

(2016) 04 AHC CK 0095

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 6759 of 2016.

Asok Pande

APPELLANT

Vs

Azam Khan, Minister, U.P. Govt. and Others

RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Constitution of India, 1950 — Article 164, 167, 19(1)(a), 194, 212, 226

Citation : (2016) 5 ADJ 369 : (2016) 3 AllWC 2837

Hon'ble Judges : Amreshwar Pratap Sahi; Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Asok Pande, Advocate, for the Appellant; C.S.C., A.S.G. and Abhinav N. Trivedi, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. The communication between His Excellency the Governor, the Speaker of the State Legislative Assembly, its newspaper reporting correlating it to the contents of words spoken by a Cabinet Minister of the State placed in this petition as the first respondent, and the expectations of the petitioner from the Chief Minister of the State to honour the express opinion of the Governor is the basis of this exercise in the writ jurisdiction, praying for a quo warranto through a judicial review under Article 226 of the Constitution of India. Reliefs ancillary to the same for removal of the 1st respondent from the Council of Ministers of the present government, have also been prayed for on the ground that the Governor has expressed displeasure on the conduct of the Minister describing him as unworthy of occupying the office held by him and incapable of discharging his duties.

2. The petitioner has appeared in person and has urged that the respondent No.1 does not deserve to continue as a Cabinet Minister of the present Government of U.P. for having lost the pleasure of the Governor as per his opinion on account of the reported incidents, where the concerned Minister appears to have hurled accusations against the Governor for stalling several bills moved by the

Legislature by not giving his assent, as if the Governor was working under some political influence. A reference has been made in particular to the Nagar Nigam bill 2015 which is the department of the respondent No.1 as Minister In-charge.

3. The petitioner's contention is that the remarks that were made by the Minister against the Governor came to be widely reported in newspapers whereupon the Governor had requested the Speaker of the Vidhan Sabha to provide him the edited and the unedited copies of the audio and video Compact Discs (CDs) of the statement of the concerned Minister, and on going through the same, the Governor found it to be highly objectionable. It is also alleged in the petition that the Speaker had expunged about 7rd of the contents of the speech of the Minister delivered inside the house and on coming to know the said facts, the Governor proceeded to write a letter to the Speaker of the Assembly raising a question mark on the capability of the Minister to function in that capacity as the language of the Minister was not favourable to the dignity and tradition of the House.

4. It is also alleged that the said letter was sent to the Chief Minister of the State and by raising a doubt about the questionable conduct of the Minister, the Governor has withdrawn his pleasure of appointing him as a Minister in the Council of Ministers headed by the Chief Minister. According to Article 163 of the Constitution, the Governor has a discretion in this matter and as per Article 164 of the Constitution, it is the pleasure of the Governor and not the pleasure of the Chief Minister to continue the Minister in office.

5. Sri Pande therefore submits that once the Minister has lost the confidence of the Governor and the pleasure stands withdrawn, the Minister cannot hold office any further. In spite of this, he has not been removed and therefore a writ of quo warranto should be issued calling upon the Minister to explain as to under what authority of law he continues to occupy the office of the Minister, and why he should not be treated as disqualified to hold the post upon having lost the pleasure of the Governor of the State.

6. Sri Pande has vehemently urged that this objectionable unparliamentary style of passing remarks adversely against the constitutional authority of the Governor who appoints Ministers, calls for an immediate action for the discontinuance of such a Minister as this conduct is not expected of him. The Chief Minister having not acted accordingly has also violated the constitutional norms in spite of having full knowledge of the insults that were cast on the Governor.

7. The petition has been vehemently opposed on behalf of the State of U.P./ respondent Nos.2, 3 and 4 by the learned Advocate General Mr. Vijai Bahadur Singh and learned Additional Advocate General Ms. Bulbul Godiyal assisted by Mr. H.P. Srivastava, learned Additional Chief Standing Counsel.

8. Ms. Ranjana Agnihotri has filed her appearance on behalf of the Union of India.

9. The learned Advocate General submits that the proceedings inside the House

are privileged proceedings and any statement made inside the house cannot be a subject matter of judicial scrutiny, more so the admitted position is that the Speaker himself has exercised his authority to expunge any such objectionable remarks that were not desirable to be maintained on the record of the House. He contends that once the remarks are off the record, nothing remains and as urged earlier, would not give any cause so as to seek a judicial review through a writ petition. He further submits that the doctrine of pleasure has not been correctly appreciated by the petitioner which is contrary to what has been interpreted by the Apex Court in several decisions that have been noticed by a Division Bench of this Court in the case of *Rajendra Prasad Baudh v. State of U.P. And others*, Writ Petition No.11331 (MB) of 2015 decided on 22.01.2016 relying on the Apex Court decisions in this regard including the latest decision in the case of *Manoj Narula v. Union of India and others* [(2014) 9 SCC 1]. The discretion therefore to appoint or continue a Minister is clearly protected which is eminently a political question beyond judicial review-ability. He has invited the attention of the Court to the decision of the Apex Court in the case of *B.P. Singhal v. Union of India and another* [(2010) 6 SCC 331] to urge that so far as appointment of a Minister is concerned, the Court will not act as an appellate authority nor has the constitution allowed invoking of such powers in a case like the present one.

10. Articles 163 and 164 of the Constitution provide that there shall be a Council of Ministers with the Chief Minister to aid and advice the Governor but the appointment of a Minister would be governed by Section 164 (1) which reads as follows:-

"164. Other provisions as to Ministers. -- (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work."

11. Thus, a Minister can be appointed by the Governor only on the advice of the Chief Minister and shall hold office during the pleasure of the Governor which has to be read in consonance with the advice of the Chief Minister. The question is can the Governor straightaway dismiss the Minister or his opinion expressed, as in the present case, would amount to withdrawal of pleasure that has to necessarily result in the removal of the Minister? A perusal of the said provisions and the decisions which have been cited at the Bar leave the legal position no longer *res integra*, but since the issue has been raised, we proceed to answer the question in the light of the settled position of law.

12. In the case of *B.P. Singhal (supra)*, this issue was referred to in paragraph - 26 thereof which is extracted hereunder:-

"26. The Constitution refers to offices held during the pleasure of the President

(without restrictions), offices held during the pleasure of the President (with restrictions) and also appointments to which the said doctrine is not applicable. The articles in the Constitution of India which refer to the holding of office during the pleasure of the President without any restrictions or limitations are Article 75(2) relating to Ministers, Article 76 (4) relating to the Attorney General and Article 156(1) relating to Governors. Similarly Articles 164(1) and 165(3) provides that the Ministers (in the States) and Advocate General for the State shall hold office during the pleasure of the Governor."

13. The Court then went on to pose this question in paragraphs 30 and 31 thereof as follows:-

"30. The Constitution of India also refers to other offices whose holders do not hold office during the pleasure of the President or any other authority. They are: the President under Article 56; Judges of the Supreme Court under Article 124; the Comptroller and Auditor General of India under Article 148; High Court Judges under Article 218; and Election Commissioners under Article 324 of the Constitution of India. In the case of these constitutional functionaries, it is specifically provided that they shall not be removed from office except by impeachment, as provided in the respective provisions."

"31. The Constitution of India thus provides for three different types of tenure: (i) those who hold office during the pleasure of the President (or the Governor); (ii) those who hold office during the pleasure of the President (or the Governor), subject to restrictions; (iii) those who hold office for specified terms with immunity against removal, except by impeachment, who are not subject to the doctrine of pleasure."

14. The Court then referred to the Constituent Assembly Debates in paragraph - 32 as follows:-

"32. The Constituent Assembly Debates clearly show that after elaborate discussions, varying levels of protection against removal were adopted in relation to different kinds of offices. We may conveniently enumerate them: (i) Offices to which the doctrine of pleasure applied absolutely without any restrictions (Ministers, Governors, Attorney General and Advocate General); (ii) Offices to which the doctrine of pleasure applied with restrictions (Members of defence services, Members of civil services of the Union, Member of an All India service, holders of posts connected with defence or any civil post under the Union, Member of a civil service of a State and holders of civil posts under the State); and (iii) Offices to which the doctrine of pleasure does not apply at all (President, Judges of Supreme Court, the Comptroller and Auditor General of India, Judges of the High Court, and Election Commissioners). Having regard to the constitutional scheme, it is not possible to mix up or extend the type of protection against removal, granted to one category of offices, to another category."

15. The power of judicial review ability was explained in paragraph - 80 as

follows:-

"80. The extent and depth of judicial review will depend upon and vary with reference to the matter under review. As observed by Lord Steyn in *Daly*, in law, context is everything, and intensity of review will depend on the subject-matter of review. For example, judicial review is permissible in regard to administrative action, legislation's and constitutional amendments. But the extent or scope of judicial review for one will be different from the scope of judicial review for the other. *Mala fides* may be a ground for judicial review of administrative action but is not a ground for judicial review of legislation's or constitutional amendments. For withdrawal of pleasure in the case of a Minister or an Attorney General, loss of confidence may be a relevant ground. The ideology of the Minister or Attorney General being out of sync with the policies or ideologies of the Government may also be a ground. On the other hand, for withdrawal of pleasure in the case of a Governor, loss of confidence or the Governor's views being out of sync with that of the Union Government will not be grounds for withdrawal of the pleasure. The reasons for withdrawal are wider in the case of Ministers and Attorney General, when compared to Governors. As a result, the judicial review of withdrawal of pleasure, is limited in the case of a Governor whereas virtually nil in the case of a Minister or an Attorney General."

16. The concluding sentence of paragraph - 80 therefore still holds the field and the judicial review ability being unavailable, a *Mandamus*, as prayed for, cannot be granted.

17. It is not established that any statutory disqualification has been incurred in the shape of an alleged displeasure expressed by the Governor in his communication to the Speaker and the Chief Minister that should be treated sufficient enough so as to cause removal of respondent No.1 from the Council of Ministers. This form of displeasure does not fall within the scope of judicial review by us as indicated above and consequently, the relief as prayed for to that extent cannot be granted.

18. The contention of the petitioner on the issue of certain sentences and remarks having been expunged by the Speaker in relation to the proceedings within the House is subject to constitutional limitations. Article 212 is extracted hereunder:-

"212. Courts not to inquire into proceedings of the Legislature.-

(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

19. Sri Pande submits that the pleasure of the Governor and the advice of the

Chief Minister are two different things. The pleasure of the Governor cannot be equated as the pleasure of the Chief Minister.

20. The advice of the Chief Minister comes at the time of appointment of a Minister as per Article 164 (1) of the Constitution of India. He can further advise the Governor for removal of his Minister which is also governed by the same provision. The question of issuing a direction to the Chief Minister to comply with the displeasure of the Governor has to be read in the light of constitutional provisions. Article 167 of the Constitution defines the duties of the Chief Minister vis-a-vis his obligations towards the Governor which is extracted hereunder:-

"167. Duties of Chief Minister as respects the furnishing of information to Governor, etc.- It shall be the duty of the Chief Minister of each State -

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council."

21. The Governor therefore in the matter of appointment of a Minister and his continuance would be subject to the aforesaid constitutional provisions and in our view, a perusal of the same cannot raise a presumption for exercise of powers of judicial review in a matter like this to issue a Mandamus as prayed for to execute the displeasure of the Governor. The advice of the Chief Minister would be binding for appointment of a Minister subject only to constitutional or statutory limitations if any but not only on a dissatisfaction or displeasure of the Governor. Such limitations however are to be understood by the Chief Minister in all dimensions of propriety as explained by the apex court in the case of Manoj Narula (supra) while discussing the issue of constitutional trust reposed in a Prime Minister or a Chief Minister as the case may be.

22. The discretion of choice and opinion of the Chief Minister about a Minister of his Cabinet is founded on an unfathomable trust reposed in him. It is thus the true conscience and measured assessment of the Chief Minister that combines itself with the pleasure of the Governor in a unique reflection of a democratic procedure that is expected under the Constitution to be executed to the utmost faith of the people who have entrusted their own governance in the hands of these constitutional authorities. Thus a Chief Minister has to respect this trustworthiness by being responsive and not indifferent even if a judicial mandate may not control such a peculiar situation. The law is yet to develop on that score but the custom and propriety to be maintained in a dignified way is not unknown in political circles.

23. At this stage, it would be appropriate to refer to the observations made in the case of Manoj Narula (*supra*) where the Apex Court was considering the issue of disqualifications being read in reference to the inclusion of Ministers in the Cabinet of a democratically elected Central or provincial Government who might be involved in criminal cases. The Apex Court came to the conclusion that a disqualification cannot be added in Article 75 (1), but it can be legitimately expected that the Prime Minister would consider not choosing a person with criminal antecedents against which charges have been framed for heinous or serious criminal offences or charges of corruption to become a Minister of the Council of Ministers. The exact words used in the concluding paragraph of the majority judgment, namely, paragraph - 100 are extracted hereunder:-

"100. Thus, while interpreting Article 75(1), definitely a disqualification cannot be added. However, it can always be legitimately expected, regard being had to the role of a Minister in the Council of Ministers and keeping in view the sanctity of oath he takes, the Prime Minister, while living up to the trust reposed in him, would consider not choosing a person with criminal antecedents against whom charges have been framed for heinous or serious criminal offences or charges of corruption to become a Minister of the Council of Ministers. This is what the Constitution suggests and that is the constitutional expectation from the Prime Minister. Rest has to be left to the wisdom of the Prime Minister. We say nothing more, nothing less."

24. The judgment in paragraph - 101 made it applicable to the States as well in the following words:-

"101. At this stage, we must hasten to add what we have said for the Prime Minister is wholly applicable to the Chief Minister, regard being had to the language employed in Article 164 (1) of the Constitution of India."

25. The Court considered the issues of constitutional morality, good governance and constitutional trust to arrive at the aforesaid conclusions.

26. This being the constitutional position, we find no reason to assume the loss of pleasure of the Governor and issue a Writ of Quo Warranto against the first respondent on the facts as disclosed in the present writ petition. There is also no reason to draw an inference that the remarks which were expunged by the Speaker of the House should be construed to be a ground to treat it against the Governor particularly such remarks which have already been expunged to the extent as stated in the petition.

27. Having said so, there is one thing which deserves to be emphasised, namely, the issue of parliamentary vis-a-vis unparliamentary and vocal use of language either within or outside the Legislature. The Ministers have a right to speak in the Houses of Legislatures which is governed by Article 177 of the Constitution of India. The powers, privileges of the House of Legislatures and of the members and committees thereof are clearly protected under Article 194 of the Constitution. The rules of procedure generally are governed by Article 208 of the

Constitution of India and ultimately, the language to be used in the Legislature is governed by Article 210 of the Constitution of India.

28. Parliamentary language denotes the kind which alone would be tolerated or permitted in the assembly, and, colloquially, has come to mean civil or polite speech, it's opposite obscene language being described as unparliamentary. Exchange of views in an assembly are underlined with wit, humour, logic, pleasantries and courtesies. At times, there are sweet stabs and rarely brute language is also employed. It is for this reason that the Speaker of the Assembly under the rules enjoys powers for expunging unwanted remarks. Members at times also pour out the abundance of their heart and tackle questions with the logic of their mind. While doing so, it also happens that speech is casually delivered with little awareness about its impact or significance. Symptoms of immaturity take over modesty of language in a mood of rhetoric. Even slogans are raised and the choice of words travel beyond a measured phrase. At times, in order to capture the mind of the listener, the language is tailored to incite, intimidate or even exhort an opinion. It is here that one can remember that silence and modesty are also very valuable qualities in the art of conversation. The reason is that speech is the image of life and what we speak is a picture window of our opinion, even though an individual at times thinks otherwise and speaks something else. "Language embodies the morals of an evolving society and the linguistic history, in the last analysis, is the cultural history of an institution."

29. Freedom of thought gets translated into free speech through an expression what is called language. Human civilisation has given shape to language in various forms but most prominently through voice and words. With social and cultural refinement came intellectual contribution that has made language grow in all dimensions, complex and rich, fluent and crisp, understandable and communicable and has a different status of expression at varying occasions. It's proper use therefore is governed by multifarious factors. This has with customary usage developed into a self-ordained discipline of language used subject-wise and appropriately tailored guided by the choice of occasion. To illustrate, a language of words used for a welcome has come to be distinguished from that used for an obituary or a casual street language from that of a formal speech. Language is strongly guided by thoughts and moods. Words spoken in anger are different from that of intellectual dialogue or debate. Even an anguish can be expressed intelligently and can be hard hitting without obscenity. There are many emotional moods that are conveyed by only outward bodily expressions without use of words. Dance performs and the strict face with bulging eyes of a School Headmaster, the affectionate jerk of a loving mother towards her child and the silent gestures of the head of a monastery towards an erring monk or nun are just illustrations of the same. This training of language to be used is an outcome of one's company or society in which one moves and is greatly influenced by what one keeps on hearing. This can be equally true when one listens devotedly to a religious discourse or a political or philosophical lecture.

30. The sum and substance is that in a civilised society language should be employed that inculcates a discipline of behaviour which generates faith in people about their own achievements. For example, if a political leader with his erudite knowledge and powerful oratory moves civilisation for the good, then the people who acknowledge such a person also take pride in themselves that they have a good leader. Such is the ideal and importance of language and its use in the Assembly or outside it that is no exception to the above explained principles.

31. This language causes concern, as in the present context, when a conflict of opinion arises. Thus the cause of use of language on a difference of reasoning does happen but that itself may not be a justification for use of indiscreet and intemperate language followed by a war of words that ultimately gets converted into a politically tainted conflict between two constitutional authorities. An impasse on account of opinions and differences do occur in governance, particularly in a democracy and in this situation the obligation and responsibility of such authorities becomes greater for resolving it at the earliest. Any personal ideology or obstinacy has to be overcome through a mechanism that restores faith in the system. The Court cannot be an arbiter but as a guardian of the Constitution it is expected by the Courts that a situation for compulsive judicial intervention, when there is a failure of constitutional functioning or a crisis, is avoided unless it is imperative and also permissible.

32. The petitioner insisted that this Court should call for a counter affidavit and investigate into the facts as also the contents of the communications that have given rise to this controversy for the purpose of construing as to whether the displeasure expressed by the Governor amounts to withdrawal of a Minister or not but the question being a pure question of law was considered on the basis of oral arguments.

A. R. Masoodi, J. - I agree. I have had the privilege of going through the judgment rendered by my esteemed brother Justice A. P. Sahi and on principle, I fully agree with the conclusion drawn. I, however, wish to put on record my point of view as under:-

33. The pleadings on record reveal that a sitting Cabinet Minister is alleged to have made some unworthy remarks against his Excellency the Governor of Uttar Pradesh during legislative proceedings on a Nagar Nigam Bill 2015 of which the unedited CD recording was called for and the objectionable part on being pointed out, was allegedly deleted by the Speaker of the Legislative Assembly. A note of displeasure is also said to have been sent to the Speaker by his Excellency the Governor. The petitioner contends that the note of displeasure is a sufficient indicator of loss of trust in the Minister who holds office at the pleasure of the Governor, therefore, the letter is binding on the Speaker and Chief Minister to discontinue the said Minister from his office by complying with the mandate of Article 164 of the Constitution of India.

34. Admittedly, the objectionable remarks have come to be made during

legislative proceedings therefore, it is to be understood as to what is the extent of freedom of speech during the legislative proceedings on a bill tabled before the House.

35. The newspaper reporting of an objectionable speech made by a sitting Cabinet Minister in the legislative proceedings being deleted by the speaker on an objection raised by the Governor of Uttar Pradesh as unworthy and a further communication in this regard to the Speaker of State Legislative Assembly has given rise to the present writ petition seeking a writ of quo warranto questioning the continuance of the said Cabinet Minister arrayed as respondent No.1 for having lost the pleasure of the Governor. Consequently, a prayer for his removal is made by seeking a writ of mandamus to the constitutional functionaries for the purpose.

36. Freedom of speech is a fundamental right by virtue of Article 19 (1) (a) of the Constitution of India, however, a right guaranteed as fundamental is not unfettered. Libel and slander are widely understood restrictions which can give rise to actionable claims civil as well as criminal against a person who is found guilty of having exceeded his right of freedom of speech. Undermining the security of State is yet another area which empowers the State to impose restrictions. The situation in the legislative proceedings stands protected by virtue of Article 194 of the Constitution of India which reads as under:-

"194. Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof - (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution Forty-fourth Amendment Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of, the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature."

37. Once freedom of speech is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of legislature, it cannot

be said that an unworthy remark of a person during legislative proceedings is altogether immune from any action being brought about on the ground of its being unconstitutional or violative of rules or standing orders before the appropriate forum. The position in the present case, however, is different and gives rise to a peculiar situation when the Governor himself against whom the alleged unworthy remarks are made is alleged to have written a note of displeasure which itself may be subject to the doctrine of necessity. The larger question is whether in such a situation, a note of displeasure expressed by His Excellency the Governor of Uttar Pradesh can at all be a basis for taking action treating it to be binding on the Speaker or for that matter whether it would be binding on the Chief Minister to alter his choice about the continuity of a Minister. On the aspect of freedom of speech in the legislative proceedings, reference may be made to the apex court judgment reported in (2010) 6 SCC 113. It is to be noted that our Constitution does not give unfettered powers to any organ of the State and all the three organs are expected to work in harmony with each other so as to promote the essence of separation of powers that may ensure independence of each one of the organs of the State. The freedom of speech of a legislative member by virtue of Article 194 (1) of the Constitution is undoubtedly subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the legislature but Article 194 (2) guarantees a privilege to the members of State legislature in respect of freedom of speech and voting and the exercise of any such right is excluded to be questioned in any court in respect of anything said or any vote given, in the legislative proceedings or any committee thereof. The protection extends even to the extent of any report, paper, votes or proceedings published by or under the authority of the House.

38. Once an act during the course of legislative proceedings is immune of being challenged before any Court, it is difficult for me to accept the contention of the petitioner that the letter sent by His Excellency the Governor to the Speaker be treated to be a decisive basis for taking action against the continuance of a Minister on that ground alone but is to be left to constitutional functionaries to resolve the issue which is beyond the scope of judicial review. The Governor of a State for exercise of any executive power is to act with the aid and advice of the council of Ministers. I may extract one sentence from para 88 of the judgment referred to above which recites the observations made by M.H. Beg, J. (as His Lordship then was) to make out the point.

"Neither of the three constitutionally separate organs of State can, according to the basic scheme of our Constitution today, leap outside the boundaries of its own constitutionally assigned sphere or orbit of authority into that of the other."

39. In yet another judgment reported in AIR 1950 SC 124, in para 12, the apex court while dealing with the legislative competence of State has held as under:-

"We are therefore of opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State

or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. ..."

40. The executive power of the State, therefore, is subject to all such limitations which are binding on other organs of the State.

41. Consequently, the petition deserves to be consigned to records with the hope and expectation that the constitutional authorities, namely, His Excellency the Governor, the Speaker of the Assembly, the Chief Minister and the Minister concerned would resolve the issue at the earliest.

42. For the reasons already given here-in-above, the issue not being justiciable on the facts of the present case, we are not inclined to interfere and the writ petition is consigned to records.