

Supreme Court can't dismiss an elected State Government : Constitutional experts

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The Supreme Court can never force the Centre to impose President's rule in a state though it can always haul it up for contempt, said noted constitutional experts Soli J Sorabjee and Fali S Nariman.

Though unambiguous in their views on apex court's jurisdiction in such matters, both were quick to clarify that it were mere oral observations and not much should be read into them. Nariman said: "SC can never compel the Centre to pass an order imposing President's rule. It can haul up a government for contempt in case it violated one of its orders. However, it is an expression in anguish on learning that the state government has allegedly violated court orders restraining a party from going ahead with the bandh."

Sorabjee, a former Attorney-General, was more forthcoming in his assessment of the constitutionally tricky situation triggered by SC.

"SC's function is not to recommend President's rule. It's function is to judge the constitutional validity of a President's rule when imposed by the Centre," he said. While passing off the SC's anguished remarks as "off-the-cuff general observations," he reminded that "the verdict banning bandhs, till it is reviewed, continues to hold force as law of the land. If the apex court's order is breached, then the remedy lies in the contempt and not in taking recourse to Article 356," he said.

Article 356 of the Constitution provides that the President shall assume all functions of the government of the state, if he, "on receipt of a report from the governor or otherwise, is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution."

If SC were to carry out its threat to bring about the dismissal of the Karunanidhi government for disobeying its ban on bandh, it would undermine the existing checks and balances on the exercise of Article 356 of the Constitution.

To begin with, the Constitution does not vest SC with the power to dismiss any state government, whatever the provocation. It is an emergency power that can be exercised only by the President, and even she can invoke it as a measure of last resort. Also, if any party violates or disobeys its order, SC has the option of initiating civil contempt against such a wrongdoer. The court cannot appropriate the role assigned to the President under Article 356. Although Article 356 gives her the discretion to act either "on receipt of report from the governor of a state or otherwise," the President is required by Article 74 to issue a proclamation on the "aid and advice" of the council of ministers.

And, if an SC order is taken to fall in the category of material "otherwise" received by the President under Article 356, it will have an anomalous implication: the judicial order will cease to have binding force. For, the implementation of the court's finding on the breakdown of the constitutional machinery in the state will, like any other input received under Article 356, be subject to the discretion of the council of ministers. Since every proclamation under Article 356 is subject to ratification by both Houses of Parliament, the validity of the court order will inevitably become a subject of political debate if that is the basis on which President's rule is imposed in Tamil Nadu.

Again, since proclamations under Art 356 are subject to review, the SC will find it hard to be objective in determining the validity of President's rule. If Karunanidhi chooses to challenge the proclamation inspired by the court, it will run the risk of violating the principle of natural justice that "nobody can be a judge in his own cause." Similarly, the apex court will be hardpressed to justify its conclusion that even a one-time defiance of its ban on bandh constitutes breakdown of constitutional machinery, warranting a departure from the federal arrangement in Tamil Nadu.

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