
(1991) 04 CAL CK 0043
In the Calcutta High Court

All India Lawyer's Council

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 30-04-1991

Acts Referred:

Constitution of India, 1950 — Article 163(3), 164(2), 164(4), 172, 174

Citation : 95 CWN 639

Hon'ble Judges : A.M. Bhattacharjee, J

Bench : Single Bench

Advocate : B.K. Roy Chowdhury, D.S. Misra and Jogmaya Sengupta, for the Appellant; N.N. Gooptu, Subodh Ukil and Tarun Roy, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Bhattacharjee, J.—Under Article 164(2) of the Constitution, "the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State". Under Article 164(4) "a Minister..... shall cease to be a Minister" "if for any period of six consecutive months" he "is not a member of the Legislature", which in a State having unicameral Legislature, like that of West Bengal, would mean the Legislative Assembly only. Would a dissolution of the Legislative Assembly, whether by expiration of period or otherwise, operate as an automatic termination or extinction of the Council of Ministers ? Would the Ministers also stand discharged or removed from their offices with the cessation of the Legislative Assembly? An affirmative answer would warrant an immediate issuance of Writ of (uo Warranto against the Council of Ministers of the State of West Bengal while a negative answer would obviously result in rejection of the Writ petition.

2. But in such a case, should not the Ministers, whose warrant to continue to hold office is challenged, be made parties to the proceedings? Should a proceeding challenging their right to hold office be proceeded with behind their back without giving them opportunity to participate therein ? It is true that the State itself, of which the Ministers represent and form part of the Executive

Organ, is the Party. Respondent. But it is not that just an executive or Ministerial action has been assailed, so that the State as the party-Respondent can effectively represent through any of its authorised officers. Since what has been challenged is the very authority of the Ministers themselves to continue to hold office, the question whether the proceeding would suffer from any serious infirmity in their absence assumes great significance. But I would still be not inclined to pursue this question, since the same has not been urged by the learned Advocate-General or the learned Government Pleader appearing for the State Respondent and the case can be disposed of on a much broader aspect of Constitutional Law.

3. I must place on record my sincere appreciation of the very able and interesting argument advanced by Mr. B.K. Roy Chowdhury, the Learned Counsel appearing for the Petitioner who has made admirable and spirited sorties to distinguish the three weighty decisions of the Supreme Court ruling clearly to the contrary to the proposition he has endeavaoured to propound and defend. But first to the provisions of the Constitution itself, before I proceed to the Judicial authorities.

4. "Even when the Legislative Assembly is constituted and is in existence, there is no legal bar in the Constitution to prevent a Governor from appointing all the Ministers from outside the Assembly. Such Ministers, even though not members of the Assembly, shall, under Article 177 of the Constitution, "have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly..... and to speak in, and otherwise to take part in the proceedings of, any Committee of the Legislature of which he may be named a member, but shall not..... be entitled to vote."

5. Such Ministers would no doubt cease to be Ministers, under the provisions of Article 164(4), if they do not become member of the Legislature within 6 months of their appointment. But then again, there is no legal bar in the Constitution to prevent the Governor to appoint them again as Ministers. That may be an act against Constitutional propriety or political morality, but in no way against Constitutional legality.

6. True, under Article 174, the Assembly must be summoned at least twice a year so that 6 months do not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. And in any such sitting or session, such a Council of Ministers consisting of non-members only, may be voted out by the members of the Assembly. But may not be also where, for example, they belong to the same party which happens to command majority in the Assembly, and thus enjoy its patronage. In theory, therefore, there is nothing to prevent a Governor appointing or reappointing a set of persons as Ministers every 6 months and nothing to prevent such Council from continuing for any indefinite period of time, with a ritualistic break at every 6 months, provided the majority of the Members do not propose to throw them out. True, under article 164(2), "the Council of Ministers shall be collectively responsible to

the Legislative Assembly of the State". But it is surely not the law that a set of persons cannot be responsible to a body without being its members; the officers of a Company for example, are not its members, but are nevertheless responsible to the Company and/or its Board of Directors.

7. Going by the letters of law, therefore, a Council of Ministers may take its birth, and also continue to live, entirely outside the Legislative Assembly and accordingly its existence or continuity may not depend on or be co-terminus with the existence or continuity of the Assembly.

8. During the course of agreement, I posed to Mr. Roy Chowdhury a hypothetical proposition. Suppose, in a State having a " bi-cameral Legislature, all the Ministers have been appointed from the Upper House, i.e., the Legislative Council. The Ministers thus being members of the Legislature, though not of the Legislative Assembly, they would not in any way come within the mischief of Article 164(4) providing that the Ministers would cease to be so if they are not members of the Legislature for a consecutive period of six months. Suppose further that in that State the Lower House, i.e., the Legislative Assembly is dissolved as a result of expiration of period of five years or otherwise. Such dissolution, by it self, would not and cannot affect the Council of Ministers. And suppose further, a new Legislative Assembly is duly elected in that State in due Course. Then also, the dissolution of the old and the birth of a new Legislative Assembly, by themselves, cannot affect the Council of Ministers who may continue in office so long they continue to be the members of the Legislative Council. This again goes to demonstrate that a Minister or a Council of Ministers is in no way affected by existence or non-existence, dissolution or reconstitution of the Legislative Assembly, until the Minister or the Ministers cease to be members of the Legislature for a consecutive period of six months. I must note that Mr. Roy Chowdhury, with his usual fairness, has not disputed the legality of this proposition.

9. After hearing Mr. Roy Chowdhury for days and with anxious advertence, I am afraid that the points raised by him relate rather to Constitution propriety and political morality than to Constitutional Law proper. The main brunt of his argument is that the present members of the Council of Ministers in West Bengal, being no longer members of the Legislative Assembly since its dissolution, must not go on formulating policies or have them executed and have access to all such records of the state to which Ministers alone on have access by virtue of their office, as it is the fundamental principle of parliamentary Government that the Government must be manned and run by persons who are and continue to be accredited representatives elected by the people.

10. As a principle, this may be beyond dispute. It is true that I have pointed out hereinabove that it is not impermissible under the Constitution to have a Council of Ministers composed of persons who are not members of the Legislature and the Council may, in law, continue in office, not only for the six months, but even virtually for indefinite period, if the Governor chooses to reappoint them after a

ritualistic half-yearly break. But such a course, though sustainable by legalese, would be improper as well as immoral in that case the letters of the Constitution would be utilised to subvert the spirit.

11. The cases at hand is however fully covered by two-Judge Bench decision of the Supreme Court in *U.N.A. Rao Vs. Smt. Indira Gandhi*, and in *Thiru K.N. Rajgopal Vs. Thiru M. Karunanidhi and Others*, both decided by the same Bench on the same day and these two, on their turn, have been approved by a later seven-judge Bench decision in *Samsher Singh Vs. State of Punjab* and Another,

12. In *Indira Gandhi* (Supra, at 1005), this very question as to whether the Council of Ministers would have to "die and faint and fail" with the dissolution of the House of the People came up for consideration. It was urged that the House of the People having been dissolved, the provisions of article 75(3) obligating the Council of Ministers to be responsible to the House of the People, could no longer be complied with and, therefore, with the dissolution of the House of the people, "the prime Minister and other Ministers must resign or be dismissed by the President and the President must carry on the Government as best as he can with the aid of the Services". This contention was rejected by the unanimous Five-Judge Bench, speaking through Sikri, C.J., and it was ruled that in that context, Clause (3) of Article 75 "must be read as meaning that Article 75(3) only applies when the House of the people does not stand dissolved". The decision therefore, was that when the House of the People is not or no longer in existence, the obligation of the Council of Ministers to remain "collectively responsible to the House of the People" would also cease, and not that the Council of Ministers itself shall stand debunked with the dissolution of the House.

13. What was ruled in *Indira Gandhi* (supra) in respect of the Union Council of Ministers, was applied by the same Bench of the Supreme Court on the same day in *Thiru K.N. Rajgopal Vs. Thiru M. Karunanidhi and Others*, in respect of the Council of Ministers for the State and it was held that notwithstanding Article 164(2), which is analogous to Article 75(3) and provides for collective responsibility of the Council of Ministers to the Legislative Assembly of the State, the Council does not cease to continue only by reason of the dissolution of the Assembly. As already noted, these decisions have been approved by both the majority and the minority in the Seven-Judge Bench decision of the Supreme Court in *Samsher Singh* (Supra, at 2200, 2223-2224).

14. It has, however, been urged that, in the case at hand, the Governor, in fact, appointed the Chief Minister and other Ministers when they were members of the Legislative Assembly and the Governor must be presumed to have done so because of their being such members at the relevant time. And now that the Ministers have ceased to be such members, the pleasure of the Governor, during which only Ministers hold office, can no longer be presumed to have continued any further in this changed context and the Ministers can no longer hold office until and unless the Governor, in his pleasure, again appoints them or requests to continue as before.

15. This contention, though apparently attractive, must be rejected for more reasons than one. There is nothing in the Constitution to indicate that only members of the Legislature can be appointed as Ministers and, as already pointed out, there is nothing in the Constitution to prevent a Governor to appoint a non-member as a Minister, though such a one would cease to hold office on his failure to become a member within 6 months. The Oath prescribed for the Ministers in the Constitution Third Schedule-Form V also does not, even remotely, suggest that the person taking oath as Minister does so on the strength of his being a member of the Legislature. It is, therefore, not possible to presume that with the termination of the membership of the Legislature, the pleasure of the Governor vis-a-vis the Ministers has or must be deemed to have, come to an end.

16. It is urged that in such a case it is the Constitutional convention for the Chief Minister to resign along with Council headed by him, to be followed by a similar convention on the part of the Governor to request the Council to continue and the Council then becomes known as a "Care-Taker" Ministry. In India at least, as the decisions in *Indira Gandhi (supra)* and in *M. Karunanidhi (Supra)* would demonstrate, no such convention can be said to have taken root and I have very strong reservations about borrowing exotic conventions from abroad in Constitutional matters when we have the lengthiest Constitution in the World, running into minutest details in pages numberless. I have, in one sense, never appreciated the expression "Care-Taker" Ministry, for every Ministry must, or at least professes to take care of the governance of the country. It is one thing to say that when there is no House in existence to which the Ministry would have otherwise been responsible, a Ministry, which has resigned, but is continuing to function at the request of the Head of State, may not, in the fitness of things, take major policy decisions. But even such a Ministry is otherwise a full-fledged Ministry in the eye of Law and all its decisions, major or minor, are immune from any challenge on the ground that the Assembly is dissolved and the ministry, whether after resignation or not, is continuing at the request of the Head of the State. A so-called Care-Taker Ministry is nevertheless a Ministry within the meaning of Article 74 and the president shall have to act in accordance with its advice under that Article.

17. On the contrary, there is clear observation in *Indira Gandhi (supra)*, at 1005, paragraph 9, last sentence) that in such a case if "the President (here, the Governor) has not said that it is his pleasure that the Respondent (here, the Council of Ministers) shall not hold office", the Council of Ministers can and does continue. And not that, the president or the Governor is required to state expressly that he, in his pleasure, requests or permits the council of Ministers to continue. Mr. Roy Chowdhury has also urged that, the People who have elected the Members of the Legislative Assembly have a right to have the Assembly for the normal period of five years under the provisions of Article 172 of the Constitution and any earlier dissolution thereof must be branded as illegal and unconstitutional and as an act of breach of faith reposed by the people in the

Members of the Assembly and the Council of Ministers, unless such a course can be demonstrated to be justified on the facts and circumstances disclosed. The Legislative Assembly of this State has admittedly been dissolved about a year before its normal tenure. Under Article 174(2)(b), "the Governor may from time to time dissolve the Legislative Assembly" and it has not been disputed that the Governor has done so on the advice of the Council of Ministers as it appears from the relevant copy of the Gazette Notification produced by the learned Advocate-General. A dissolution of the Assembly on the whimsical, capricious or otherwise unreasonable advice of the Council of Ministers is surely reprehensible. But, as ruled by the Supreme Court in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, every State action is to be presumed to be reasonable and in the public interest, until the contrary is proved by those who assert to the contrary. And as there is nothing on record to prove the contrary, the presumption would be that the dissolution has been effected on reasonable grounds and in public interest, particularly when the provisions of Article 163(3) categorically shut out any enquiry by the Court as to what advice if any, has been tendered by the Council of Ministers to the governor, on the basis of which the Governor has decided to dissolve the Assembly.

For the reasons as stated above the writ petition is rejected but without any order as to cost.