
(1995) 07 BOM CK 0001

In the Bombay High Court

Case No : Writ Petition No. 1507 of 1995

Devidas Venkatrao Pawar

APPELLANT

Vs

Gopinath Mundhe and others

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Constitution of India, 1950 — Article 163, 164, 173, 226

Citation : (1995) MhLj 711

Hon'ble Judges : S.S. Dani, J;A.D. Mane, J

Bench : Division Bench

Advocate : N.B. Khandare and S.B. Kaldate, for the Appellant; Nitin Pradhan and A.H. Joshi for respondent No. 1, C.J. Sawant, Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

A.D. Mane, J.—This is a petition under Article 226 of the Constitution of India filed by the petitioner. The petitioner is the citizen of India and ordinarily resides at Aurangabad. He is Professor and also a social worker. He takes keen interest in social work. He has filed this petition, as, according to him, without any political object but with a view to maintain dignity of the Constitution of India. Respondent No. 1 is the elected member of the Maharashtra Legislative Assembly from the Renapur Constituency in Marathwada region. He is a member of the Bhartiya Janata Party. He was sworn in as Deputy Chief Minister on 14-3-1995. The oath has been administered by the Respondent No. 2 Governor of Maharashtra.

2. In this petition the petitioner seeks Writ of Quo Warranto for disqualifying the Respondent No. 1 to hold the office of the Deputy Chief Minister of State of Maharashtra on the ground that the oath administered to him as Deputy Chief Minister was not the oath in accordance with the prescription of the Constitution of India and secondly; to declare that the office of the Deputy Chief Minister held by the respondent No. 1 is unconstitutional and ultra vires to the Constitution of

India.

3. In support of the petition, the petitioner submits that the respondent No. 1 Shri Gopinath Mundhe was sworn in as Deputy Chief Minister of the State of Maharashtra on 14-3-1995. According to the petitioner, the news about the swearing in ceremony held at Shivaji Park, Bombay on 14-3-1995 was widely published by the media including television that the respondent No. 1 has taken the oath as Deputy Chief Minister of the State of Maharashtra. The oath ceremony was also telecast in television news at 7.30 p.m. on 14-3-1995. According to the petitioner, as per Article 163 of the Constitution there shall be Council of Ministers and the Chief Minister is the head to aid and advise the Governor. Article 164 provides that the Chief Minister shall be appointed by the Governor and other Ministers shall be appointed by the Governor on the advice of the Chief Minister. The swearing in ceremony of the Chief Minister and the Deputy Chief Minister was, however, held on 14-3-1995 at the same time and at the same function. That necessarily means that the appointment of the Deputy Chief Minister is not as per the advice given by the Chief Minister to the Governor as per the Constitution. The petitioner further submits that there is no constitutional sanction for the office of the Deputy Chief Minister and therefore, the oath administered to the respondent No. 1 by the Governor as Deputy Chief Minister is unconstitutional. In other words, it is thus submitted that the oath administered by the respondent No. 2 to the respondent No. 1 as Deputy Chief Minister is not in consonance with the provisions of Articles 163 and 164 of the Constitution of India.

4. Pursuant to the notice dated 29-3-1995 Mr. C. J. Sawant, learned Advocate General, appears for the respondents Nos. 2 and 3, Mr. Nitin Pradhan and Mr. A. H. Joshi, learned counsel, appear for the respondent No. 1.

5. We have heard at great length Mr. Khandare, the learned counsel for the petitioner and Mr. C. J. Sawant, learned Advocate General of State of Maharashtra. Mr. Khandare learned counsel for the petitioner, relies on Form V in Schedule III to the Constitution of India in support of his contention that the oath administered to the respondent No. 1 as Deputy Chief Minister was not valid oath. Mr. Sawant learned Advocate General, however, files his written statement and submits that in the swearing in ceremony held on 14-3-1995 though the respondent No. 1 has been described as Deputy Chief Minister, that description does not confer on him any power of the Chief Minister. It has also been submitted that describing Shri Gopinath Mundhe, respondent No. 1 herein, as Deputy Chief Minister is descriptive only and for all purposes he is a Minister like other members of the Council of Ministers though he has been described as Deputy Chief Minister. Reliance has also been placed on the decision of the Apex Court in K. M. Sharma Vs. Shri Devi Lal and others, to show that such a description does not vitiate the oath administered to the respondent No. 1. In view of the submission of Mr. Sawant, learned Advocate General, Mr. Khandare, learned counsel for the petitioner, does not press his first contention that while

the respondent No. 1 was described as Deputy Chief Minister, the oath administered to him becomes unconstitutional and we think rightly. There is no separate form for administering oath either for the Chief Minister or the Deputy Chief Minister. The prescribed Form V in Schedule III is for administering oath to a Minister. Secondly, describing the respondent No. 1 as Deputy Chief Minister is descriptive of him as Deputy Chief Minister only, though for all purposes he is Minister when it is common ground that there is no constitutional sanction for the office of the Deputy Chief Minister as such. The Apex Court in the reported decision *K. M. Sharma Vs. Shri Devi Lal and others*, reiterated the view that the words which precede the essential requirement of oath as provided in Article 173 read with Form VIA, which is similar to Form V of Article 164 in the present case, are descriptive of a person and that description "of Deputy Prime Minister does not confer any power of Prime Minister". In that case the oath administered to Shri Devi Lal was also challenged on the same ground and the Apex Court observed that merely describing Shri Devi Lal as Deputy Prime Minister could not vitiate the oath administered under Article 173 read with Form VIA in Schedule III to the Constitution. We have already stated that in this case also there is no quarrel that the respondent No. 1 was administered oath as per Article 164 read with Form V in Schedule III to the Constitution which contains the essential requirement that the person taking oath or making affirmation would bear true faith and allegiance to the Constitution and uphold sovereignty and integrity of India. Thus, applying the same principle as laid down by the Apex Court in the case cited *supra*, the ground to challenge the oath administered to the respondent No. 1 must fail.

6. Mr. Khandare, learned counsel appearing for the petitioner, no doubt, submitted that admittedly there is no constitutional sanction for the office of the Deputy Chief Minister and therefore, Writ of Quo Warranto be issued against the respondent No. 1 on the ground that he has not been validly appointed to the office of the Deputy Chief Minister of the State of Maharashtra. We, however, find no merit in his submission. The petitioner could not be permitted to raise a point of this kind when it is made clear that the oath administered to the respondent No. 1 is in accordance with the prescription of the Constitution of India. In that case no Writ of Quo Warranto will be issued to support a collateral attack on a person's right to public office. In the view we take, the petition does not require any further consideration. The writ petition is, therefore, dismissed.