
(1988) 08 AHC CK 0047
In the Allahabad High Court
Case No : Writ Petition No. 6101 of 1988

Harsharan Verma

APPELLANT

Vs

State of U.P. & Another

RESPONDENT

Date of Decision : 03-08-1988

Acts Referred:

Constitution of India, 1950 — Article 163, 164

Citation : (1988) 08 AHC CK 0047

Hon'ble Judges : S.Saghir Ahmad, J and Virendra Kumar, J

Final Decision : Dismissed

Judgement

S. Saghir Ahmad, J.—In this petition, filed under Article 226 of the Constitution, the petitioner has claimed the following reliefs:

?(a) to issue a writ of quowarranto directing the opposite party no. 1 not to allow opposite party no. 2 to discharge the duties and responsibilities in the House and to quash the order of appointment after summoning it from opposite party no. 1 and to hold the Office of the Chief Minister of U.P.

(b) To issue writ, order or direction in the nature of Mandamus commanding the oppparty no. 1 not to allow opposite party no. 1 to sit in the House.

(c) any other writ, order or direction be passed as may be deemed necessary in the interest of justice."

2. It may be stated that opposite party no. 2 is Sri Narain Dutt Tewari, who has been appointed as the Chief Minister of U.P. and it is this appointment which has been challenged in this petition.

3. We have heard Sri Harsharan Verma, the petitioner, who has appeared in person and Sri R.N. Trivedi, Addl. Advocate General, U. P.

4. The principal contention of Sri Harsharan Verma is that since Sri Narain Dutt Tewari is not a Member of the State Assembly, he was not qualified to be appointed as the Chief Minister and could not have, therefore, been appointed as

the Chief Minister.

5. Article 164 of the Constitution under which a Chief Minister is appointed by the Governor and other Ministers are appointed on the advice of the Chief Minister, provides as under:

¶164. (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 Minister shall hold office during the pleasure of the Governor:

Provided that in the State 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.

(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.?

6. With reference to the provisions of Article 164 (1) read with Article 164 (4), it is contended by Sri Varma that the provisions that 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, only provides a disqualification and not a qualification for being appointed as Chief Minister or Minister. The provisions contained in Article 164 of the Constitution have been considered twice, at least at the instance of the petitioner himself, by the Supreme Court and the contentions raised by him were repelled.

7. In *Harsharan Verma v. Tribhuvan Narain Singh*, Chief Minister, U.P. and another, AIR 1971 SC 1331, the Supreme Court, in para 4 of the report, observed as under:

"It seems to us that Clause (4) of Article 164 must be interpreted in the context of Article 163 and 164 of the Constitution. Article 163 (1) provides that ?there shall be a council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.? Under Cl. (1) of Article 164, the Chief Minister has to be appointed by the Governor and the other Ministers have to be appointed by him on the advice of the Chief Minister. They all hold office during the pleasure of the

Governor. Clause (I) does not provide any qualification for the person to be selected by the Governor as the Chief Minister or Minister, but Clause (2) makes it essential that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. This is the only condition that the Constitution prescribed in this behalf.?

8. In para 7 of the report the Supreme Court further observed as under:

?It seems to us that in the context of the other provisions of the Constitution referred to above there is no reason why the plain words of Clause (4) of Article 164 should be cut down in any manner and confined to a case where a Minister loses for some reason his seat in the Legislature of the State. We are assured that the meaning we have given to Clause (4) of Article 164 is the correct one from the proceedings of the Constituent Assembly and the position as it obtains in England, Australia and South Africa.?

9. The Supreme Court reiterated this view in *Har Sharon Varma v. State of U.P.* and another, (1985) 2 SCC 48 even after taking into consideration the amendment brought about in Article 173 of the Constitution. The Supreme Court observed in para 15 of the report as under :

?It is thus seen that there is no material change brought about by reason of the amendment of Article 173 (a) of the Constitution in the legal position that a person who is not a member of the State Legislature may be appointed as a Minister subject, of course, to Clause (4) of Article 164 of the Constitution which says that 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.?

10. Since the Supreme Court has very clearly laid down that a person who is not a member of the Legislative Assembly or the Legislative Council can still be appointed as Chief Minister or Minister, we cannot take a different view, as the decisions of the Supreme Court are binding on us.

11. The debate of the Constituent Assembly as set out in the Constituent Assembly Debate, Vol. VII at Page 1186 has been reproduced in the petition as under:

?I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this and it is perfectly possible to imagine that the person who is otherwise competent to hold the office of the Minister has been defeated in the Constituency for some reason and he might have incurred the displeasure, of that particular constituency. It is not a reason why a member so competent as that should not be permitted to be appointed a member of the Cabinet on the assumption that he shall be able to get himself elected from the same constituency or from another Constituency. After all the privilege that he is permitted is a privilege that extends only to 6 months. It does not confer a right to sit in the House without being elected at all.?

12. It is contended that the intention has been clearly expressed by the Constitution makers while debating the provisions of Article 164 that a person who is not a member of the Assembly cannot be appointed as a Minister or a member of the Cabinet on the assumption that he would get himself elected to the Assembly. It may be pointed out that in *Har Saran Varma v. Tribhuwan Narain Singh and another* (supra) the Supreme Court itself has referred to an amendment which was proposed in the Constituent Assembly in this regard but was negatived. It will be useful to reproduce para 81 of the report as under:

?An amendment was proposed in the Constituent Assembly that the following be substituted.

?A Minister shall, at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the States as the case may be.?

13. This amendment was, however, negatived.

14. This contention of Sri Varma based on Constituent Assembly debate has, therefore, also to be rejected.

15. Sri Varma then contended that there is a prohibition in a nonmember sitting or voting in the Legislative Assembly or Legislative Council and if he does so, he is to be penalised under Article 193 of the Constitution. That being so, it is contended that a nonmember cannot be appointed as Chief Minister or a Minister, particularly, as he cannot sit or vote in the Assembly or Council. This contention cannot be accepted. Article 177 provides as under:

?Every Minister and the AdvocateGeneral for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.?

16. In view of the express provisions contained in this Article a Minister can speak in and otherwise take part in the proceedings of the Legislative Assembly of the State or for that matter Legislative Council or any committee of the Legislature. Article 177 was also relied upon by the Supreme Court in *Har Sharan Varma v. Tribhuwan Narain Singh* (supra) in which the Supreme Court observed as under:

?The appellant drew our attention to Article 175 in which it is provided that ?the Governor may address the Legislative Assembly or, in the case of a. State having Legislative Council, either house of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of Members.? He said that it would be rather strange that the Minister, who were not members of either the Legislative Assembly or the Legislative Council would not be present. But it seems to us that by virtue of Article 177 the Ministers, even if they are not Members of a Legislative Assembly or Legislative Council

would be entitled to be present at such a meeting.?

17. In view of the above, the contention with respect to the sitting and participation of a nonmember in the Assembly has to be rejected.

18. The argument of Sri Varma with respect to the provisions Contained in Article 175 that Governor can invite only members of the Assembly in the Session can also not be accepted in view of the Supreme Court decision in Har Sharan Varma v. Tribhuvan Narain Singh (Supra) of which the relevant portion has been quoted just above.

19. It may be pointed out that Sri Har Sharan Varma had also figured as a petitioner in a case decided by this court as far back as 1961 which has since been reported as Har Sharan Varma v. C.B. Gupta and others, AIR 1961 All 301 in which his contention that a nonmember cannot be appointed as Chief Minister was rejected. This decision has since been approved by the Supreme Court in Har Sharan Varma v. State of U.P. and others(supra) 1985 (2) SCC 48.

20. We may notice another argument of Sri Varma which is based on ground (C) reproduced below :

?(C). Because the opposite party no. 2 who has been appointed as a Chief Minister by the Governor of U.P. on the recommendation of Sri Rajiv Gandhi, Prime Minister, who called the opposite party no. 2 from United Kingdom when there was no vacant seat in the House and he was not fulfilling any of the conditions mentioned above hence his appointment as a Chief Minister was wholly illegal and unconstitutional.?

21. With reference to the word ?House? we called upon Sri Varma to specify whether by the word ?House? he meant Legislative Assembly and Council both or only Assembly or any of them and Sri Varma stated before us that he meant only che ?Legislative Assembly?. His contention is that since there was no vacancy in the Legislative Assembly and all the seats were full, a nonmember could not be inducted into Assembly for being appointed as Chief Minister.

22. As seen above, a person who is not a member of the Assembly or Council can be appointed as Chief Minister under Article 164 of the Constitution, as consistently interpreted by this court and the Supreme Court and, therefore, if a person who is not a member of either the Assembly or the Council can still be appointed as Chief Minister or Minister and he can continue and function as such for a period of six months as envisaged by Article 164 (4) notwithstanding that a seat was not available in the Assembly or the Council. The question of qualification would become relevant at the time of expiry of the period of six months contemplated by Article 164 (4) as it is at the expiration of that period that a ?Minister? which would also include a Chief Minister, would cease to be a Minister unless in the meantime he becomes a member of the Legislature.

23. No other point was pressed before us.

24. For the reasons stated above, there is no merit in this petition which is dismissed in limine.

25. After the judgment was pronounced, the petitioner orally prayed for leave to file an appeal in the Supreme Court. The question raised in this petition has already been considered by the Supreme Court in atleast two cases in which the petitioner himself had figured as petitioner, namely (i) Har Sharan Varma v. Tribhuwan Narain Singh, AIR 1971 SC 1331 and (ii) Har Sharan Varma v. State of U.P. and another, (1985) 2 SCC 48. Since the authoritative pronouncements of the Supreme Court are available on the questions raised in this petition, the leave prayed for is refused.