

(2011) 11 AP CK 0094

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29351 of 2011

Dr. S. Venu Gopala Chary

APPELLANT

Vs

Hon''ble Sri Nallari Kiran Kumar Reddy At present the Chief
Minister of Andhra Pradesh and five others

RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Constitution of India, 1950 — Article 356, 356(1)

Citation : (2011) 11 AP CK 0094

Hon'ble Judges : Nooty Ramamohana Rao, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : C.S. Ramachander Rao, for M/s. K.R. Prabhakar, for the Appellant;
G.P. for GAD, Sri Ponnamm Ashok Goud, Asst. Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

Hon''ble Acting Chief Justice Ghulam Mohammed

1. The writ petitioner, an Hon''ble Member of the Andhra Pradesh Legislative Assembly, seeks a Quo warranto, against the 1st respondent, to show the authority under which he was holding the Office of the Chief Minister of Andhra Pradesh after his government incurred the disqualification of lacking majority support of Members of the Legislative Assembly.

2. The petitioner represents Mudhole Assembly Constituency, Adilabad District. He was also elected earlier as a Member of Parliament of Adilabad Lok Sabha constituency. He also served as a Cabinet Minister of the State Government and also served as a Union Minister of State in the past.

3. It is specifically asserted that the petitioner has no animosity or ill-will either towards the 1st respondent - Chief Minister or the 4th respondent - Leader of Opposition in the State Assembly. As he was interested in governance of the State in accordance with the constitutional spirit and scheme, he has instituted this writ petition.

4. It is stated that the strength of Andhra Pradesh Legislative Assembly is 294 members, of them one is a nominated member. It is further pointed out that on 30.10.2011, Sri N.Rajeshwar Reddy, Hon"ble Member representing Mahabubnagar Assembly Constituency expired and that he was an associate member of the ruling congress party, though elected as an independent. It is further pointed out that in the elections that took place in the year 2009, the ruling congress party has secured 156 seats and it was extended support by three independent members. It is pointed out that Smt.Y.S.Vijayamma has since resigned to her membership of the ruling congress party, thus bringing down the supporting members strength to 157. In the mean time, one of the political parties viz., Prajarajyam Party has merged with the ruling Congress party, thus, boosting its strength to 175 members. However, 26 MLAs of the ruling congress party has joined another political party called YSR Congress party. Thus, the strength of the ruling congress party and its associate members came down to 149. Two ruling party MLAs viz., Sri Komatireddy Venkata Reddy and Sri Chirumarthi Lingaiah resigned as Members of the Legislative Assembly. Therefore, the strength of the ruling party MLAs has come down to 147. Thereafter, on 30.10.2011, three more ruling party members viz., Sri Jupalli Krishna Rao, Sri Tatikonda Rajaiah and Sri Somavarapu Satyanarayana have not only resigned to their membership of the Legislative Assembly, but also to the Membership of the ruling congress party. Thus, the strength has fallen down to 144 whereas in an Assembly having membership strength of 294, the requisite majority needed to form the government is 147 and in view of the above narrated facts, there is no sanction or authority for the 1st respondent to continue in office of the Chief Minister of the State Government.

5. It is pointed out further that the 4th respondent who is the leader of opposition has failed to discharge his duty by bringing about a `NO CONFIDENCE MOTION" against the 1st respondent, entirely for private reasons. Therefore, the 4th respondent has been impleaded. Since, it is the ruling congress party which has lost support of the majority members of the Assembly, Indian National Congress is impleaded as 6th respondent. Since, it is the responsibility of the Union of India to ensure that all States function in accordance with the letter and spirit of the constitution and since it has failed to act in accordance therewith, the Union of India is impleaded as 5th respondent. Since the 1st respondent herein is functioning as the Chief Minister of the State, the State of Andhra Pradesh is impleaded as the 2nd respondent and since he lost the support of the majority members of the Andhra Pradesh Legislative Assembly, the Andhra Pradesh State Legislative Assembly is impleaded as the 3rd respondent.

6. Heard Sri S.Ramachander Rao, learned Senior Counsel on behalf of the learned counsel for the petitioner.

7. While reiterating the facts narrated supra, learned Senior Counsel Sri Ramachander Rao would contend that the 1st respondent has clearly lost the legislative mandate inasmuch as he has no strength of his own party of 147

MLAs. The learned Senior Counsel would contend that this court being the upholder of the constitutional values, has the responsibility to ensure that those values permeate all institutions of the State and hence must uphold the spirit of the Constitution which requires that every Chief Minister must necessarily enjoy support of the majority members. As per the conventions prevailing, an elected leader who enjoys a mandate via the majority membership strength of a Legislative Assembly alone can continue in office and the moment the strength of his drops down to anything less than 147, such a person cannot continue in office as Chief Minister of Andhra Pradesh. Further, everyone concerned should know that the 1st respondent has been functioning with a property, which stems from the support of majority members of the Assembly. This court should act in the matter to clear the air of uncertainties and failure to do so would lead to grave consequences. The learned Senior Counsel would further contend that it is for the 1st respondent to satisfy this court that he was enjoying the majority support for him to validly hold the office of the Chief Minister and hence the 1st respondent should be called upon to do so. Hence, he contends that writ of Quo warranto sought for by the petitioner should be issued.

8. Learned Senior Counsel has placed strong reliance upon the judgments rendered by the Supreme Court in *Dr. Kashinath G. Jalmi and another Vs. The Speaker and others*, *B.R.Kapur v. State of Tamil Nadu and another* (2001) 7 SCC 231, *R.P. Kapur and Others Vs. Sardar Pratap Singh Kairon and Others*, *N. Kannadasan v. Ajay Khose* (2009) 7 SCC 1, *Mir Ghulam Hussan and Others Vs. The Union of India (UOI) and Others*, Order dated 24.2.1998 passed by the Supreme Court in *Jagdambika Pal Vs. Union of India and Others*, and the order dated 9.3.2005 passed by the Supreme Court in *Anil Kumar Jha v. Union of India* (2005) 3 SCC 150. He also placed reliance upon a Division Bench judgment of this court in *Ahmed Ehtesham Kawkab Vs. The Government of India, Ministry of Commerce and Industry (Department of Commerce) and Others*, We have not the slightest doubt in our minds about the maintainability of this writ petition and consequently we have not adverted, to the above decisions, in our order.

9. Quo warranto is a judicial remedy against an intruder or usurper of a substantive public office, posing a question to such a holder as to the authority by which he was holding the said public office. Quo warranto is a proceeding for determining the right to the exercise of office and then oust the holder if his claim is not well founded or if he has forfeited his right to hold the said office. It is intended to protect public interest by calling upon the person who is construed to have lost his right and authority to hold a public office. Therefore, a right of Quo warranto lies against the person who is not entitled to hold a public office. Hence, in theory it is conceived that a challenge in this regard can be mounted on various grounds, including the ground that the holder of the office either did not fulfill the pre-requisite qualifications or suffered later on from any disqualification capable of debarring him from holding such a public office. It will be apt in this context to recall profitably the words of Justice Gajendra Gadkar, (as the learned Chief Justice then was), in the case of *The University of Mysore*

and Another Vs. C.D. Govinda Rao and Another,

Broadly stated the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty. If the enquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. It also protects a citizen from being deprived of public office to which he may have a right.

10. It is appropriate to notice that the writ petitioner has chosen to challenge the authority of the 1st respondent to hold the office of the Chief Minister on the premise that he lost the majority support of the ruling party members of the State Assembly, but not on other ground. As was noticed already, the plea of the petitioner is that 26 members of the ruling party have now shifted their loyalty to another political entity and tendered resignations to their membership of the House. What would happen if these resignations are all accepted is a matter of conjecture, speculation and guess work. Till such time, the resignation of a Member is not accepted, such a person continues to be a Member of the Legislative Assembly. Whether a particular leader has enjoyed the majority support or not, cannot be tested at any other place than the Floor of the Assembly itself. The petitioner is obviously conscious that what is required to be enjoyed by the leader of the House is the support of majority members of the Legislative Assembly. In a given situation, it may not be really necessary that such a majority support must come from a single political entity or block. In a given situation, even though a particular political party may not have garnered enough number of seats in a House for claiming majority, it can still seek the support of other political parties or members and then pass the Floor Test by proving its majority. Therefore, the very basic premise upon which the petitioner has proceeded in the above writ petition is a mere calculation worked out by him on the basis of computing the number of ruling party members who have tendered their resignation to the Speaker. It is admitted position that such resignations have not been accepted. Plainly, the present case does not project a scenario where one can reasonably come to a conclusion that the 1st respondent does not enjoy the support of majority members of the Legislative Assembly. The crucial mandate is the majority support of the House, but not necessarily that such a majority support must be forthcoming from one single political entity. It is, therefore, a case where the basic foundational fact situation is lying in loose sand. Such facts take the form and shape of disputed questions, which should not be determined in the present writ petition. [Union of India (UOI) Vs. T.R. Varma, Jagdish Prasad Shastri v. State of Uttar Pradesh AIR 1971 SC 1224 , Kamini Kumar Das Choudhury Vs. State of West Bengal and Others, Indu Bhushan Gupta Vs. State of U.P. and Others, New Satgram Engineering Works and Another Vs. Union of India (UOI) and Others, , Bishambhar Dayal Chandra

Mohan and Others Vs. State of Uttar Pradesh and Others,

11. Similarly, as to whether the resignations offered by various Members of the Legislative Assembly are required to be accepted or not, and as to whether those members would be pressing for their acceptance or upon reconsideration would not press for such acceptance and as to whether a proper assessment should be undertaken by this court as to the actual number of members who will be lending support to the 1st respondent, if a Floor test is undertaken by him, are all questions that fall within the political domain of various political parties. It may not be appropriate for the Constitutional Courts to enter upon such a charter. It will be extremely advantageous for us to notice the principle enunciated by Justice V.R.Krishna Iyer in paras 17 and 18 in Bhut Nath Mete Vs. The State of West Bengal, Also State of Rajasthan and Others Vs. Union of India and Others, It Could be argued, with considerable force, on political and moral grounds, that electors should be given a fresh opportunity of pronouncing their verdict upon the policies and programmes of the Governments in the States when very convincing proof of wide divergence between their views and those of their Governments has become available. The Law Minister's view is that, where there is an overwhelmingly large electoral verdict in a State against the party to which its Government belongs, the situation not only justifies but makes resort to a fresh (c)lection or an appeal to the political sovereign imperative. This I think, is largely a political and moral issue. We are only concerned, with its relationship to constitutional provisions. If its impact on the minds and feelings of electors or those officers who have to carry on the day to day administration is such that it will frustrate the very objects of a Government under the Constitution or make it impossible for the Government in a State to function as it ought to under the Constitution, it may come to the conclusion that action under Article 356 of the Constitution is called for. We cannot forget that Article 356(1) calls for an assessment of a "situation". We cannot anticipate decisions or interdict possible actions in situations which may or may not arise due to all kinds of factors-economic, social, moral and political.

12. Further, the issuance of a Writ of Quo warranto is a discretionary remedy. The courts are required to balance the interests of all stakeholders in larger public interest very carefully. When it appears to the court that granting of such a writ is likely to create or contribute to confusion and disorder or even produce injury to public, it is the larger public interest which should far outweigh the individual right of the complainant. When issuance of a writ of Quo warranto is likely to result in disturbance to public tranquillity and peace and good governance of the State, in our considered opinion, it is more apt to refuse to grant such a relief by this court. [Statesman (Private) Ltd. Vs. H.R. Deb and Others,

13. Further, the learned Senior Counsel has suggested that we can appropriately modify the relief prayed for, by directing the 3rd respondent to convene the Assembly and then direct the 1st respondent to take the Floor test. As was

noticed supra, such a measure could have been explored where there is reasonable material before the court to apprehend that the 1st respondent is principally lacking majority support. Therefore, we do not find the present case as a fit case for issuing any such directions.

14. Therefore, we have no hesitation to dismiss this writ petition and it is accordingly dismissed. But, however, without costs.