MAITHRIPALA SENANAYAKE, GOVERNOR OF THE NORTH-CENTRAL PROVINCE AND ANOTHER
v.
GAMAGE DON MAHINDASOMA AND OTHERS

SUPREME COURT
G. P. S. DE SILVA, CJ.,
AMERASINGHE, J. AND
RAMANATHAN, J.
S.C. APPEALS NOS. 41 & 42/96
SEPTEMBER 23RD AND 24TH, 1996

Certiorari – Interpretation of the Constitution – Powers of the Governor to dissolve a Provincial Council – Pre-conditions for dissolution – Whether discretionary or mandatory – Powers of the President to give directions – Article 4 (b), 154 B, 154 C & 154 F of the Constitution.

The Governor, each of the North-Central and Sabaragamuwa Provincial Councils, upon receiving complaints regarding the administration of the Council, wrote to the Chief Minister of the Provincial Council seeking advice on the dissolution of the Provincial Council. The Chief Minister advised against the dissolution. When the Chief Minister so advised, the Board of Ministers in each Council, in the opinion of the Governor, commanded the support of the majority of the Provincial Council. According to the Proclamation that was Gazetted thereafter, on receiving the Chief Minister's advice each Governor sought the order and direction of the President of the Republic under Article 154 B read with Article 154 F of the Constitution; and acting upon the order and direction of the President under the said Articles, dissolved the Provincial Council. Consequently, the Commissioner of Elections, acting under section 10 of the Provincial Councils Elections Act, No. 2 of 1988 gave notice of election to the two Councils and called for nominations on 18.1.96. On applications made by the Chief Minister the Court of Appeal issued Writs of Certiorari quashing the orders of dissolution made by the Governors and the notifications published by the Commissioner of Elections on the ground that they were null and void and illegal. The court granted leave to appeal to the Supreme Court on the following questions:

(*a*). Whether Article 154 B (8) (*c*) contemplates a discretionary power by the Governor and if so whether such power is required to be exercised on the direction of the President.

(*b*). Whether Article 154 B (8) (*d*) contemplates the exercise of the Governor's power solely as a delegate.

(*c*). Whether the proviso appearing immediately after Article 154 B (9) applies to Article 154 B (8) (*d*).

Held:

1. In exercising his power to dissolve a Provincial Council under Article 154 B (8) (*c*), the Governor is required by Article 154 B (8) (*d*) to act in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Council. This is a safeguard imposed by Parliament to promote the purpose of the Thirteenth Amendment namely, devolution, for the benefit of voters and elected representatives at Provincial level. The proviso to Article 154 B (9) which enables the Governor where he disagrees with the advice of the Board of Ministers to refer the case to the President for orders is included to apply to the words immediately preceding it in Article 154 B (9) which deals with pardon, respite or remission. It does not apply to any other paragraph or sub-paragraph of Article 154 B, including Article 154 B (*c*) and (*d*).

2. Article 154 B (8) confers on the Governor a discretionary power to dissolve a Provincial Council, but that power is coupled with a duty imposed by Article 154 B (8) (*d*), to exercise it in accordance with the advice of the Chief Minister. That duty is mandatory. Hence, the Governor cannot exercise the power in his discretion, on the directions of the President. The fact that the Governor believed that he was required to act in his discretion did not make it so; nor did his decision become final within the meaning of Article 154 F (2).

3. The power of dissolution of a Provincial Council is conferred by Parliament on the Governor by Article 154 B (8) (*c*). Parliament has not given that power to the President and made it delegable to the Governor. The Governor is required by Article 154 B (8) (*d*) to act in accordance with the advice of the Chief Minister. Article 154 B (2) which provides that the Governor shall be appointed by the President and shall hold office, in accordance with Article 4 (b), during the pleasure of the President does not alter this position since the general provisions of Article 4 (*b*) would not override the specific provisions of Article 154 B (8) *(c)*. Consequently, Article 154 B (8) (*c*) does not contemplate the exercise of the Governor's power solely as a delegate.

Cases referred to:

1. *Raj Karishna Bose v. Binod Kanungo* AIR 1954 SC 202.
2. *Piper v. Harvey* (1958) 1 QB 439.
3. *In Re the Thirteenth Amendment to the Constitution and the Provincial Councils Bill* (1987) 2 Sri LR 312.
4. *Hanlon v. The Law Society* (1980) 2 All ER 199, 221.
5. *Houston v. Burns* (1918) AC 337, 348.

6. *Jones v. Wrotham Park Settled Estates* (1979) 1 All ER 286, 289.
7. *I. R. C. v. Hinchy* (1960) AC 748.
8. *I. R. C. v. Ayrshire Employers, Mutual Insurance Association Ltd.* (1946) 1 All ER 637.
9. *Bribery Commissioner v. Ranasinghe* 66 NLR 66, 73.
10. *Income Tax Special Purpose Commissioner v. Pemsel* (1891) AC 531, 549.
11. *Richards v. McBride* (1881) 8 QBD 119, 122.
12. *Spillers Ltd. v. Cardiff Assessment Committee* (1931) 2 KB 21, 43.
13. *New Piymouth Borough Council v. Tarnak Electric Power Board* (1933) AC 680, 682.
14. *R. v. Schildkamp* (1971) AC 1.
15. *Uttar Pradesh v. Babu Upadhaya* AIR 1961 SC 751.
16. *Premachandra v. Jayawickrame and Another* (1944) 2 Sri LR 90.
17. *Re Baker* (1890) 44 Ch. D. 262, 270.
18. *Council of Civil Service Unions v. Minister for the Civil Service* (1985) AC 374, 410.
19. *Somawathie v. Weerasinghe* (1990) 2 Sri LR 121.
20. *Dunn v. The Queen* (1896) 1 QB 116.
21. *Hales v. The King* (1918) 34 TLR 589.
22. *Denning v. Secretary of State for India* (1920) 37 TLR 138.
23. *Whiteman v. Sadler* (1910) AC 514, 527.
24. *N. Stafford Steel Co. v. Ward* LR 3 Ex. 172, 177.
25. *Felix v. Shiva* (1982) 3 All ER 262, 266.

APPEALS from judgments of the Court of Appeal.

E. D. Wickremanayake, with *L. V. P. Wettasinghe, Jayampathi Wickremaratne, M. A. Q. M. Gazzali, Palitha Matthew, Gaston Jayakody, Amitha Nikapitiya, Malathie Ratnayake, Anandi Cooray, Shamika Seneviratne, U. A. Najeem* and *Prasanna Obeysekera* for appellant in SC Appeal No. 41/96.

D. S. Wijesinghe, PC with *L. V. P. Wettasinghe, Jayampathi Wickramaratne, M. A. Q. M. Gazzali, Palitha Mathew, Gaston Jayakody, Amitha Nikapitiya, Malathie Ratnayake, Anandi Cooray, Shamika Seneviratne, U. A. Najeem* and *Prasanna Obeysekera* for appellant in SC Appeal No. 42/96.

K. N. Choksy, PC with L. C. Seneviratne, PC, Paul Perera, PC, Daya Pelpola, D. M. M. Jayamaha, Laksman Perera, Ronald Perera, Anil Rajakaruna, S. J. Mohideen, and Nigel Hatch for 1st respondent in SC Appeals Nos. 41 & 42/96 and added respondent in SC Appeal 41/96.

S. N. Silva, PC, AG K. C. Kamalasabayson, PC, ASG., S. Gamlath, SSC and *U. Egalahewa, SC* for 2nd respondent.

Cur. adv. vult.

October 14, 1996.

AMERASINGHE, J.

There are two appeals from the decisions of the Court of Appeal delivered on the 27th of March, 1996. It was agreed by learned counsel that the two appeals be heard and dealt with together, since the matters in issue in both of them were identical.

At the commencement of the hearing, the Attorney-General informed the court that, in view of the fact that the first respondent in Application No. 41/96 was now seriously incapacitated as a result of a motor car accident, it might be advisable to add the incumbent Chief Minister as a party to the proceedings. Learned counsel for the first respondent in the two appeals said he had no objections and stated that he would additionally represent the incumbent Chief Minister, if so instructed.

The material facts are identical in both cases and are not in dispute. Those facts are as follows: The Governor of each of the Provincial Councils concerned, upon receiving certain complaints with regard to the administration of the Council, wrote to the Chief Minister of the Provincial Council seeking advice on the dissolution of the Provincial Council. The Chief Minister advised against dissolution. When the Chief Minister advised the Governor, the Board of Ministers, in the opinion of the Governor, commanded the support of the majority of the Provincial Council. The subsequent events are set out in the Proclamation made by each of the two Governors in *Gazette Extrardinary,* No. 904/7 of January 03, 1996:

* The Governor 'referred the question of [the]dissolution of the Provincial Council . . . for an order and direction to . . . [the President of the Republic] in terms of Article 154 [B] read with Article 154 [F] of the Constitution'.

* The President 'made order and directed' the Governor in terms of Article 154 [B] and Article 154 [F] of the Constitution to dissolve the Provincial Council, in question.

* Acting in terms of the said order and direction' of the President 'in terms of Article 154 [B] of the Constitution read with

Article 154 [F]', the Governor dissolved the Provincial Council with effect from the date of the proclamation. In the case of the North-Central Provincial Council (SC Appeal No. 41/96), and the Sabaragamuwa Provincial Council (SC Appeal No. 42/96), the date was January 03, 1996.

In *Gazette* No. 904/13 dated January 04, 1996, the Commissioner of Elections, acting in terms of section 10 of the Provincial Councils Elections Act, No. 2 of 1988, gave notice of his intention to hold elections to the two Provincial Councils and called for nominations commencing on January 18, 1996.

On January 08, 1996, the two Chief Ministers filed separate petitions in the Court of Appeal alleging that, for the reasons stated therein, the dissolution was unlawful and praying for –

(*a*) an order declaring the purported dissolution to be null and void and an order in the nature of a Writ of Certiorari quashing the order of dissolution made by the Governor;

(*b*) the issue and grant of an Order in the nature of a Writ of Certiorari quashing the notification published by the Commissioner of Elections;

(*c*) the issue and grant of an Order in the nature of writ of prohibition against the Commissioner of Elections restraining him from taking any steps to hold an election to the Council;

(*d*) The issue and grant of an interim order restraining the Commissioner of Elections from proceeding to act in terms of his notification pending the hearing and final determination of the application, and in particular from receiving nominations;

(*e*) costs and such other and further relief as to the court may seem meet.

For the reasons set out by their Lordships of the Court of Appeal in their judgment delivered on March 27, 1996, the court stated as follows:

. . . we are of the view that the Governor when dissolving a Provincial Council, acting under [the] provisions of Article

154 B (8) (c) has no discretion and is bound by the provisions of Article 154 B (8) (*d*), to act on the advice of the Chief Minister provided the Board of Ministers commands a majority in the Provincial Council. Therefore we hold that the Governors . . . have acted contrary to the provisions of Article 154 B (8) (*c*) and (*d*) of the Constitution, by seeking the advice of the President, in a matter they had no discretion, and dissolving the said Provincial Councils in accordance with the directions given by the President. Hence the said dissolutions of the said Provincial Councils are illegal and should be declared null and void.

Accordingly, the Court of Appeal –

* declared the orders of dissolution made by the Governors null and void and issued and granted orders in the nature of Writs of Certiorari quashing the orders of dissolution; and further

* declared the notification published by the Commissioner of Elections illegal and issued and granted orders in the nature of Writs of Certiorari quashing the notification.

The Court of Appeal refused to grant the Writs of Prohibition prayed for against the Commissioner of Elections on the ground that 'the question of holding elections does not arise, as the terms of office of the said Provincial Councils would be revived by virtue of the order of the Court holding the dissolution to be null and void and quashing the dissolution.

Each of the Chief Ministers were allowed costs in a sum of Rs. 35,000 against the respective Governors.

On April 01, 1996, the Court of Appeal granted leave to appeal to the Supreme Court on the following questions of law:

(*a*) Whether Article 154 B (8) (*c*) contemplates a discretionary power by the Governor and if so whether such power is required to be exercised on the directions of the President.

(*b*) Whether Article 154 B (8) (*d*) contemplates the exercise of the Governor's power solely as a delegate.

(c) Whether the proviso appearing immediately after Article 154 B (9) applies to Article 154 B (8) (d).

These questions were proposed by learned counsel for the first respondent in CA No 17/96, namely, the Governor of the North Central Province, and accepted by learned counsel for the first respondent in CA Application No. 18/96, namely, the Governor of the Sabaragamuwa Province, and by the Deputy Solicitor-General on behalf of the Commissioner of Elections.

Learned counsel were heard on September 23 and 24, 1996, and the court took time for consideration.

I shall deal with the third question first (1) because the answers to the other questions depend to some extent on the answer to the third; and (2) since such an approach minimizes repetition.

DOES THE PROVISO APPEARING IMMEDIATELY AFTER ARTICLE 154 B (9) APPLY TO ARTICLE 154 B (8)?

Paragraphs (8) and (9) of Article 154 B provide as follows:

(8) (a) The Governor may, from time to time, summon the Provincial Council to meet at such time and place as he thinks fit, but two months shall not intervene between the last sitting in one session and the date appointed for the first sitting in the next session.

(b) The Governor may, from time to time, prorogue the Provincial Council.

(c) The Governor may dissolve the Provincial Council.

(d) The Governor shall exercise his powers under this paragraph in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council.

(9) without prejudice to the powers of the President under Article 34 and subject to his directions the Governor of a Province shall have the power to grant a pardon to every person convicted of an offence against a statute made by the Provincial Council of that Province or

a law made by Parliament on a matter in respect of which the Provincial Council has power to make statutes and to grant a respite or remission of punishment imposed by court on any such person:

Provided that where the Governor does not agree with the advice of the Board of Ministers in any case and he considers it necessary to do so in the public interest, he may refer that case to the President for orders.

The appellants' submissions

Learned counsel for the appellants submitted in their arguments, responses to the arguments of learned counsel for the respondents and in their written submissions that the proviso found in paragraph (9) applies to all that is found in Article 154 B before the proviso, and that the Court of Appeal was in error in confining it to paragraph (9). Consequently, when the Governor did not agree with the Chief Minister on the question of dissolution and he considered it necessary to do so in the public interest, he had the option, if not also a duty as a delegate of the President, to refer the case to the President for orders, and then carry out those orders. In the circumstances, the seeking of advice by the Governors was proper, and the orders of dissolution were lawful and valid.

Following the principles operating in the UK, the USA and India, the Board of Ministers of a Provincial Council have no say in the matter of pardons for offences. Even under Article 34 of the Constitution of Sri Lanka 'the Cabinet of Ministers of the central government, to take an analogy, does not have a say in the matter of pardons. The procedure for 'acting on advice', was dispensed with by the present Constitution. It is the President alone who decides questions relating to the grant of a pardon, respite, or remission except that where an offender shall have been condemned to suffer death by the sentence of any court, the President is required to cause a report to be made to him by the Judge who tried the case, which report the President is required to forward to the Attorney-General with instructions that after the Attorney-General has advised thereon, the report shall be sent together with the Attorney-General's advice to the Minister in charge of the subject of Justice, who shall forward the report with his recommendation to the President. It is the Minister of Justice who recommends, and not the Cabinet of Ministers, and the President is not bound by the recommendation.

Admittedly, the question of 'advice of the Board of Ministers' mentioned in the proviso is not stipulated in paragraph 9, 'thus effectively severing any connection between the two'. The proviso in its terms is not applicable to a pardon, which is the exercise of a prerogative power. Moreover 154 B (9) refers to 'the public interest' and not to the interests of justice which is the relevant consideration in matters of pardon. By an 'obvious inadvertence' the proviso has been placed below Article 154 B (9) 'which has no relevance whatsoever' to paragraph 9. 'The aforesaid proviso clearly does not apply to sub-article (9) even though it appears soon after that sub-article. Although a relative or qualifying phrase is normally taken with the immediately preceding term or expression, this rule should 'be disrgarded if it is against common sense and the expression used. *(Raj Krishna Bose v. Binod Kanungo*[1]. In any event, 'the language in the proviso to Article 154 B (9) makes it plain that it was intended to apply to and/or to have an operation more extensive than that of the provision it immediately follows. Therefore it must be given such wider effect. (*Piper v. Harvey*[2]) Bindra, *Interpretation of Statutes* 7th ed. p. 80). Admittedly there is a colon preceding the proviso, but in *Raj Krishna Bose* (*supra*) the Supreme Court of India noted that punctuation was only a minor element in the construction of a statute and that very little attention is paid to it in the English courts. Punctuation may have its uses in some cases, but it cannot be regarded as a controlling element. *Craies on Statute Law* goes further and states that punctuation is disregarded in the construction of statutes – 6th edition p. 197.

In the circumstances, the court should give the proviso a purposive interpretation. The changes brought about by the Thirteenth Amendment to the Constitution, which added chapter XVII A to the Constitution creating and making provisions relating to Provincial Councils, did not impair the unitary character of the Republic of Sri Lanka. That was the essence of the decision of the Supreme Court *In re the Thirteenth Amendment to the Constitution and the Provincial Councils Bill*[3]. At the core of that decision was the finding that the President was supreme. In the *Thirteenth Amendment* case, Sharvananda, CJ said that 'So long as the President retains the power to give directions to the Governor regarding the exercise of his executive functions, and the Governor is bound by such directions *superseding the advice of the Board of Ministers'* (emphasis added by counsel) . . . there can be no gainsaying the fact the President

remains supreme or sovereign in the executive field and the Provincial Council is only a body subordinate to him.

It is Article 154 B (8) (*d*) that Sharvananda, CJ had in mind when His Lordship adverted to the right of the President to make binding directions that superseded 'the advice of the Board of Ministers'. The discretion of the Governor which is made subject to the directions of the President under Article 154 F (1) cannot be restricted to the insignificant matters referred to in Article 154 (B) (10) (*a*) or (*b*) and 154 F (4). Article 154 L gives the President the power to take over the administration of a Provincial Council, but this is limited in time to one year, and limited to situations when the administration cannot be carried on in accordance with the Constitution. Consequently, a corrupt administration may nevertheless administer the province if the administration can be carried on in accordance with the Constitution. Moreover, after one year the Council will have to be handed back to the corrupt Board of Ministers. The supremacy of the President is assured only by recognizing the power of giving directions superseding the advice of the Board of Ministers as stipulated in the proviso in 154 B (9) which controls 154 (8) (*d*). So important a matter as the dissolution of a Provincial Council cannot be allowed to remain in the hands of one man – the Chief Minister.

The respondents' submissions

The Court of Appeal rightly confined the applicability of the proviso to Article 154 B (9). The proviso is not misplaced and meaningless in the context of the paragraph in which it is found. Earlier, the practice was for the prerogative of pardon, respite or remission to be exercised by the Head of State on advice. This followed the conventions in the UK. However, when the present Constitution was enacted, Article 34 conferred the power on the President without qualification, except in a case where an offender had been condemned to death. Article 154 B (9) deals with the power of Governor to grant a pardon, respite or remission relating to offences committed against a statute made by a Provincial Council or a law made by Parliament on a matter in respect of which the Provincial Council has power to make statutes. This power does not limit the power of the President under Article 34. Moreover, the Governor is subject to the directions of the President, who is the ultimate authority on the matter. The President, except in one type of case, is not obliged to seek any person's advice in

exercising the powers of pardon, respite or remission. However, the Governor's powers are not unfettered: Article 154 F (1) provides that "There shall be a Board of Ministers with the Chief Minister at the head and not more than four other Ministers to aid and advice the Governor in the exercise of his functions. The Governor shall, in the exercise of his functions, act in accordance with such advice, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion." In a case in which the Governor has to consider whether a pardon, respite or remission should be granted, he is required by Article 154 F (1) to seek the advice of the Board of Ministers. In the event of a disagreement with the Board of Ministers, eg where the Board advises that a certain offender should be pardoned but the Governor does not wish to pardon the person, he may, if he considers it necessary to do so in the public interest, in terms of the proviso to 154 B (9) refer the case to the President for orders, which orders he will be obliged to carry out. In the circumstances, the proviso is in its proper place and makes sense.

On the other hand, if, as contended for by the appellants, the proviso applies to all the preceding paragraphs of Article 154 B, it would make no sense: For instance, it could not have been the intention of Parliament that the proviso should regulate Article 154 B (8) (*d*), for by that provision the Governor is required to exercise his power of dissolution with the advice of *the Chief Minister.* The conflict enabling the Governor to consult the President under the proviso is concerned with a conflict of opinion with *the Board of Ministers.*

Moreover, if the proviso is added to Article 154 B (8) (*d*), it would create a contradictory position: whereas under the proviso the Governor may, and therefore has a discretion to, consult the President, Article 154 B (8) (*d*) states that the Governor *shall* exercise his powers under that paragraph in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council.

With regard to the question of alleged corruption and maladministration, there was no admissible evidence in that regard. In any event, these matters are irrelevant because the Constitution does not empower the Governor to dissolve the Provincial Council on these grounds, either on his own initiative or on the directions of

anyone else. Provincial Councils were placed on a different footing from other local authorities like Municipal Councils, Urban Councils and Pradeshiya Sabhas, in respect of which express provision is made for dissolution after inquiry, if the Minister is satisfied that there is sufficient proof of incompetence or mismanagement. No similar provision exists with regard to Provincial Councils and it must be taken that Parliament made a deliberate departure.

My View on the Question of the Proviso

The proviso is an ancient formula. It enables a general statement to be made as a clear proposition, any necessary qualifications being kept out of it and relegated to the proviso. This aids understanding. "The formula beginning 'Provided that . . .' is placed at the end of a section or sub-section of an Act, or a paragraph or sub-paragraph of a schedule, and the intention of which is to narrow the effect of *the preceding words.* (Francis Bennion, *Statutory Interpretation,* 1984, p. 570). The emphasis is mine. N. S. Bindra, *Interpretation of Statutes,* 7th Ed., p. 79, explains that a proviso relates to the subject-matter of the principal clause. He states that: "The proviso cannot possibly deal with an entirely different topic or subject and it is sub-servient to the main provision." He adds that "it is a cardinal rule of interpretation" that a proviso to a particular provision of a statute "only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other." Later, Bindra states that although at times it is used to introduce independent legislation, "the presumption is that, in accordance with its primary purpose, it refers only to the provisions to which it is attached. Ordinarily, a proviso to a section is intended to take out a part of the main section for special treatment; it is not expected to enlarge the scope of the main section".

In the matters before us, the proviso under consideration is placed immediately after the main clause in Article 154 B (9), and in the light of what a proviso is intended to do, as a matter of first impression, it seems to me that the proviso was intended to apply to the words immediately preceding it in Article 154 B (9).

Learned counsel for the appellants accepted the fact that ordinarily a proviso must be taken to relate to the words immediately preceding it, but they submitted, citing Bindra p. 80 and *Piper v. Harvey* (*supra*),

that exceptionally a proviso may have a wider operation. *Piper v. Harvey* was a case in which there was a repeal of sections, but it was held that the proviso remained because it extended beyond the repealed enactment, whereas usually the repeal of a section also repeals the proviso. Bindra at p. 79-80 states as follows:

> . . .cases have arisen in which the Supreme Court has held that despite the fact that a provision is called a proviso, it is really a separate provision and the so-called proviso has substantially altered the main section. For example, relying upon the dictum laid down in *Piper v. Harvey* that *if the language of the proviso makes it plain* that it was intended to have a operation more extensive than that of the provision which it immediately follows, it must be given such wider effect. It was held that *the clear language of the proviso* to subsection (2) of section 202, Cr. P.C., made it obligatory upon the Magistrate in a case exclusively triable by the Court of Session, to proceed to inquire and at such inquiry call upon the complainant to produce his entire evidence –The emphasis is mine.

There is nothing either in the language of the proviso or in any other part of Article 154 B suggesting that it was intended to be a separate provision or that it was intended to have a more extensive application than the usual one of qualifying the words immediately preceding the proviso in Article 154 B (9).

On the other hand, as we have seen, Bindra points out that the proviso cannot possibly deal with an entirely different topic or subject. That, he said, was a "cardinal rule of interpretation". Article 154 B (9) deals with *pardon, respite and remission.* The proviso cannot be made applicable to the entirely different subject of *the dissolution of a Provincial Council,* which is what Article 154 B (8) (*c*) and (*d*) deals with.

Halsbury, vol. 44 paragraph 881 note 3, refers to several decisions, and draws attention to the fact that: "The danger of construing a proviso, which is merely a limitation on the enactment to which it is attached, as if it were a general limitation to other enactments or were itself a positive enactment has often been pointed out".

The factual circumstances which trigger the operation of a legal provision is of the utmost importance. The proviso is inappropriate in the context of Article 154 B (*d*) which provides that the Governor

shall exercise his powers of dissolution in accordance with the advice of the *Chief Minister*, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council. The proviso deals with an entirely different factual situation, namely where the Governor does not agree with the advice of the *Board of Ministers* and he considers it necessary to do so in the public interest and refers the matter to the President for orders. This is not without significance in deciding whether the proviso is applicable to Article 154 B (8) (*d*). In the UK, the power of advising the dissolution of Parliament within the five-year period prescribed the Parliament Act of 1911, is by convention vested in the Prime Minister, rather than in the Cabinet of Ministers. O. Hood Phillips and Paul Jackson, *Constitutional and Administrative Law*, 7th ed., at p. 150, observe that: "This power of timing is a weapon of great political importance in the hand of the government, and especially of the Prime Minister". The matter is further, explained by Wade and Phillips, *Constitutional and Administrative Law*, 9th ed., at p. 163 in the following terms:

> It is today not necessary that the Cabinet should have decided in favour of dissolution, although the Prime Minister may have discussed the desirability of a dissolution with the Cabinet or with selected colleagues. The opportunity of choosing the timing of a General Election is an important political power at the disposal of the Prime Minister; thus he may choose a time when there is a revival in the economy or when opinion polls and by-elections results indicate that the Government's popularity is rising. It is sometimes said that the right to request a dissolution is a powerful weapon in the hands of a Prime Minister to compel recalcitrant supporters in the Commons to conform.

The proviso makes good sense where it is located, but it would not do so if it is made applicable to Article 154 B (8) (*d*). Instead, it would interfere with a power the Chief Minister alone was obviously meant to have. Moreover, a reading of the proviso into Article 154 B (8) would create ambiguities where none exist.

With regard to the submission of learned counsel for the appellant on the colon immediately preceding the proviso, I agree that although punctuation forms part of an enactment and is an unamendable descriptive component of such enactment. Yet, in general, punctuation

is of little weight, since the sense of a provision should be the same with or without its punctuation. Punctuation is a device not for making meaning, but for making meaning plain. Where mistakes in punctuation occur, we should have little hesitation in altering them. However in *Hanlon v. The Law Society*[4] Lord Lowry said:

> I consider that not to take account of punctuation disregards the reality that literate people, such as Parliamentary draftsmen, punctuate what they write, if not identically, at least in accordance with grammatical principles. Why should not other literate people, such as Judges, look at the punctuation in order to interpret the meaning of the legislation as accepted by Parliament?

Lord Shaw of Dunfermline in *Houston v. Burns*[5] observed that:

> Punctuation is a rational part of English composition and is quite significantly employed.

In the matters before me, the sense of Article 154 B (9) remains the same with or without the colon. What the colon does in that provision is to divide the provision into two parts, carving out from the main clause, which in general terms sets out the power of the Governor to grant a pardon, respite or remission which, in terms of Article 154 F (1), he must exercise in accordance with the advice of the Board of Ministers. The procedure he should adopt, should he disagree with the advice of the Board of Ministers on the exercise of his power of pardon, follows the colon. The colon preceding the proviso in Article 154 B (9) is a circumstance of importance in that it helps to make clear the meaning of 154 B (9). Ignoring it does not make the proviso applicable to Article 154 B (8) (*c*) and (*d*).

Learned counsel for the appellants urged us to adopt a 'purposive approach'. Bennion (op. cit.) points out at page 657 that:

> A purposive construction of an enactment is one which give effect to the legislative purpose by –
>
> (*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this code called a purposive-and-literal construction), or

(*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).

What this court is invited to do is to adopt a 'purposive' and strained construction.

Lord Diplock in *Jones v. Wrotham Park Settled Estates*[6], stated as follows with regard to purposive-and-strained constructions:

> . . . I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it. *Kamins Ballrooms Co., Ltd. v. Zenith Investments (Torquay) Ltd.* (1971) AC 850 provides an instance of this; but in that case the three conditions that must be fulfilled in order to jusfy this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed.

Have the conditions calling for a purposive-and-strained construction been satisfied?

Although purposive construction is an almost invariable requirement, a non-purposive construction may be unavoidable when there is insufficient indication of what the legislative purpose is or just how it is to be carried out: *I.R.C. v. Hinchy*[7], *I.R.C. v. Ayrshire Employers Mutual Insurance Association Ltd.*[8]. Judges rarely attempt elaborate and comprehensive statements of purpose. We usually say what

seems to us enough to deal with the point at issue. However, Sharvananda, CJ, whose judgment in *Re the Thirteenth Amendment to the Constitution*, (*supra*), was heavily relied upon by the appellants in their several submissions, at pp. 326-327, stated as follows:

> . . . The Bill does not in any way affect the sovereignty of the people. Instead of the legislative and executive power of the people being concentrated in the hands of Parliament and President it is sought to be diversified in terms of the Directive Principles of State Policies found in Article 27 (4) of the Constitution. This Article provides that:
>
> The State shall strengthen and broaden the democratic structure of government and the democratic rights of the People by decentralising the administration and by affording all possible opportunities to the people to participate at every level in national life and government.
>
> Article 27 (1) states that –
>
> the Directive Principles of State Policies contained herein, shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society.
>
> True the Principles of State Policy are not enforceable in a court of law but that shortcoming does not detract from their value as projecting the aims and aspirations of a democratic government. The Directive Principles require to be implemented by legislation. In our view, the two Bills [the Bill for introducing the Thirteenth Amendment and the Provincial Councils Bill] represent steps in the direction of implementing the programme envisaged by the Constitution-makers to build a social and democratic society.
>
> Healthy democracy must develop and adapt itself to changing circumstances. The activities of central government now include substantial powers and functions that should be exercised at a level closer to the people. Article 27 (4) has in mind the aspirations of the local people. Article 27 (4) has in mind the aspiration of the local people to participate in the governance of their regions. The Bills envisage a handing over of responsibility for the domestic affairs of each province, within the framework of a united Sri Lanka. They

give new scope for meeting the particular needs and desires of the people for each province. Decentralization is a useful means of ensuring that administration in the provinces is founded on an understanding of the needs and wishes of the respective provinces. The creation of elected and administrative institutions with respect to each province - that is what devolution means - gives shape to the devolutionary principle.

The concept of devolution is used to mean the delegation of central government powers without the relinquishment of supremacy . . .

Professor Cass R. Sunstein, in a paper entitled *Federalism in South Africa? Notes from the American Experience.* The American University Journal of International Law and Policy, vol. 8 Nos. 2 & 3, Winter/ Spring 1992/1993, 413 at p. 437, states as follows:

. . . Citizen participation in public affairs is highly unlikely at the national level. Because people perceive the national government at the lower and smaller levels, a constitutional system can increase participation and responsiveness, and also cultivate citizenship. This is an important democratic advantage insofar as a prime goal of democracy is to ensure that government is responsive to the people's desires and aspirations.

Article 154 B (9) gives the Governor of a Province the power of granting a pardon, respite or remission to a person convicted in respect of an offence against a statute made by the Provincial Council or by Parliament in respect of which the Provincial Council has power to make statutes. In terms of Article 154 F (1), that function is ordinarily exercised by the Governor on the advice of the Ministers of the Provincial Council. Where the Governor does not agree with the advice of the Ministers in any case, and he considers it necessary to do so in the public interest, he may refer the case to the President for orders. So, the powers of pardon, respite and remission which were reposed solely in the President by Article 34 of the Constitution were devolved on the Governor in respect of certain specified matters of an essentially Provincial character. However, the supremacy of the President in that regard was in no way impaired, for (1) Article 154 B (9) expressly states that that provision is 'without prejudice to the powers of the President' under Article 34, so that the President may,

regardless of the views of the Governor or the Ministers grant a pardon, respite or remission in any case; and (2) the Governor's powers are stated in Article 154 B (9) to be 'subject to [the President's] directions'.

In order to achieve its object of ensuring a more democratic constitutional regime, Parliament created Provincial Councils by enacting the Thirteenth Amendment. After considering the proposed provisions of the Thirteenth Amendment Bill and the Provincial Councils Bill, the Court held in *Re the Thirteenth Amendment* (*supra*) that the proposed structure of Government did not violate Article 2 of the Constitution which provides that the Republic of Sri Lanka is a Unitary State. The court found that, although certain functions were to be exercised by the Provincial Councils, yet in all spheres of activity, – legislative, executive and judicial – the government of Sri Lanka was supreme. On the other hand, if one were to read the proviso in Article 154 B (9) into Article 154 B (8) (*d*), it might by a side wind negate the purpose of the Thirteenth Amendment. Bindra, op. cit., at page 80 puts the matter succinctly: "unless the words are clear, the Courts should not so construe the proviso as to attribute to the Legislature to give with one hand and take away with another". Sharvananda, CJ was not troubled by the form of Article 154 B (8) and did not say that the powers of the President were retained by importing the proviso from Article 154 B (9) in construing Article 154 (8) or that it was necessary to do so. What his Lordship did point out, citing *Bribery Commissioner v. Ranasinghe*[9], was that the imposition of *procedural restraints* does not erode the powers of an organ of government. So long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council, the Governor shall exercise his powers of dissolution in accordance with the advice of the Chief Minister. The Honourable Attorney-General submitted that an exercise of the powers of dissolution even when the Chief Minister commands the support of the majority of members of the council would not hamper the democratic process, for another election would be held and perhaps the same political party with an enhanced majority may be returned. Elections are of vital importance. So is stability. Professor Herman Schwartz, in his paper, *Economic and Social Rights,* The American University Journal of International Law and Policy, volume B, Nos. 2 & 3, Winter/ Spring 1992/1993, points out that governmental structures "must obviously be relatively stable so that the country can function, and so that people can know and rely upon the rules of the game".

If corruption and maladministration were meant to trigger Article 154 B (8) (*c*) and (*d*) as an important safeguard of executive supremacy, what is the explanation for the failure to specifically refer to them? Parliament may have had no intention of elevating Provincial Councils to the level of co-ordinate bodies, but, it certainly seems to have had no intention of dealing with them as if they were bodies like Municipal Councils, (cf. section 277 Municipal Councils Ordinance, (cap. 252)), Urban Councils (cf. section 184 Urban Councils Ordinance, (cap. 255),) or Pradeshiya Sabhas (cf. section 185 Pradeshiya Sabhas Act No. 15 of 1987) with regard to the matter of dissolution. Different 'rules of the game', to use Herman Schwartz's phrase, were prescribed for Provincial Councils.

In India, the Constitution provides in Article 175 as follows with regard to the State legislatures:

(2) The Governor may from time to time –

(*a*) prorogue the House or either House;

(*b*) dissolve the Legislative Assembly.

Learned counsel for the respondents submitted that, although certain provisions of the Indian Constitution were closely followed in enacting our own Constitution, deliberate departures were made in other instances, one of them being the procedure for the dissolution of Provincial Councils. This would appear to be so.

Article 154 B (8) (*c*) and (*d*), it seems to me, was designed to promote the purpose of devolution. When that Article was enacted, Parliament had before it Article 70 of the Constitution which provides that "The President may, from time to time, by Proclamation summon, prorogue and dissolve Parliament". It is not without significance that in enacting the Thirteenth Amendment, a similar power was not conferred on the Governor. Instead, in Article 154 B (8) (*c*) and (*d*) Parliament underscored the purpose of the Thirteenth Amendment by enacting that the Governor shall exercise his powers of dissolution "in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council". There is no suggestion that the President has greater powers in dissolving

Parliament than in dissolving Provincial Councils. The powers of the President are not in issue in this case. The power of dissolving a Provincial Council is vested by Parliament in the *Governor,* and not in the President: and in the exercise of that power, the Governor is subject to certain procedural safeguards which have been imposed by Parliament, having regard to the purpose of the Thirteenth Amendment, for the benefit of the voters and their elected representatives at a Provincial level, who might be affected by the exercise of the Governor's power of dissolution.

In the circumstances, I should give what Bennion (op. cit., p. 657) called a "purposive-and-literal" construction to Article 154 B (8) (*c*) and (*d*), that is, one which follows the literal meaning of the enactment because that meaning is in accordance with the legislative purpose. The construction suggested by the appellants would be inimical to the legislative purpose.

Halsbury, (op. cit., paragraphs 856 and 857) states as follows:

> 856. The object of all interpretation of a written instrument is to discover the intention of the author as expressed in the instrument. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. This intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand, however strongly it may be suspected that the result does not represent the real intention of Parliament.
>
> 857. If the words of a statute are clear and unambiguous, they themselves indicate what must be taken to have been the intention of Parliament, and there is no need to look elsewhere to discover the intention or their meaning.

Halsbury, (op. cit., paragraph 858) points out that it is only where a statute is ambiguous that 'the intention of Parliament' must be sought by reference to such matters as what was the law before the law in question, the mischief or defect for which the law did not provide, the remedy Parliament resolved and appointed to 'cure the disease' and the 'true reason of the remedy'.

Learned counsel for the appellants contended that a construction that a Governor must act on the advice of the Chief Minister would place the power of dissolution in the hands of one man – the Chief Minister. That submission overlooks the fact that the Chief Minister's advice is of value because of his representative character in a democratic institution. His power base lies in the majority in the Council. The Chief Minister's advice on the question of dissolution must be followed "so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council". (Article 154 B (8) (*d*)). Article 154 F provides as follows:

(4) The Governor shall appoint as Chief Minister, the member of the Provincial Council constituted for that Province who, in his opinion, is best able to command the support of a majority of the members of that Council:

Provided that where more than one-half of the members elected to a Provincial Council are members of one political party, the Governor shall appoint the leader of that political party in the Council as Chief Minister.

(5) The Governor shall, on the advice of the Chief Minister, appoint from among the members of the Provincial Council constituted for that Province, the other Ministers.

A Provincial Council is constituted "upon the election of members of such Council in accordance with the law relating to Provincial Councils elections." (Article 154 A (2)).

The second condition for the adoption of a "purposive-and-strained" construction set out by Lord Diplock in *Jones v. Wrotham Park Settled Estates,* (*supra*), was that it must be 'apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the Act was to be achieved'.

The Constitution and Acts of Parliament are produced by 'precision drafting' (as distinguished from 'disorganized composition'), where (although there are occasional lapses and errors) the draftsman aims to use language accurately and consistently. There is nothing to suggest that the Thirteenth Amendment or any of its provisions was

sloppily drafted, so that the text is confused, contradictory or incomplete in expression. We must presume that the drafting was competent. This is an aspect of the maxim *omnia praesumuntur rite et solemniter esse acta* – all things are presumed to be correctly and solemnly done. Cf. Bennion, op. cit., at 177-180. Accordingly, I should prefer to follow a construction which flows from a reading based on correct and exact drafting rather than one based on error. Halsbury, (op. cit., paragraph 862), states that "There is a strong presumption that Parliament does not make mistakes. If blunders are found in legislation, they must be corrected by the legislature, and it is not the function of the court to repair them. . ." Eventually, the Thirteenth Amendment must be seen as an Act of Parliament and in the circumstances it is usual for a court to proceed on the assumption that 'the legislature is an ideal person that does not make mistakes'. See per Lord Halsbury in *Income Tax Special Purposes Commissioner v. Pemsel* [10]; *Richards v. McBride*[11]. I am unable to accept the submission fo learned counsel for the appellants that the proviso was placed in Article 154 B (9) as a result of 'obvious inadvertence'. The burden of establishing such a submission lies heavily upon those who assert it. Cf. the observations of Lord Hewart, CJ in *Spillers Ltd. v. Cardiff Assessment Committee*[12] approved by Lord Macmillan in *New Plymouth Borough Council v. Taranak Electric Power Board*[13]. In my view, the appellants have failed to discharge that burden. Indeed everything points in the opposite direction. The words as they are can be given a sensible meaning; indeed, what we are invited to do will have the effect of causing ambiguity; there is no need to supply omitted words or to transpose, interpolate or otherwise alter words to avoid manifest absurdity or injustice. I must give the words in Article 154 B (8) (*c*) and (*d*) its ordinary and primary meaning. As Halsbury, (op. cit., paragraph 864) observes:

> If the result of the interpretation of a statute according to its primary meaning is not what the legislature intended, it is for the legislature to amend the statute construed rather than for the courts to attempt the necessary amendment by investing plain language with some other than its natural meaning to produce a result which it is thought the legislature must have intended.

The third condition for adopting a "purposive-and-strained" interpretation was said by Lord Diplock in *Jones v. Wrotham Park Settled Estates,* (*supra*), to be the possibility of stating 'with certainty what

were the additional words that would have been inserted by the draftsman and approved by Parliament'. Arguably, Lord Diplock's third point was overstated. (See *R v. Schildkamp*[14]). The suggestion of learned counsel for the appellants was that the additional words to be placed in Article 154 B (8) (*d*) are the words in the proviso to Article 154 B (9). As I have pointed out, this is not feasible because it would introduce ambiguity and uncertainty into Article 154 B (8) (*d*). It would also undermine the purpose of the Thirteenth Amendment by conferring a discretion on the Governor even where the advice tendered is that of a Chief Minister of a Council with a Board of Ministers which commands the support of the majority of the Council. I am therefore unable to hold that the words of the proviso in Article 154 B (9) were intended by Parliament to be inserted into Article 154 B (8) (*d*).

I am of the view that the proviso appearing immediately after Article 154 B (9) does not apply to any other paragraph or sub paragraph of Article 154 B, including Article 154 B (8) (*c*) and (*d*).

DOES ARTICLE 154 B (8) (*C*) CONTEMPLATE A DISCRETIONARY POWER BY THE GOVERNOR AND IF SO IS SUCH POWER REQUIRED TO BE EXERCISED ON THE DIRECTIONS OF THE PRESIDENT.

This ground of appeal raises two questions: (1) whether Article 154 B (8) (*c*) confers a discretionary power on the Governor; and if so (2) whether such power has to be exercised on directions given by the President.

The submissions of the appellants on the question whether Article154 B (8) (c) contemplates a discretionary power.

Article 154 B (8) (*c*) of the Constitution which provides that: "The Governor may dissolve the Provincial Council" stands by itself and is not in any way qualified. If, on the other hand, Article 154 B (8) (*d*) is to be interpreted as qualifying all the provisions in paragraph (8), this would make paragraph (8) (*a*) meaningless, for how can the Governor in terms of (*a*) act as he "thinks fit" and at the same time be bound by the advice of the Chief Minister? Moreover, such an interpretation could lead to conflict where the Governor and Chief Minister would both have power to summon the Provincial Council.

Article 154 B (8) (*d*) states that the Governor "shall exercise his powers . . . in accordance with the advice of the Chief Minister. Although "shall" in its ordinary signification is mandatory, yet, having regard, *inter alia,* to the nature and design of the statute, the consequences which would flow, and the impact of other provisions, the real intention of Parliament might be that the provision was directory. (Bindra, op. cit., page 1113); *Uttar Pradesh v. Babu Upadhaya*[15].

Article 154 F (2) provides that if any question arises whether any matter is or is not a matter as respects which the Governor is by or under the 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 in any court on the ground that he ought or ought not to have acted in his discretion. If, therefore, the Governor in his discretion decided that Article 154 B (8) (*c*) gave him a discretion to dissolve the Provincial Council despite the provisions of Article (154 B (8) (*d*), such a decision is final and cannot be challenged. The decision whether Article 154 B (8) (*c*) gives the Governor a discretion is also a matter to be exercised according to the Governor's discretion. The question of law whether Article 154 B (8) (*c*) contemplates a discretionary power by the Governor has already been answered by the very act of the Governor in deciding in his discretion that the dissolution of the Council is a matter as respects which he can act in his discretion.

It is only by 'reading a discretion into Article 154 B (8) (*c*) that directions by the President regarding dissolution can be given. Full effect must be given to Article 4 (*b*). It is the existence of a discretion in regard to the dissolution of the Council enabling directions from the President that ensures that the executive supremacy of the President is effectively achieved. This is essential for the preservation of the unitary character of the Republic: *Re the Thirteenth Amendment, (supra).*

The submissions of the respondents on the question whether Article 154 B (8) (c) contemplates a discretionary power.

Article 154 E provides that a Provincial Council shall, unless sooner dissolved, continue for a period of five years from the date appointed for its first meeting and the expiration of the said period of five years shall operate as a dissolution of the Council. "The Provincial Councils

(Amendment) Act No. 27 of 1990 provides that where more than one -half of the total membership of a Council repudiates allegiance to the Constitution, the Governor is required to communicate such fact to the President. Upon such communication being made, the Council stands *ipso facto* dissolved. The dissolution takes place by operation of law and not by direction of the President. The only other provision that provides for a dissolution of a Council before five years is to be found in Article 154 B (8). The power of dissolution set out in Article 154 B (8) (*c*) must be exercised in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands in the opinion of the Governor the support of the majority of the Provincial Council, for Article 154 B (8) (*d*) states that the Governor "shall" do so. The power of dissolution given by Article 154 B (8) (*c*) is not discretionary.

The Governor's functions under the Constitution fall into three categories: (*a*) those exercised by him on the advice of the Board of Ministers; (*d*) those exercised by him on the advice of the Chief Minister: and (*c*) those exercised by him in his discretion. Chapter XVII A of the Constitution does not catalogue the matters that are within the discretion of the Governor. Article 154 F (1) provides that the Governor shall act in accordance with the advice of the Board of Ministers, except insofar as he is required by the Constitution to act in his discretion. In the matter of dissolution, the Governor is required by Article 154 B (8) (*d*) to act on the advice of the Chief Minister. Since it is not a matter in which he has a discretion, Article 154 F (2), which states that the exercise of the Governor's discretion shall be on the President's direction, has no applicability. Where a Constitutional duty is expressly cast on the Governor, he has no discretion and must carry out his legal duty in accordance with the relevant provision: *Premachandra v. Jayawickrame and another*[16].

Article 4 (*b*) has no application here. Article 4 (*b*) designates or identifies the Constitutional organs in which are deposited the three aspects of sovereignty referred to in Article 3. It confers on each organ, ie Parliament, the President and the Courts, their respective powers in *general terms*. In the case of the executive power of the people, it is provided that it shall be exercised by the President. But it does not, and cannot, follow in law or in common reason that Article 4 (*b*) dominates the entire spectrum of executive action and overrides all other provisions of the Constitution applicable to the exercise of

executive power, including Articles of the Constitution which make specific or express provision for the exercise of a particular executive power in a particular manner. eg Articles 43 (3), 70 (1) (*a*), 70 (1) proviso (*b*) and (*c*), 154 F (4), 154 F (4) proviso and 154 F (5) show that Article 4 (*b*) does not give the President the degree of executive power claimed. If the President has the powers claimed by reason of the provisions of Article 4 (*b*), the greater part of the Constitution will be rendered nugatory and the President will be in a position to override the Constitution at will. Such an interpretation, elevating Article 4 (*b*) to such a supra-level, is wholly unacceptable.

In *Re The Thirteenth Amendment*, (*supra*), the court was principally concerned with the question whether the proposed amendment detracted from Article 2 which declares that the Republic of Sri Lanka is a unitary state. The dicta at pages 318–327 and 357–359 show that the court regarded the President's right to give directions to the Governor in the exercise of the Governor's *discretionary* powers was an adequate retention of power in the centre to prevent Provincial Councils being regarded in constitutional law as co-ordinate bodies. The court did not rule that the President retained overriding executive powers under Article 4 (*b*) which supersede the express provisions relating to Provincial Councils contained in the Constitution.

My view on the question whether Article 154 B (8) (c) contemplates a discretionary power.

S. A. de Smith, Lord Woolf and Jeffrey Jowell in *Judicial Review of Administrative Action*, 1995, 5th ed. 295, observe as follows:

> An administrative decision is flawed if it is illegal. A decision is illegal if–
>
> (1) it contravenes or exceeds the terms of the power which authorises the making of the decision;
>
> (2) if it pursues an objective other than that for which the power to make the decision was conferred.
>
> The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the power in order to determine whether the

decision falls within its 'four corners'. In so doing the courts of law enforce the rule of law, requiring administrative bodies to act within the bounds of the powers they have been given. They also act as guardian of Parliament's will-seeking to ensure that the exercise of power is what Parliament intended.

O. Hood Phillips and Paul Jackson, *Constitutional and Administrative Law,* 7th ed., at p. 662, observe as follows:

> A Minister, a local authority and any public body may only validly exercise powers within the limits conferred on them by the common law or statute. A decision may fall outside those powers and so be *ultra vires* because the body concerned has attempted to deal with a matter outside the range of the power conferred on it – substantive *ultra vires* – or because it has failed, in reaching its decision, to follow a prescribed procedure — procedural *ultra vires.*

After discussing the question of judicial review of prerogative powers, Phillips and Jackson, (*ibid*), state as follows:

> As regards the innumerable statutory powers, the question is one of the interpretation of the statute concerned. The acts of a competent authority must fall within the four corners of the powers given by the legislature. The court must examine the nature, objects and scheme of the legislation, and in the light of that examination must consider what is the exact area over which powers are given by the section under which the competent authority purports to act.

Sir William Wade and Christopher Forsyth, *Administrative Law,* 1994, 7th ed., p. 245, states as follows:

> When the question arises whether a public authority is acting unlawfully, the nature and extent of the power or duty has to be found in most cases by seeking the intention of Parliament as expressed or implied in the relevant Act. The principles of administrative law are generalized rules of statutory interpretation.

The matter in issue is whether the dissolution of the Provincial Council by the Governor was legal or illegal. Did the act of dissolution fall within the four corners of Article 145 B (8)? Did the Governor contravene or exceed the terms of Article 154 B (8) which authorises

him to dissolve a Provincial Council? Did he follow the procedure for dissolution prescribed by that Article, or did he follow some other procedure? The Governor maintains that he acted in his discretion in terms of the power conferred on him by Article 154 B (8) (*c*) of the Constitution, and he, therefore, consulted the President, and acted on the orders of the President as he was obliged to do. The Chief Minister maintains that, since the Governor had disregarded his advice in dissolving the Provincial Council when, in the opinion of the Governor, the Board of Ministers commanded the support of the majority of the Provincial Council, the Governor had acted illegally, and therefore the dissolution of the Council is void.

The answer to the matter in issue depends on what the relevant provision of the Constitution states and means. The relevant provision is Article 154 B (8) of the Constitution. Taken in isolation, Article 154 B (8) (*c*) would seem to confer a discretionary power, for the provision states that 'The Governor may dissolve the Provincial Council'. However, Article 154 B (8) (*d*) prescribes the manner in which the power of dissolution may be exercised, if it needs to be exercised at all: "The Governor shall exercise his powers under this paragraph in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council. "It was not in dispute that the relevant provision of law applicable to the question of dissolution was Article 154 B (8), nor was there any dispute that the factual circumstances that were required to trigger the application of that provision existed: the Board of Ministers, in the opinion of the Governor, did command the support of the majority of the Provincial Council.

It was contended that the qualification of the exercise of discretionary power set out in Article 154 B (8) (*d*) could not have been intended to apply to the preceding provisions of the paragraph because to do so would cause ambiguity. Perhaps, as suggested by learned counsel for the appellants, there may be some ambiguity when Article 154 B (8) (*d*) is read with Article 154 B (8) (*a*). There may be not. It is a matter that will need consideration when a question with regard to the Governor's powers to *summon* the Provincial Council to meet requires consideration. I am concerned with the question of *dissolution,* and in that regard, it is my view that Article 154 B (8) (*c*) is subject to Article 154 B (8) (*d*), for it is clearly stated in Article 154 B (8) (*d*) that the Governor shall exercise his powers "under this paragraph"

in the manner prescribed therein. "This paragraph" obviously refers to paragraph (8) of Article 154 B. Article 154 B (8) (*c*) confers a power expressed in permissive language because the word used is "may". See per Cotton, LJ in *Re Baker*[17]. However, when a power is given to a person by the word 'may', but it is coupled with a duty to refrain from exercising it in certain prescribed circumstances, it becomes his duty not to exercise it in those circumstances. (Cf. Wade and Forsyth,. *Administrative Law,* 7th ed. at 265 where the converse case is dealt with). A Governor *may* dissolve a Provincial Council in terms of Article 154 B (*c*) but he must do so in accordance with the duty prescribed by Article 154 B (8) (*d*). Article 154 B (8) (*c*) read with Article 154 B (8) (*d*) presents no ambiguity either in respect of the verbal formula that constitutes the relevant law nor in its application to the facts of the instant cases. There is no doubt as to the legal meaning and the legislative intention conveyed by Article 154 B (8) (*c*) and (*d*) and it is both unnecessary and improper in the circumstances to attempt to give it some other meaning by calling in aid other provisions of the Constitution.

It is of importance to decide whether a statutory duty is mandatory – words such as 'absolute', 'obligatory', 'imperative' and 'strict' may be used instead – or whether it is directory. ('Permissive' is sometimes used, but the use of the term 'directory' in the sense of permissive has been criticised by Craies, *Statute Law,* 7th ed. 1971 p. 61 n. 74.) Ordinarily, where the relevant statutory duty is mandatory, failure to comply with it invalidates the thing done. Where it is merely directory the thing done will be unaffected, though there may be some sanction for disobedience imposed on the person bound. If the Governor's duty to act on the advice of the Chief Minister was mandatory and not directory, then failure to comply with his duty invalidated the dissolution. Article 154 B (8) (*d*) uses the word "shall" in describing the manner in which the Governor should exercise his power of dissolution. I am in agreement with the view that although the word "shall" ordinarily imposes a mandatory duty, there may be cases in which it has the same meaning as 'may'. However, I find no reason adduced in the matters before us to give Article 154 B (8) (*c*) read with Article 154 (8) (*d*) any meaning other than that the Governor *will have to* or *must,* if the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council, exercise his powers of dissolution in accordance with the advice of the Chief Minister. Wade and Forsyth, op. cit., p. 245 observe that: "Powers

confer duties whether to act or not to act, and also in many cases, what action to take, whereas duties are obligatory and allow no option. De Smith, Woolf and Jowell, op. cit., p. 296, observe that: "if only one course can lawfully be adopted, the decision taken is not the exercise of a discretion but the performance of a duty". Since the Board of Ministers in the opinion of the Governor commanded the support of the majority of the Provincial Council, there was only one, uniquely right course of action prescribed – to follow the advice of the Chief Minister in deciding whether to exercise his power of dissolution. There was no discretion. By his failure to act in accordance with the duty imposed on him by law, the Governor acted illegally.

I am unable to accept the suggestion that if a Governor supposes or believes something to be in his discretion, it becomes finally and conclusively a discretionary matter on which he should consult the President, and therefore if he consults the President, then, he is obliged to follow the directions of the President. Article 154 F (2) states as follows:

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

With regard to the dissolution of the Provincial Council, there was nothing forming, or capable of forming, the basis of a problem, nor any difficulty or doubt or uncertainty as far as the Constitutional provisions of Article 154 B (8) (*c*) and (*d*) were concerned. There was no "question" whether the Governor was required to act in his discretion. The fact that he honestly believed there was one, did not make it so. Perhaps, the Governor misunderstood the law? It is the duty of the decision-maker to understand correctly the law that regulates his decision-making power and give effect to it: *Council of Civil Service Unions v. Minister for the Civil Service*[18].

It was not said by Sharvananda, CJ in *Re the Thirteenth Amendment, (supra)*, that the Amendment was not violative of Article 2 (which states that Sri Lanka is a Unitary State), because the President had

unlimited executive powers. What he did say in relation to executive powers was that there was a sufficient retention of powers by the President in relation to discretionary powers so as to ensure the position that Sri Lanka remained an unitary state. There was no suggestion that the President had to have powers additional to those conferred by the Thirteenth Amendment, eg in the matter of dissolution, in order to maintain the status of Sri Lanka as a unitary state, nor was there any suggestion that, because Parliament had imposed procedural restraints on the manner in which executive power may be exercised, the President's position, as the person exercising the executive power of the People, was undermined. On the other hand, it was acknowledged that procedural restraints on the exercise of power did not limit supremacy in the relevant sphere of activity: See *Re Thirteenth Amendment,* (*supra*), at pp. 320–321.

If, as I have said, Article 154 B (8) (*d*) introduced procedural safeguards on the exercise of the Governor's power of dissolution for the benefit of the voters and their elected representatives who might be affected by the exercise of the power, – what other reason could there have been?–, then we have another reason for concluding that the Governor's power was not discretionary. Wade and Forsyth, op. cit., p. 255, observe:

> Procedural safeguards which are so often imposed for the benefit of persons affected by the exercise of administrative powers are normally regarded as mandatory so that it is fatal to disregard them.

I am of the view that Article 154 B (8) (*c*) does not contemplate a discretionary power by the Governor.

In view of that conclusion, the further question in ground (*a*) for appeal, namely, "if so whether such power is required to be exercised on the directions of the President" does not arise.

DOES ARTICLE 154 B (8) (*C*) CONTEMPLATE THE EXERCISE OF THE GOVERNOR'S POWER SOLELY AS A DELEGATE?

The Submissions of the Appellants

If Article 154 B (8) (*c*) is subject to Article 154 B (8) (*d*), then the Governor must exercise his powers as a delegate, for the Governor's

role is that of a delegate. See the judgment of Sharvananda, CJ in *Re the Thirteenth Amendment,* at pages 322–323. Article 154 B (2) provides that: "The Governor shall be appointed by the President by warrant under his hand, and shall hold office, in accordance with Article 4 (*b*), during the pleasure of the President". The Governor's position is unlike that of the Auditor-General, the Commissioner of Elections or Judges of the Superior Courts who, although appointed by the President, cannot be removed from office at will. The subjection of Article 154 B (2) to Article 4 (*b*) makes the Governor an agent and representative of the President in the Provincial area. The Governor derives his authority from the President and exercises executive power vested in him as a delegate. The dissolution of the Council is an executive act. In *Re the Thirteenth Amendment,* (*supra*), the court emphasized that, so long as the President retains the power to give directions to the Governor regarding the exercise of his executive functions and the Governor is bound by such directions, superseding the advice of the Board of Ministers; and the President can take over the functions and powers of the Provincial Council by virtue of Articles 154 K and 154 L, there can be no gainsaying the fact that the President remains supreme or sovereign in the executive field and the Provincial Council is only a body subordinate to him. The notion that the Chief Minister should prevail over the Governor who is acting as a delegate and/or on the directions of the President as regards the dissolution of a Council, is contrary to the decision in *Re the Thirteenth Amendment,* (*supra*), on the question of the exercise of executive sovereignty. It is the discretionary power to dissolve a Council that ensures executive supremacy. The temporary take over of the Council for a year under Article 154 K in no way achieves this supremacy.

In the performance of his functions, the Governor is required to act in his discretion (the test of which is the Governor's conception of the discretion), the Governor is obliged to seek the President's directions. The resulting action then arises from the President's fiat, the Governor being a mere instrumentality. No doubt the Governor has a part to play, namely, to decide that there exists a discretionary matter, and to seek the President's directions before the Governor exercises his discretion. It is only in situations of discretion arising from powers conferred on the Governor by the Thirteenth Amendment that the Governor acts as a delegate of the President. Article 154 B (8) (*c*) contemplates a discretionary power. Consequently in exercising this power in terms of Article 154 (8) (*d*), the Governor is acting

solely as a delegate of the President. So much so that for this purpose, the word "shall" occurring in the said Article need not be construed as "may", since the President can give directions superseding the advice of the Board of Ministers. To the extent that the ensuing action has the President's approval (through his directions), the Governor is giving effect to the President's fiat and so acting as a delegate.

The Submissions of the Respondents

The fact that a person is appointed by the President, eg the Auditor-General, the Commissioner of Elections or Judges of the Superior Courts, does not carry with it the corollary that he becomes the agent or delegate of the President and must therefore carry out his orders and directions. The executive power of the President in regard to Provincial Councils can be exercised only in two situations: (i) where express provision is contained (eg Articles 154 K and 154 L); (ii) where the Governor is exercising a discretionary power, in which case he can seek the advice and directions of the President in terms of Article 154 F (2). Otherwise the Governor is obliged to carry out his functions as laid down in the various Articles of the Constitution. In *Premachandra v. Jayawickrame and another*, (*supra*), the Supreme Court held that the Governor was not exercising a discretionary power and that, therefore, Article 154 F (2) did not apply. The present case is the same. It is only in instances where the Governor is acting in pursuance of a discretionary power that he can seek the President's advice under Article 154 F (2), and not otherwise.

A Provincial Council, like Parliament, is an elected body. Accordingly, Article 154 (8) (*c*) and (*d*) makes specific provision for the manner of dissolution. This provision alone must apply to dissolution. Neither the President, nor the Governor claiming to act through the President, can ignore this Article and take refuge under Article 4 (*b*). Even if the Governor is a "delegate" of the President as claimed (which is not conceded), neither the President nor the Governor were entitled to act in the manner complained against. The only relevant Article is Article 154 B (8) (*c*) and (*d*). All that is required is that it should be applied to determine whether or not the Governor has acted constitutionally in dissolving the Provincial Council. If the words of a statute are clear and unambiguous, they themselves indicate what must be taken to have been the intention of Parliament, and there is no need to look elsewhere to discover their intention or their meaning. (Halsbury, 4th ed. vol. 44 paragraph 857); see also

Somawathie v. Weerasinghe[19]; Halsbury, op. cit., paragraph 857; Basu, page 33; Bindra, op. cit., page 941.

Article 154 B (2) does not have any application in the present case. This Article relates only to the appointment of a Governor. The reference in it to Article 4 (*b*) is only for the purpose of showing that his appointment is in pursuance of the President's executive powers. The reference to Article 4 (*b*) does not mean that all the duties and functions of a Governor referred to in Article 154 B are made discretionary, or that the Governor must act in accordance with the President's directions, notwithstanding express provision to the contrary governing the exercise of a particular duty or function in Article 154 B itself.

In any event, the maxims *generalia specialibus non derogant*, and *expressio unius est exclusio alterius* apply and effect must be given to the specific provision contained in Article 154 B (8) (*c*) and (*d*): Halsbury, op. cit., paragraph 875.

My View on the Question

It has been observed that an element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else. (See Wade and Forsyth, op. cit., at 347), and that there is no general principle that administrative functions are delegable; and that the principle is rather that, where any decision has to be made, it must be made by the authority designated by Parliament and by no one else: (Wade and Forsyth, op. cit., at 353). The power of dissolution of a Provincial Council is conferred by Parliament on the Governor by Article 154 B (8) (*c*). Parliament has not given that power to the President and made it delegable to the Governor. When a decision has to be made on the question of dissolution, the decision must be that of the Governor, whatever other descriptive labels may or may not be attached to him, and regardless of the course of action that may be open to him to follow or may be obliged to follow in respect of other matters. Where the Chief Minister advised the Governor against dissolution, the Governor had no option in the matter: He was required by Article 154 B (8) (*d*) to act in accordance with the advice of the Chief Minister, for the Governor was of the opinion that the Board of Ministers commanded the support of the Provincial Council. As I

have pointed out earlier, he had a legal duty in the circumstances to act on the advice of the Chief Minister.

Nowhere in the Constitution is the Governor described as a 'delegate', nor are the duties and functions of the Governor or how they should be exercised, defined or described in terms of his being a 'delegate'. The description of the Governor as a 'delegate' occurs in the following observations of Sharvananda, CJ in *Re the Thirteenth Amendment*, (*supra*), at op. 322–323:

> The Governor is appointed by the President and holds office in accordance with Article 4 (*b*) which provides that the executive power of the people shall be exercised by the President of the Republic, during the pleasure of the President (Article 154 B (2)). The Governor derives his authority from the President and exercises the executive power vested in him as a delegate of the President. It is open to the President therefore by virtue of Article 4 (*b*) of the Constitution to give directions and monitor the Governor's exercise of this executive power vested in him. Although he is required by Article 154 F (1) to exercise his functions in accordance with the advice of the Board of Ministers, this is subject to the qualification 'except insofar as he is by or under the Constitution required to exercise his functions or any of them in his discretion'. Under the Constitution the Governor as a representative of the President is required to act in his discretion in accordance with the instructions and directions of the President. Article 154 F (2) mandates that the Governor's discretion shall be on the President's directions and that the decision of the Governor as to what is in his discretion shall be final and not be called in question in any court on the ground that he ought or ought not to have acted in his discretion. So long as the President retains the power to give directions to the Governor regarding the exercise of his executive functions; and the Governor is bound by such directions superseding the advice of the Board of Ministers and where the failure of the Governor or Provincial Council to comply with or give effect to any directions given to the Governor or such Council by the President under Chapter XVII of the Constitution will entitle the President to hold that a situation has arisen in which the administration of the Province cannot be carried on in accordance with the provisions of the Constitution and take over the functions and powers of the Provincial Council (Article 154 K and 154 L), there can be no gainsaying the fact that the President remains supreme or sovereign in the executive field and the Provincial Council is only a body subordinate to him.

Article 55 (1) of the Constitution provides that the appointment, transfer, dismissal and disciplinary control of public officers is vested *in the Cabinet of Ministers*, and that all public officers shall hold office at pleasure. (The emphasis is mine.) In the UK, public servants hold office during the pleasure of the Crown. (Cf. *Dunn v. The Queen*[20]; *Hales v. The King*[21]; *Denning v. Secretary of State for India*[22], unless otherwise provided. The rule, even in England, is not based on connection with the *royal* prerogative, except, perhaps in a loose sense, but rather on the ground that 'the government should be able to disembarrass itself of any employee at any moment': Wade and Forsyth, op. cit., at pp. 70–71. Paradoxically, both in the UK and in Sri Lanka, there are legal restrictions on the exercise of the 'pleasure' principle. It seems to me that when Article 154 B (2) provided that the Governor shall be appointed by the President, and that the Governor shall hold office, in accordance with Article 4 (*b*), during the pleasure of the President, an exception was created to Article 55: what was sought to be done was to enable the President, instead of the Cabinet of Ministers, to appoint and remove a Governor. It does not mean that because the Governor holds office during the pleasure of the President, he is obliged to comply with the directions of the President, disobeying the provisions of the Constitution, which in its Preamble is stated to be the *Supreme Law,* and which the Governor has, in terms of Article 154 B (6) solemnly undertaken to uphold.

Article 154 B (2) provides that the Governor shall be appointed by the President "and shall hold office, in accordance with Article 4 (*b*), during the pleasure of the President". His tenure of office is therefore less secure than that of certain others who are also appointed by the President. The fact that his employment is precarious because he holds office during the pleasure of the President may, as a matter of self-interest, make it desirable for him consult the President in matters of importance. There is no disagreement that, although generally the Governor must act on the advice of the Board of Ministers, he is not required to do so where he is *by or under the Constitution required to exercise his functions or any of them in his discretion.* Where he so acts in the exercise of his discretion, he is subject to the directions and orders of the President. (Article 154 F (1) and (2)). It is not only prudent but also a constitutional requirement prescribed by Article 154 F (2) that he shall exercise his discretion on the President's directions. It may be appropriate in matters where the Governor is required by the Constitution to act in his discretion to describe him as a 'delegate' because he is required

to exercise his discretion on the President's directions and might be taken to have been deputed to act for the President.

For the reasons I have already given, the Governor had no discretion in the circumstances of the case in the matter of the dissolution of the Provincial Council. Article 154 F (2) which requires the exercise of the Governor's *discretionary* powers on the directions of the President has no applicability in this matter. Parliament in its wisdom in Article 154 B (8) expressly conferred the power of dissolution on the Governor, and not on the President, and specifically and unambiguously in apt words provided the manner and circumstances in which the Governor should exercise his power of dissolution. The power cannot be exercised by implication having regard to Article 4 (*b*) read with Article 154 B (2) and Article 154 F. Admittedly, the general words in Article 4 (*b*) are wide enough to cover the case of the dissolution of a Provincial Council; however, it does not do so because specific provision is made in that regard by Article 154 B (8). Bennion, op. cit., p. 378 explains the matter in the following words:

> *Generalibus specialia derogant.* Where the literal meaning of a general enactment covers a situation for which specific provision is made by some other enactment within the Act or instrument, it is presumed that the situation was intended to be dealt with by the specific provision.

Conversely, general words are taken not to be intended to disturb express stipulations – *clausula generalis non referta ad expressa;* and general provisions do not override special ones – *generalia specialibus non derogant.*

Halsbury, (op. cit., paragraph 875), states as follows:

> Whenever there is a general enactment in a statute which, if taken in its most comprehensive sense, would override a particular enactment in the same statute, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may apply. This is merely one application of the maxim that general things do not derogate from special things.

Therefore, in my view, since Article 4 (*b*), taken in its most comprehensive sense, would not override Article 154 B (8), I hold that Article 154 B (8) must be operative on the question of the power of the Governor to dissolve a Provincial Council.

No inference is proper if it goes against the express words Parliament has used. *Expressum facit cessare tacitum.* As Lord Dunedin observed in *Whiteman v. Sadler*[23], "Express enactment shuts the door to further implication". The chief application of the principle *expressum facit cessare tacitum* lies in the so-called *expressio unius* principle. Article 4 does state that the executive power of the people shall be exercised by the President. However, Article 154 B (8) creates an express exception to that provision, and the principle *expressio unius est exclusio alterius* must apply. It is an ordinary rule that: "if authority is given expressly, though by affirmative words, upon a defined condition, the expression of that condition excludes the doing of the act authorised under other circumstances than those so defined: *expressio unius est exclusio alterius.* (Per Willes, J in *N. Stafford Steel Co. v. Ward*[24]. In *Felix v. Shiva*[25], Everleigh, LJ said: "If a power is given by statute, and the statute lays down the way in which the power is to be brought into existence, it must be brought into existence by that method and none other".

A Governor is bound to act in accordance with the express provisions in Article 154 B (8). He cannot rely on the fact that the executive power of the people is ordinarily exercised by the President. If the Governor is advised against dissolution by a Chief Minister, so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council, the Governor must act on the advice of the Chief Minister. He is neither required by the Constitution, nor is he permitted, *in those circumstances,* to act in his discretion or on the orders and directions of the President. Where Parliament has prescribed the manner in which a power may be exercised, no one has any discretion to ignore those directions. Unless he complies with the directions, he acts illegally. The rule of law requires the Governor to justify his action as authorised by law. (See de Smith, Woolf and Jowell, op. cit., p. 295 quoted above). This he has failed to do.

It was suggested by the appellants that, since the Governor was a delegate, his action in dissolving the Provincial Council could not be questioned because of the immunity from suit conferred on the President by Article 35 of the Constitution. The matters before the court do not concern the President's acts or omissions. The respondents challenge the exercise of the powers of the Governor, not as a delegate, but as a person directly conferred by Parliament with the

power of dissolution. The Governor has no immunity from suit. He is not beyond the reach of the law, and it is not appropriate to invent new official immunities.

A. V. Dicey, *Introduction to the Study of the Law of the Constitution,* 10th ed., 1965, p. 193, observed as follows:

> Every man whatever his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of ordinary tribunals . . . with every official from Prime Minister down to a constable or a collector of taxes is under the same responsibility for every act done without legal justification as any other citizen.

My answer to the question whether Article 154 B (8) (*c*) contemplates the exercise of the Governor's power solely as a delegate is that it does not. The power of dissolution is one that is expressly conferred on the Governor by Article 154 B (8) of the Constitution. It is not a power of the President exercised by the President by means of the Governor. In the matter of dissolution, the Governor derives his authority from a specific provision of the Constitution that confers that power on him and on no other person. His power does not come to him vicariously by reason of his position as a person substituted for the President. The power has been conferred on the Governor by Parliament and it is his duty to exercise that power exactly in the manner prescribed by Parliament.

ORDER

For the reasons set out in my judgment, I affirm the decisions of the Court of Appeal in respect of SC Appeal No. 41/96 and SC Appeal No. 42/96 and dismiss the appeals in both cases.

The first appellant in each of the appeals shall pay Rs. 7,500 as costs.

G. P. S. DE SILVA, CJ. – I agree.

RAMANATHAN, J. – I agree.

Appeals dismissed.