



7th Annual
NALSAR - Justice Bodh Raj Sawhny
Memorial Moot Court Competition, 2013

October 4-6, 2013

Moot Problem

1. The 2024 General Elections to the Lok Sabha resulted in a hung parliament. Post electoral alliances were being pursued rigorously. Ultimately, the Old Congress Party (OCP) managed to put together a seemingly impossible alliance called the Nationalist Progressive Alliance (NPA). The NPA consisted of 14 parties and managed the support of Left parties, who were as usual eager to support the government but did not take part in it. The foundation of the NPA lay in the support of three women Chief Ministers and leaders of three powerful regional parties—Ms. Mia of the KSP, Ms. Jia of the TNAIMK, and Ms. Mata of the Dwinamool Congress.
2. While the KSP and the Dwinamool Congress got five cabinet berths each, the TNAIMK demanded that its candidate be named as the NPA candidate in the presidential elections that were due in November 2024, a demand that was agreed to by all in the NPA. On 21 November 2024, Mr. Arunobh Banerjee, took oath as the President of India. Mr. Banerjee, was a well respected statesman across political lines and was known for his integrity and impartiality.
3. Immediately after assuming office, the Cabinet recommended to the President that Mr. Vinod Sinha be appointed as the Comptroller and Auditor General of India. The unanimous decision of the Union Cabinet in this regard, was conveyed by the Cabinet Secretary and the PMO to the Principal Secretary to the President of India on 4.12.2024. The President, through the Principal Secretary, addressed a letter voicing his opposition to the appointment on 18.12.2024. The letter dated 18.12.2024, *inter alia* stated that since Mr. Sinha was the Defence Secretary during the controversial M-18 Tank deal with France, which was being audited by the CAG, it would be in the interest of the institution of the CAG that he not be considered for the position.
4. On 20.12.2024, the emergency meeting of the Union Cabinet resolved to reiterate its recommendation dated 4.12.2024, specifically stating that the President had no say in this regard and that the merits of his objection need not be gone into. On Christmas Eve, the President issued a warrant appointing Mr. SK Iyengar as the Comptroller and Auditor General of India. Mr. Iyengar was a forthright IAS officer with a distinguished career, having served in several important posts. He was voted the Civil Servant of the Year Award in 2019, for his

pioneering work in Rural Development Ministry and in the year 2021 was nominated for the Nobel Peace Prize for heading the Conciliation Commission for North East India, in the aftermath of the violent unrest that prevailed there for decades.

5. On 2.1.2025, the Union of India filed Presidential Reference 1 of 2025 before the Supreme Court of India, on the advice of the Attorney General of India. The specific question raised in the backdrop of the events of December 2024, was- Whether the President of India is bound by the advice of the Union Cabinet while appointing the Comptroller and Auditor General of India?
6. On 4.1.2025, the Principal Secretary to the President of India filed an affidavit in Presidential Reference 1 of 2025, upon instructions from the President, stating that the President was not consulted at the time of preferring the Presidential Reference. The affidavit disputed the validity of the reference itself. It stated that the Supreme Court ought to refuse to hear the reference, since it was *malafide* and intended to undo an important constitutional appointment. However, without prejudice to its stand on maintainability, the affidavit stated that the advice of Supreme Court would not be binding upon the President, and in any case cannot affect the validity of the appointment of Mr. Iyengar.
7. The Chief Justice of India constituted a bench of nine judges to hear the reference, including objections as to the maintainability. The Attorney General of India and the Solicitor General were to represent the Union of India and the Chief Justice appointed Mr. Motilal and Mr. Dorabjee, former Attorney Generals to assist the Court by arguing on behalf of the President of India.

**This problem has been framed by Mr. K. Parameshwar, Advocate, Supreme Court of India. Participants are forbidden from contacting the author under any circumstances. Any attempt to do so will result in immediate disqualification.*