

(1993) 12 KAR CK 0029
In the Karnataka High Court
Case No : Writ Petition No. 38283 of 1993

H.N. Nanjegowda

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 10-12-1993

Acts Referred:

Constitution of India, 1950 — Article 164 (2), 226, 356

Citation : (1994) ILR (Kar) 936

Hon'ble Judges : Rajendra Babu, J

Bench : Single Bench

Advocate : Ko. Chennabasappa, for the Appellant;

Judgement

Rajendra Babu, J

1. This Petition is filed under Article 226 of the Constitution of India to:

(i) direct the Union of India to invoke the provisions of Article 356 of the Constitution of India and introduce President's Rule in the State;

(ii) direct the 2nd respondent to seek necessary financial assistance from the 1st respondent to the relief of the earthquake victims in the Northern parts of Karnataka; and

(iii) direct the 1st respondent to provide sufficient funds to rehabilitate the flood and earthquake victims immediately and also to direct the 2nd respondent to set up a separate machinery to undertake the rehabilitation of flood and earthquake victims on war-footing.

2. The Petition is filed on behalf of the citizens of the State of Karnataka alleging that a situation has arisen in which the Government cannot be run in accordance with the provisions of the Constitution on account of the fact that there is no Council of Ministers worth the name as contemplated under Articles 163 and 164 of the Constitution of India to aid and advice the Governor in the exercise of his functions inasmuch as there is complete disharmony amongst the Members

thereof and there is complete lack of collective responsibility by the Members of the Cabinet and is opposed to all principles of Democracy which is a Basic Structure of the Constitution.

3. To impress upon me that the duty discharged by the Council of Ministers as contemplated under Article 163 of the Constitution is a collective responsibility, several text-books such as The British Cabinet System by Arthur Berriedale Keith; The British Cabinet by John P. Machintosh; The British Constitution and Politics by J. Harvey & L. Bather; Cabinet Government by Sir Ivor Jennings and Walter Bagehot and the English Constitution were referred to.

4. It is submitted that in the General Elections held to the Assembly during November, 1989 the Ruling Party got a majority of 3/4th of the total Members of the House and Sri Veerendra Patil became the Leader of the House and on his removal from the office, Sri S. Bangarappa succeeded him in October, 1990. Again, he was removed and Sri Veerappa Moily was introduced as the Chief Minister. It is alleged that within a short period of 3 or 4 months after Sri Veerappa Moily became the Chief Minister dissidents in the ruling party came to the fore and for the last 8 months, the Members of the Legislative Assembly belonging to the Ruling Party have been carrying on a campaign against him and that dissidence within the Party is reflected in the Cabinet also. The Members of the Legislative Assembly and Parliament have been representing to the Prime Minister, who is also the President of the Congress Party, to remove the Chief Minister. It is submitted that the dissident activity has assumed such proportion that the administrative machinery of the State has virtually come to a grinding halt.

5. It is further urged that the situation prevailing in the State does not merely affect the Ruling Party, but also actually affects the functioning of the Constitution itself. It is stated that there are two factions in the Cabinet and the dissidents' group is headed by the Deputy Chief Minister and another former Senior Minister in-charge of the Revenue portfolio. On account of the dissident activity, some Ministers within the Ruling Party who are loyal to the Chief Minister have resigned and have requested the Chief Minister to relieve them of their responsibility. Some other Ministers headed by the Deputy Chief Minister and the former Revenue Minister have tendered their resignation. Press reports of the resignations of the Ministers are also produced alongwith the Petition. On that basis, it is contended that there is no Council of Ministers in the State. On account of the bitter faction of the Council of Ministers, many of the Ministers have not been attending the Cabinet Meetings and there is hardly any harmony amongst the Council of Ministers. In a party system of Democracy where there is total dissidence within the same party there cannot be a Ministry which can be held together by a little more than the desire for office, which lacks cohesion. Thus, it is submitted that there is no Council of Ministers within the meaning of Articles 163 and 164 of the Constitution. It is further urged that the Cabinet is not functioning at all in accordance with the provisions of the Constitution and a

situation has arisen in the State in which the Government cannot be run in accordance with the provisions of the Constitution.

6. The dissident activities of the Ruling Party has rendered the Legislative Assembly into an ineffective body which serves no purpose in the governance of the State and to illustrate certain incidents that took place on 6th September, 1993, a copy of the proceedings of the House on the said date is produced and certain details are set out in the Petition. According to the petitioner, the Cabinet system under the Constitution should reflect the will of the people and maintain continuous touch with the Assembly. But in the present case, the Assembly is adjourned sine die and the Cabinet is unable to face the Assembly which is a direct violation of the Constitution.

7. It is urged that although the Ruling Party has 3/4th majority in the House, the Assembly not being functioning and the joint responsibility of the Ministers being absent, the Government has come to a stand-still and to a grinding halt. The petitioner thereafter refers to the inadequacy in the relief works undertaken regarding the flood and earthquake. While some of the Ministers expected financial assistance from the Central Government, the Chief Minister made a statement that it would be appropriate to secure the financial assistance within its own means so far as the earthquake is concerned, and to seek financial assistance from the Central Government in regard to flood relief is concerned. This kind of airing of views in the public by the Chief Minister and Ministers itself would show that there is lack of cohesion amongst the Ministers and joint responsibility of the Ministers is not noticed and the affected persons have not received adequate attention or relief. To buttress this submission, the petitioner has referred to certain Press statements issued by the Ministers, Chief Minister and the Chairman of the Legislative Assembly Sri D.B. Kalmankar and, according to the petitioner, a reading of these developments in the Cabinet and the Legislative Assembly would establish that the situation has arisen in the State that the Government cannot be run in accordance with the provisions of the Constitution and warrants action under Article 356 of the Constitution of India.

8. Next the petitioner refers to another matter, namely, as to Sri C.K. Jaffer Sheriff, Minister for Railways in the Union Government, and his wife and friends and relatives having acquired vast extent of land and real estate in and near Bangalore City and Challakere in violation of the law governing the purchase of land. In this regard, there is strong difference of opinion between the Chief Minister and the then Revenue Minister. This circumstance is also stated as an instance in which the Government cannot be run in accordance with the provisions of the Constitution.

9. It is next contended that the officers of the Government are unable to take decisions in the matters for fear of victimisation and that they are totally demoralised. It is stated that the majority of the Members of the Parliament from Karnataka belonging to the Ruling Party have urged the Prime Minister to change the Chief Minister.

10. It is averred in the Petition that the necessity to seek relief of the Central Government for the earthquake victims is required particularly in view of the public statement made by the Deputy Chief Minister that the Contractors' bills amounting to Rs. 1020 crores have not been paid for want of sufficient funds.

11. Petitioner further alleges that the circumstances referred to above require the Governor of the State to make a report to the 1st respondent that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution and he has been furnished with sufficient material in that regard by different quarters: firstly as to the non-existence of Council of Ministers and a Chief Minister cannot be expected to advise the Governor as to the dismissal of his own ministry or the dissolution of the Assembly. Inasmuch as the Governor and the President of India have failed to take action to up-hold the Constitution and to ensure that the Government is run in accordance with the provisions of the Constitution, petitioner is invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

12. Under Article 164 of the Constitution, the Chief Minister is appointed by the Governor and within a period of six months after his appointment he should be an elected Member of the Legislative Assembly or Legislative Council. But, however, he should command a majority in the Legislative Assembly. The responsibility of the Council of Ministers is embodied in Article 164(2) of the Constitution. The collective responsibility makes each Minister vicariously responsible to the Legislative Assembly for the acts of other members of the Council of Ministers. Since the Council of Ministers is able to stay in office so long as it commands the support of the majority of the Legislative Assembly, the whole Council of Ministers is held politically responsible as one entity and may be compelled to resign for any act done by one particular Minister or his Department.

13. In this case, the petitioner is not seeking for a Writ of Quo Warranto. On the other hand, the contention urged is that a situation as contemplated under Article 356 has arisen. Under Article 356, the Governor may make a report that a situation has arisen that the Government of the State cannot be carried on in accordance with the Constitution and such satisfaction can be recorded by the President even otherwise. Whether such a situation has arisen or not is for the President or the Governor to infer or decide appropriately in that regard and I do not think it is possible for this Court to compel either the Governor or the President to take action in that regard for the power that is exercised by the President under Article 356 is a political one, since the President has to act on the advice of his Council of Ministers and supported by the Members of Parliament who belong to the Party of that Council of Ministers or are in alliance with that party. Further, as long as the Chief Minister who had been appointed by the Governor, enjoys the majority of the Members of the Legislative Assembly, he cannot be removed from office and if that is so, the question of making a report that the Constitutional machinery has broken down also may not arise. Whatever may be the extent of the dissident activity within the Ruling Party, as long as the

Ministry is headed by a person who enjoys the confidence of the majority of the Members of the Assembly this situation must prevail, however, unfortunate it may be that there is disharmony amongst the Members of the Cabinet and that is not in the interest of the State. By that circumstance itself, one cannot come to the conclusion that the administration of the State cannot be carried on in accordance with the Constitution. If the Courts were to begin to interfere with such matters, every activity of the Government wherever there is difference of opinion amongst the Ministers, can be brought before the Court and reliefs sought for. Such matters should be wisely and properly left to the discretion of the Governor to be dealt with. If he is satisfied that it is impossible for the Ministry to carry on its functioning, he may take appropriate steps in that regard. Unless it can be shown that the office held by the Chief Minister is not forfeited, as long as he enjoys the majority of the Members of the Assembly, the Governor may allow or even may have to tolerate the continuance of the Chief Minister in the office. The situations referred to by the petitioner and his learned Counsel before this Court with great emphasis and at length by reference to various Text-books and Decisions of the Supreme Court are only many imponderables which by itself would not be sufficient to hold that a Constitutional machinery has broken down. The prerogative under Article 356 of the Constitution cannot be exercised in a casual manner. Often such a question is a complex question and not merely a legal issue and decision should reflect the worldly wisdom and Statesmanship of the person, who, by the Constitution is charged with the onerous responsibility in the matter. A safe distance must be kept between the limits of functions of Judiciary, Executive and Legislature. Courts would not exercise any discretionary jurisdiction under Article 226 of the Constitution of India or encroach upon a field which is exclusively preserved for the Governor under the Constitution, unless this Court can hold that the Chief Minister is disqualified from holding his office and that, is not the case put forth before the Court at all.

14. The concept of joint responsibility of the Ministers is for the purpose explained by me a little earlier. That does not mean that every question that arise for decision before the Government, there should be complete agreement between the Ministers. Even one or the other may have disagreed, once a decision is taken all the Ministers will be collectively responsible for the same and not otherwise. In that view of the matter, I do not think this Court can draw any inference one way or the other on the material put forth before it to give any directions as sought for by the petitioner.

15. As regards the contentions urged in support of the relief for the earthquake and flood victims, the petitioner has not been able to place any material to show the areas where earthquake has taken place or the floods have affected. What is the extent of financial assistance so far provided by the State Government, what is the nature of the assistance that the State Government should expect from the Central Government and to what extent. The particulars in that regard are totally and utterly lacking. On the basis of such pleas, a relief of the nature sought for

cannot be granted. Unless the petitioner places sufficient material before the Court or makes appropriate allegations to call for further information from the Government, no relief can be granted to the petitioner.

18. In that view of the matter, I do not think there is any justification to entertain this Petition. Petition is therefore rejected.