
(2013) 12 PAT CK 0065
In the Patna High Court
Case No : C.W.J.C. No. 15535 of 2012

Harendra Pratap Singh

APPELLANT

Vs

Nitish Kumar

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2014) 2 PLJR 494

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navaniti Prasad Singh, J.—Petitioner, being a practicing Advocate of this Court and professing to be public spirited person, has filed this writ petition. By this writ petition, he has sought a writ of quo warranto challenging the validity of appointment of Shri Nitish Kumar as the Chief Minister of this State who was sworn in as such by the Governor of Bihar on 24.11.2010. He has further sought a writ of quo warranto in relation to appointment of Dr. Manmohan Singh as the Prime Minister of India who was so appointed by the President of India on 22.5.2009.

2. The solitary ground on which he has challenged these appointments is based upon Article 164(1)(1-A) and Article 75(1)(1-A) of the Constitution respectively. The relevant parts thereof are quoted hereunder:--

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:....

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

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 percent of the total number of members of the House of the People....

3. Article 75 deals with the appointment of Prime Minister and his Council of Ministers and Article 164 deals with appointment of Chief Minister and his Council of Ministers. Learned counsel submits that these amendments were made by virtue of Constitutional (91st Amendment) Act, 2003 with effect from 1.1.2004. Learned counsel submits that after this Amendment, the strength of the Ministers including the Prime Minister or the Chief Minister and his Ministers, as the case may be, has been fixed at 15% of the total strength of Lok Sabha or the Vidhan Sabha which provision was earlier not there. That being so, he submits that the Prime Minister and the Chief Minister must necessarily now be members of the Lok Sabha and Vidhan Sabha. He submits that the Prime Minister is member of the Rajya Sabha and the Chief Minister is member of the Vidhan Parishad. Thus, they are both not members of Lok Sabha or the Vidhan Sabha as required by the Constitution and, thus, they are not qualified to be appointed as such.

4. Having heard the learned counsel, in my view, the argument is totally misconceived. It is noted only to be rejected outright without notice to any respondents or hearing them. Prior to the 91st Constitutional Amendment, the question came up before the Apex Court as to whether a person could be Prime Minister or Chief Minister without being member of either of the two Houses constituting the Parliament or the State Legislature. The Parliament consists of the Lok Sabha and the Rajya Sabha. Similarly, in Bihar, the State Legislature consists of Vidhan Sabha and Vidhan Parishad that is the Legislative Assembly and the Legislative Council. This question was answered by the Apex Court in the case of Har Sharan Verma Vs. Shri Tribhuvan Narain Singh, Chief Minister, U.P. and Another, wherein the Apex Court rejected the challenge in respect of appointment of Chief Minister who was not a member of either of the house. Then in the case of S.P. Anand Vs. H.D. Deve Gowda and others, , the challenge was made to the appointment of Prime Minister on the same ground. The challenge was again repelled by the Apex Court. Thus, the Apex Court clearly held that a person need not be a member of the Legislature to be appointed as Prime Minister or Chief Minister.

5. The only change in the constitutional scheme after these judgments is introduction of Article 75(1)(1-A) and Article 164(1)(1-A) of the Constitution. We, thus, have to see whether this introduction makes any change whatsoever? In my view, it does not because all it (amended provision) says is that for quantifying the maximum number of Ministers either at the Centre or at the State which includes the Prime Minister and the Chief Minister, as the case may be, the number of members in Lok Sabha or as the case may be Vidhan Sabha

has to be taken note of. It does not speak of anything beyond that. This provision only quantifies the strength of the Council of Ministers and nothing more. It does not specify the eligibility or qualification of the Minister much less the Prime Minister or the Chief Minister. To the contrary, if we look to the other provisions of the Constitution in respective chapters, it would be seen the said provision only uses the expression Legislative Assembly of the State or the House of the People is only for the purposes of calculating the strength and no further. If what learned counsel was submitting was correct then Article 75(5) and Article 164(4) would become meaningless.

6. Reading further sub-clause (5) of Article 75 would clearly show that a person who is not a member of the House of Parliament but has been appointed Minister has to become Member of either House of Parliament within a period of six months. Article 79 provides for the Houses of Parliament. There are two Houses known as Council of States (referred to as Rajya Sabha) and House of the People (referred to as Lok Sabha). If what petitioner states is to be accepted then this sub-Article (5) of Article 75 is redundant. What learned counsel then submits is sub-Article (5) of Article 75 talks of Minister and it does not talk of Prime Minister. The answer is simple. Prime Minister is one of the Ministers who is the Leader so far as the Council of Ministers is concerned. He is first appointed by the President on whose advice, the rest are appointed. This is contained in Article 74 of the Constitution. This clearly says that Prime Minister is the Head of Council of Ministers otherwise there is no distinction between the Minister and Prime Minister.

7. Similar are the provisions with regard to the Chief Minister of the State. There, Article 163 is with regard to Chief Minister being Head of the Council of Ministers. Article 164(4) specifically provides that a Minister has to become a Member of the Legislature of State within a period of six months. Legislature of State is defined under Article 168(1) of the Constitution. In Bihar, as per Article 168(1) of the Constitution, there is- the Vidhan Sabha and the Vidhan Parishad which is not there in most of the other States. There is special constitutional provision therein in this regard and Legislature of the State constitutes both the Houses. That is why is the expression of the Legislature of the State. The provision is otherwise in pari materia to the scheme as contemplated under Articles 74, 75 and 79 of the Constitution.

8. Petitioner then relies on the Constitution Bench judgment of the Apex Court in the case of B.R. Kapur Vs. State of Tamil Nadu and Another, , for the proposition that Chief Minister and Minister are two different posts and they are two different authorities. In my view, first we must look at the context in which these arguments were made. The context is noted in paragraph 2 of the judgment clearly noticing whether a person who is convicted of a criminal offence and whose conviction has not been suspended pending appeal can be sworn in and can continue to function as a Chief Minister of the State. The question was not as to status of Chief Minister vis-?-vis Minister. It was pointed out that in terms of

Article 164(4), only a person competent to be elected can be inducted as Chief Minister or Minister and not just anybody. The case is, thus, distinguishable and has no application in this case.

9. His submission further is, Prime Minister/Chief Minister and Minister are distinct. What the learned counsel submits is that Article 74(5) and Article 164(4) contemplate Ministers and not Prime Minister or Chief Minister, as the case may be. This argument is once again noted only to be rejected. Let it be noted that it is, inter alia, with aid of these two very Articles that earlier the Apex Court, in the cases noted earlier, had rejected the arguments that no person could be appointed Prime Minister or Chief Minister unless he was already member of the appropriate Legislature. Thus, I find no merit in this application. It is, accordingly, dismissed.