a member of Legislative Council is binding on the Hon'ble Governor
- (iii) With a consequential prayer to advice/direct the Hon'ble Governor to confirm the decision passed by the Hon'ble Chief Minister and Council of Ministers with respect to the Petitioners nomination as a member of Legislative council for the State of Telangana at the earliest and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iv) To call for the records pertaining to the G.O.Ms.No.12 and 13 both dated 27.01.2024 [published in Extraordinary Gazette No.5 (G-674 and RNI No.TELMUL/2016/73158, HSE No.1051/2023-2025) and Extraordinary Gazette No.6 (G-675 and RNI No.TELMUL/2016/73158, HSE No.1051/2023-2025) both dated 27.01.2024] and quash the same as being as illegal, arbitrary, highhanded, in violation of the rights guaranteed to the petitioner under Part-III of the Constitution of India.

**W.P.No.181 of 2024:**

For the aforesaid reasons, this Hon'ble Court may be pleased to issue a writ or order more particularly one in the nature of writ of Certiorarified Mandamus calling for records pertaining to the orders dt. 19-09-2023 passed by the Hon'ble Governor, wherein the Hon'ble Governor had

rejected the nomination/decision/resolution passed by the Government of Telangana/Hon'ble Chief Minister and Council of Ministers resolving/deciding/nominating the Petitioner as a member of Legislative Council under Governor Quota and:

- (i) Quash the orders dt.19-09-2023 passed by the Hon'ble Governor as the same is unconstitutional, beyond jurisdiction, in violation of rights guaranteed to the Petitioner under Part-III of the Constitution, in violation of the powers and constitutional mandate under Article 163 and 171 of the Constitution and in violation of the basic structure of the constitution, in violation of the principles of natural justice and
- (ii) Declare that the nomination/decision/Resolution Passed by the Hon'ble Chief Minister and the Council of Ministers in July 2023 resolving/deciding/nominating the Petitioner to be a member of Legislative Council is binding on the Hon'ble Governor
- (iii) With a consequential prayer to advice/direct the Hon'ble Governor to confirm the decision passed by the Hon'ble Chief Minister and Council of Ministers with respect to the Petitioners nomination as a member of Legislative council for the State of Telangana at the earliest and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iv) To call for the records pertaining to the G.O.Ms.No.12 and 13 both dated 27.01.2024 [published in Extraordinary Gazette No.5 (G-674 and RNI No.TELMUL/2016/73158, HSE

No.1051/2023-2025) and Extraordinary Gazette No.6 (G-675 and RNI No.TELMUL/2016/73158, HSE No.1051/2023-2025) both dated 27.01.2024] and quash the same as being as illegal, arbitrary, highhanded, in violation of the rights guaranteed to the petitioner under Part-III of the Constitution of India.

**(b) Impugned Orders:**

**W.P.No.180 of 2024:**

Date: 19-09-2023

To

1. The Chief Secretary,  
Government of Telangana,  
Secretariat, Hyderabad.
2. The Hon'ble Chief Minister,  
Government of Telangana,  
Secretariat, Hyderabad.

Sir/Madam,

Sub: Governor Quota - Nomination of MLC-  
Recommendation of Dr. Dasoju Sravan  
Kumar-Rejection-Intimation-Reg.

Ref: The recommendation of Dr. Dasoju Sravan  
Kumar by the Government of Telangana for  
nomination as MLC in Governor Quota.

With respect to the recommendation cited in the  
reference, I am pleased to inform the following:

The Article 171(1)(e) & 171(5) of the Constitution of  
India empowers the Governor to nominate Members, under

Article 171(3) & (5) consisting of persons having special knowledge or practical experience in Literature and Science, Art, Cooperative movement and Social service. The Section 10 of the Representation of Peoples Act, 1950 specifies the allocation of seats in the Legislative Council as shown in Schedule-III. The Schedule-III appended to Section 10 of the Representation of Peoples Act 1950 was amended by Section 17 of Act 6 of 2014 with effect from 01-03-2014 including serial No. 7-A the State of Telangana with 40 Seats, including and the 6 seats to be nominated by the Hon'ble Governor under Article 171(3) R/W. Section 171(5) or (6) of the Constitution.

The Section 3 and 6(2) of the Representation of Peoples Act, 1951 prescribes the qualification for the members to be an elector for a Assembly Constituency or a resident of the State respectively. The disqualifications mentioned in Sections 8 to 11(A) are clearly applicable for being nominated to the Legislative Council.

The summary of Dr. Dasoju Sravan Kumar indicates his active participation in politics, Corporate and academic sector. His summary does not indicate any special achievements in Literature, Science, Art, Cooperative movement and Social service, which appears to be from the summary a short tenure. There is no apparent consideration of the fulfillment of the pre-conditions required under Article 171(5) of the Constitution of India. Except the summary, no other details or documents are enclosed or sent to me. The methodology adopted in his consideration for nomination as Member of Legislative Council is also not enclosed. There are no reports either from the Intelligence or other



Agencies indicating that he does not incur disqualification mentioned under Section 8 to 11(A) of the Representation of the Peoples Act 1951. The entire file relating to the consideration of all the relevant records and the criteria required to be fulfilled by the Constitution and the note file before the Cabinet and the Hon'ble Chief Minister evidencing the consideration of all the relevant records have not been enclosed along with the recommendation. The bereft of the above, just a summary without any documentation in support thereof showing the fulfillment of the criteria mentioned above, it will be inappropriate for me to consider and nominate Sri. Dasoju Sravan Kumar as a Member of Legislative Council.

There are several eminent non-politically affiliated people recognized in our State, fulfilling the requisites prescribed under Article 171(5) of the Constitution of India. Non-consideration of those people and consideration of politically aligned persons to fill the post earmarked for nomination in those fields will be a de-recognition of the merits and the contribution of those people in those fields with special knowledge and experience in the fields mentioned in Article 171(5) of the Constitution of India and these sort of nominations to fill up the specially nominated posts will make the Article 171(5) purposeless, which may not be the intention of the Constitution makers, besides it will take away the opportunities to genuine people fulfilling those qualifications. Hence, the nomination of Sri Dasoju Sravan Kumar, as a Member of Legislative Council, is rejected.

My earnest request to the Cabinet and the Hon'ble Chief Minister is to avoid such politically aligned persons

to fill up nominated posts under article 171(5) of the Constitution of India, defeating its objectives and enactment and consider only genuinely eminent persons in the respective field.

As such, the nomination of Mr. Dasoji Sravan Kumar is rejected and the file is returned.

Sd/-  
GOVERNOR,  
TELANGANA

**W.P.No.181 of 2024:**

Date: 19-09-2023

To

1. The Chief Secretary,  
Government of Telangana,  
Secretariat, Hyderabad.
2. The Hon'ble Chief Minister,  
Government of Telangana,  
Secretariat, Hyderabad.

Sir/Madam,

Sub: Governor Quota - Nomination of MLC-  
Recommendation of Mr. Kurra  
Satyanarayana-Rejection-Intimation-Reg.

Ref: The recommendation of Mr. Kurra  
Satyanarayana by the Government of  
Telangana for nomination as MLC in  
Governor Quota.

With respect to the recommendation cited in the reference, I am pleased to inform the following:

The Article 171(1)(E) of the Constitution of India empowers the Governor to nominate the remainder of the Members after they are elected under sub-clause-A, B, C & D of Article 171(3). The Article 171(5) of the Constitution of India empowers the Governor to nominate Members. Under Article 171(3) & (5) consisting of persons having special knowledge or practical experience in Literature and Science, Art, Cooperative movement and Social service. The Section 10 of the Representation of Peoples Act, 1950 specifies the allocation seats in the Legislative Councils as shown in Schedule-III. The Schedule-III appended to Section 10 of the Representation of Peoples Act 1950 was amended by Section 17 of Act 6 of 2014, with effect from 01-03-2014 including the serial No. 7-A the State of "Telangana" with 40 Seats and the 6 seats to be nominated by the Hon'ble Governor under Article 171-(3) R/W. Article 171(5) or (6).

The Section 3 and 6(2) of the Representation of Peoples Act, 1951 prescribes the qualifications for the members to be an elector for an Assembly Constituency and a resident of the State respectively. The disqualifications mentioned in Sections 8 to 11(A) are clearly applicable for being nominated to the Legislative Council.

The summary of Mr. Kurra Satyanarayana indicates his active participation in politics and Corporate Trade Union Activities. His profile summary does not indicate his special knowledge in Literature, Science, Art, Cooperative movement and Social service, which appears to be from the summary a short tenure, which will not come within the purview of Article 171(5). There is no apparent

consideration of the fulfillment of the pre-conditions required under Article 171(5) of the Constitution of India. Except the profile & summary, no other details or documents or the methodology adopted in his consideration for nomination as Member of Legislative Council are enclosed. There is no report either from the Intelligence or other Agencies indicating that he does not incur disqualification mentioned under Section 8 to 11-A of the Representation of the Peoples Act 1951.

The Cabinet records relating to the consideration of all the Parameters and the criteria required to be fulfilled in the Constitution, which are considered by the Cabinet and by the Hon'ble Chief Minister have not been enclosed along with the recommendation. The bereft of the above, just a Profile and summary of the candidate without the documentation in support thereof evidencing the fulfillment of the criteria mentioned above, indicates that Mr. Kurra Satyanaryana does not fulfill all the parameters laid down in Article 171(5) of the Constitution and he does not incur disqualification section 8 to 11 (A) of the R.P. Act, 1951 to be recommended as a Member of Legislative Council.

There are several eminent non-politically affiliated people eminently recognized in our State, fulfilling the pre-requisites prescribed U/A 171(5) of the Constitution of India. Non-consideration of those people and consideration of politically aligned persons to fill the post earmarked for nomination in those fields will be a de-recognition of the merits and the non-recognition of the contribution of those people with special knowledge and experience in the fields mentioned in Article 171(5) of the Constitution of India and

these sorts of nominations intending to fill up the specially nominated posts will make the Article 171(5) purposeless, which may not be the intention of the Legislation and it will take away the opportunities to genuine people fulfilling those qualifications.

My earnest request to the Cabinet and the Hon'ble Chief Minister is to avoid such politically aligned persons to fill up nominated posts under article 171(5) of the Constitution of India, defeating its objectives and enactment.

As such, the nomination of Mr. Kurra Satyanrayana as a Member of Legislative Council is rejected.

Sd/-  
GOVERNOR,  
TELANGANA

34. Thus, from perusal of the aforesaid orders, it is evident that the nominations of the petitioners have not been rejected either on account of the fact that they have incurred any disqualification under Article 191 or they are not eligible under Representation of People Act, 1951, or otherwise ineligible. A careful scrutiny of the orders discloses that on one hand, it has been held that except for summary of the petitioners, no other details or documents have been enclosed or attached and methodology adopted for consideration for nomination as Members of Legislative

Council has also not been disclosed. It has been noted that there are no reports either from Intelligence or other agencies indicating that the petitioners have not incurred any disqualification under the Representation of People Act, 1951. It has further been held that no documentation has been furnished in support of the recommendations showing the fulfillment of criteria as laid down under Article 171(5) of the Constitution of India for nomination as Member of Legislative Council. Therefore, it has been concluded in the impugned orders that it would be inappropriate for the Governor to consider and nominate the petitioners as Members of the Legislative Council.

35. However, despite the aforesaid finding and even in the absence of any material before the Governor, the nominations of petitioners as Members of Legislative Council have been rejected. Therefore, in the obtaining factual matrix, it was not open for the Governor to reject the nominations of the petitioners to the Legislative Council and the Governor in the facts of the case, could have remitted the matter to the Cabinet either for furnishing requisite

documents or for re-consideration. On this ground alone, the orders dated 19.09.2023 cannot be upheld and the subsequent action of Council of Ministers, dated 13.01.2024 in favour respondent Nos.4 and 5 as well as the Orders of the Governor, dated 27.01.2024 and Gazette Notifications, dated 27.01.2024, therefore cannot be sustained in the eye of law.

36. At this stage, it is necessary to deal with the submissions made on behalf of the respondents. For the reasons assigned by us in the preceding paragraphs, the contention that the petitioners neither have any vested right to approach this Court under Article 226 of the Constitution of India nor have any locus to challenge the orders dated 19.09.2023 is sans substance. The petitioners in these writ petitions are not seeking the relief of implementation of the decision of the Cabinet. The contention that the Constitution Bench decision in **Nabam Rebia** (supra) does not apply to the facts of the case is misconceived. It is relevant to mention here that reasons for reference of the Larger Bench about the correctness of view taken in **Nabam Rebia** (supra) have no bearing on the facts of these cases. Notwithstanding

reference of the decision in **Nabam Rebia** (supra) to a Larger Bench, it operates as a binding precedent for this Court (see **Union Territory of Ladakh vs. Jammu and Kashmir National Conference** (supra)). It has already been held that the aforesaid decision notwithstanding its reference to a Larger Bench is a precedent for this Court and the ratio therein binds this Court.

**(xiii) CONCLUSION:**

37. The impugned orders dated 19.09.2023 are quashed and the subsequent recommendation of Council of Ministers, dated 13.01.2024 in favour respondent Nos.4 and 5, Orders of the Governor, dated 27.01.2024 and Gazette Notifications, dated 27.01.2024 are quashed. A public law declaration is issued that the Governor is bound to act on the aid and advice of the Council of Ministers while exercising powers under Article 171(5) of the Constitution of India. However, it is open for the Governor to examine the issues of eligibility or disqualification of a person recommended by the Council of Ministers, to the Legislative Council. In addition, the Governor has the power to remit the matter to the Council of



Ministers either to furnish requisite documents/information or for re-consideration of the recommendation made by the Council of Ministers. The Governor is not answerable to the Court in view of Article 361 of the Constitution of India. No positive direction can be issued to the Governor. However, in the facts and circumstances of these cases, this Court hopes and trusts that suitable action in accordance with the provisions of the Constitution shall be taken.

The writ petitions are accordingly disposed of. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

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**ALOK ARADHE, CJ**

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**ANIL KUMAR JUKANTI, J**

07.03.2024

Note: LR copy be marked.  
(By order)  
Pln/vs