
(2015) 01 PAT CK 0097
In the Patna High Court
Case No : CWJC No. 12371 of 2014

Harendra Pratap Singh

APPELLANT

Vs

Narendra Damodar Das Modi and Others

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Constitution of India, 1950 — Article 163, 164, 74, 75

Citation : (2015) 2 PLJR 286

Hon'ble Judges : L. Narasimha Reddy, C.J.; Rajendra Kumar Mishra, J

Bench : Division Bench

Advocate : Priyanka Singh, for the Appellant; Lalit Kishore, Ravindra Priyadarshi, Sanjay Kumar and Ravindra Kumar Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, C.J.

1. The petitioner is an advocate practicing at Patna. He filed this writ petition in public interest with a prayer to issue a writ of quo warranto and/or any other appropriate writ quashing the swearing in/appointment of respondents 2 to 8 as Ministers of Government of India and that of respondents 11, 12 and 13 as Ministers in the Government of State of Bihar. It is stated that though the respondents referred to" above were not elected to the House of People (Lok Sabha) or the Legislative Assembly (Vidhan Sabha), as the case may be, they have been inducted into the ministry by administering oath. He contends that with the introduction of Clause-(1-A) of Article 75 of the Constitution of India and Clause-(1-A) of Article 164 thereof, it is only a person who is elected to the House of People or the Legislative Assembly, as the case may be, that can be inducted into the respective ministries and not otherwise. He submits that the induction of respondents into ministries subsequent to introduction of such specific provisions such as Clause 1-A in Articles 75 and 164 of the Constitution of India, is untenable.

2. The petitioner, who argued in person, has also placed reliance on certain precedents.

3. Sri Lalit Kishore, Shri Ravindra Priyadarshi, Shri Sanjay Kumar and Shri Ravindra Kumar Sharma, learned counsel for the respondents advanced arguments opposing the Writ Petition. They submit that similar writ petition, filed by the very petitioner, was dismissed earlier.

4. The Constitution provides for the formation of Council of Ministers at the Union level and the Council of Ministers at State level. Articles 74 and 75 deal with the Ministry at the Union, whereas Articles 163 and 164 deal with Council of Ministers at State levels. It is beneficial to extract Articles 75 and 164 of the Constitution. They read as under:--

Article 75: Other provisions as to Ministers.--(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

[(1-A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent of the total number of members of the House of the People.

(1-B) A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under Paragraph-2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.]

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

Article 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 [Chhattisgarh, Jharkhand], 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.

[(1-A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than twelve:

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent or the number specified in the first proviso, as the case may be, then, the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.

(1-B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under Paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.].

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

5. From a perusal of the same, it becomes clear that the Prime Minister is to be

appointed by the President, and other Ministers in the ministry of Union, on the advice of the Prime Minister. The Governor is empowered to appoint the Chief Minister for the State; and to appoint other Ministers in the Cabinet, on the advice of the Chief Minister. The main plank of argument of the petitioner is Clause (1-A) in both the Articles. Clause (1-A) which is identical in Articles 75 and 164 is to the effect that the total number of Ministers shall not exceed fifteen per cent of the total number of Members of the concerned Houses. Except that, it has stipulated the ceiling on the size of the Ministry; the Clause has no other purpose to serve.

6. The question as to whether an individual must be a Member of the Lok Sabha or Rajya Sabha to be inducted as a Minister in the Union Government or a Member of Legislative Assembly (Vidhan Sabha) or Legislative Council (Vidhan Parishad), wherever it exists, to be inducted as Minister in the State Government; does not pose any difficulty at all. Clause-5 of Article 75 and Clause 4 of Article-164 are clear on this aspect. They are to the effect that if a Minister, who was not a member of either House of the Parliament or the Legislative Assembly or Legislative Council, as the case may be, at the time of his or her induction, shall cease to be Minister, after six months, unless they become Members of such Houses. In other words, there is no bar for any individual to be inducted into Ministry, even if he is not a Member of the House of Legislature. Such facility, however, is available only for a period of six months. Within that period, he must become a Member of either of the Houses. If he fails to become a Member of Legislature of whatever kind, at the respective level within the stipulated time, he ceases to be a Minister. Clause (1-A) which was inserted in the respective Articles, for the sole purpose of restricting the size of Ministry. By no stretch of imagination, it can be construed as the one, stipulating any qualification or condition precedent, for a person to be inducted into the Ministries.

7. It is also brought to our notice that the petitioner made a similar attempt by filing C.W.J.C. No. 15535 of 2012 Ed.?Reported in 2014 (2) PLJR 494 raising objection to the induction into the Ministry vis-?-vis Dr. Man Mohan Singh, the then Prime Minister of India and Mr. Nitish Kumar, the then Chief Minister of Bihar. A Division Bench of this Court dismissed the petition through order dated 28.3.2014 passed in L.P.A. No. 61 of 2014 being reported in this issue at pg. 272.

8. Reliance is placed on certain precedents.

9. We find that they do not at all govern the matter in issue and when the language of the Articles itself is clear and unambiguous, there is no need to seek help from the decided cases.

10. We do not find any force in the submission of the learned counsel for the petitioner.

11. We, therefore, dismiss the writ petition.

12. Interlocutory application, if any, stands disposed of. There shall be no order as to costs.