
(1970) 09 CAL CK 0022
In the Calcutta High Court
Case No : C.O. 5240 (W) of 1970

Jyotirmoy Bose

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-09-1970

Acts Referred:

Constitution of India, 1950 — Article 356

Citation : AIR 1971 Cal 122 : (1971) 2 ILR (Cal) 276

Hon'ble Judges : P.K. Banerjee, J

Bench : Single Bench

Advocate : B. Das, General and Abdul Salam, Noni Coomar Chakravarty, Somnath Chatterjee and J.N. Haldar, for the Appellant; S.C. Bose and B.P. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Banerjee, J.—In this application the petitioner who is a member of the Parliament challenges an order passed by the President under Article 356 of the Constitution of India and also the order being G.S.R. 491 as also the order passed by the Governor appointing the Advisers being respondents Nos. 4 to 8 and the rule of business dated 6th April, 1970. The petitioner prayed for a writ of quo-warranto against respondents Nos. 4 to 8. Without issuing a Rule, I directed the petitioner to serve a copy of this application on the respondents Nos. 2 to 8. In pursuance of that order, the respondents Nos. 2 to 8 appeared through Mr. Advocate-General and respondent No. 1 appeared through Mr. S. C. Bose. After hearing the parties in full, I do not find any merit in the contentions and I do not, therefore, propose to issue a Rule.

2. The facts which were not disputed are that after the resignation of Mr. Ajoy Kumar Mukherjee on or about the 16th March, 1970, the President of India, in purported exercise of powers under Article 356 of the Constitution of India, issued a proclamation being G.S.R. 490 dated 19th March, 1970 whereby the President of India assumed to himself all the functions of the Government of

West Bengal and all the powers vested in or exercisable by the Governor and such of the powers as enumerated by the said proclamation. It is further stated that along with the proclamation, the President issued an order being G.S.R. 491 whereby the President directed that all the powers and functions would also be exercisable by the Governor of West Bengal. It is stated that the Governor appointed the respondent No. 4 as his Principal Adviser and respondents Nos. 5 to 8 as his Advisers by orders dated 6th April and 17th April, 1970 by which the Governor assigned to them the charges of various departments of the Government of West Bengal. It is stated that the Governor also fixed the terms and conditions of the appointment. The petitioner has challenged the said orders in this application. The State Government filed affidavit. The Union of India also filed affidavit in support. In the affidavit of the Union of India filed by Mr. L. P. Singh, Secretary to the Ministry of Home Affairs, Government of India, New Delhi, it was stated that in making the said proclamation under Article 356 of the Constitution of India, the President had the advice of the Council of Ministers on the subject. It was stated that the President's proclamation and G.S.R. 490 and order therein being No. G.S.R. 491 were laid on the Table of both the Houses of Parliament on March 20, 1970. It is denied that the advisers are nothing but the Council of Ministers and it is stated that the Advisers are not Council of Ministers but are only appointed to assist the Governor in the discharge of his functions. It is stated further that the salaries and allowances etc., could not be included as only a vote on account was passed on 30th March, 1970 by the Parliament and State Budget estimate would be submitted, on 14th August, 1970 in which the said provision would be made. The State Government also filed affidavit, inter alia, contending (sic) on 11th August, 1970 which was however allowed to be withdrawn by the Court and the respondent was directed to file fresh affidavit and such fresh affidavit was filed by one Mr. Nalinaksha Nanda on 10th September, 1970. It is stated, inter alia, that G.S.R. 490 and G.S.R. 491 were valid. The appointments of the Advisers were also valid. It is stated that the Advisers are not Council of Ministers, as alleged and the appointment of the Advisers have been approved by the President. The Budget grants for the State of West Bengal makes provision for within the head of Account of Salaries for the post of Advisers. It is also said that the vote of account for expenditure was only passed and the Budget for the full year was submitted to the Parliament on 14th August, 1970 and was duly passed by the Parliament. It is stated that the Advisers are only public officers. It is further stated that the rules of business were made under the relevant provision of the Constitution. In reply, the petitioner reiterated the statements made in the petition.

3. Mr. Noni Coomar Chakravarty on behalf of the petitioner contended with reference to the proclamation under Article 356 of the Constitution that the Governor is nothing but the Agent of the President and secondly the Governor being a delegatee himself of the President cannot re-delegate the power given to the Governor. The appointment of the Advisers is nothing but re-delegation of the powers delegated to the Governor. Mr. Chakravarty further contended that

the G.S.R. 491 is bad in law because in his opinion, the delegation of power could only be done by the Parliament under Article 356(1)(c) of the Constitution and not by an order made under Article 356(3) of the Constitution. It is argued by Mr. Chakravarty that the proclamation has to be placed before the Parliament and G.S.R. 491 not being a proclamation need not be placed before the Parliament. Thirdly, it is contended by Mr. Chakravarty that the appointment of the Advisers is nothing but a substitution of Council of Ministers. Moreover, under Article 356 of the Constitution, the President has delegated the power to the Governor who must act himself. Furthermore, in the affidavit-in-opposition it is stated that in making the proclamation under Article 356 of the Constitution, the President took the advice of the Council of Ministers which, it is alleged, is not contemplated under Article 356 of the Constitution and the proclamation having been made on the basis of an advice of the Council of Ministers, the President has taken into consideration irrelevant matter and, as such, the proclamation is clearly bad. It is further stated that the President and not the Governor can make the assignment and/or appointment of the Advisers. The Governor having appointed them the appointment is bad.

4. From a reading of the said proclamation and G.S.R. 490 and G.S.R. 491 (Annexures A and B to the petition), it appears that the President having been satisfied on the report of the Governor and on the advice of the Council of Ministers, as it appears from the affidavit-in-opposition, has made an order under Article 356 of the Constitution of India. Effect of the said proclamation is embodied in the proclamation itself. By Clause (1) and Clause (a) of the proclamation, the President assumed himself all the powers and functions of the State and all the powers vested in or exercisable by the Governor of that State, i.e., all executive powers. Under Clause (b), the legislative power was declared to be exercisable by the Governor or under the Authority of the Parliament. In Clause (c), the President made the incidental and consequential provision in order to give effect to the object of proclamation, namely, for exercise of the executive function by virtue of Clause (a) and secondly

5. Regarding the first two points, it must be stated that they are covered by the two decisions of this Court, namely, one by me in *Monish Biswas v. State* and the other by the Hon'ble Mr. Justice Anil Kumar Sen in which it has been held that the proclamation under Article 356 and the order on the basis of the proclamations are valid. I will deal with the new point which is urged in this case. Mr. Chakravarty urged that the G.S.R. 491 was not laid before the Parliament. It has been specifically dealt with by the Union of India through Mr. L. P. Singha that it was duly placed before the Parliament. In that view of the matter, this point must fail. The main argument in this case, however, is that the Governor cannot appoint the Advisers because that amounts to sub-delegation of delegated power. Secondly, it is stated in the affidavit by the Union of India that before the proclamation would be issued the President took advice of the Council of Ministers. I will deal with the second point first. Mr. Chakravarty contended that under Article 356, it is a discretion of the President to be satisfied on the

report of the Governor of the State or otherwise to the effect that the situation has arisen in which the Government of the State cannot be carried out in accordance with the provision of the Constitution. The President, in exercise of that power, cannot and should not consult the Council of Ministers or should not take any advice of the Council of Ministers. It has been held by the *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, while considering the effect of Article 53(1) of the Constitution as also Article 75 that the President, in exercise of the function will be aided and advised by the Council of Ministers and held that "the President has thus been made a formal or constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet." Whether the President has discretionary power in other matters, it is not in this case to be considered but in so far as Article 356 is concerned, I have no doubt in my mind that the President while taking the matter for proclamation under Article 356 acts as a constitutional head and must act as advised by the Council of Ministers to his satisfaction that the situation has arisen in which the Government of State cannot be carried on in accordance with the provision of the Constitution. To say that the power given under Article 356 is a discretionary power to the President is, in my opinion, wholly misconceived. In so far as the point that the appointment of the Advisers are nothing but appointment of Council of Ministers is also wholly misconceived. Mr. Chakravarty argued that he cannot argue that, in place of Advisers if more Secretaries of the department were appointed, he could not have agitated the point regarding the appointment of the Advisers. But, as the Advisers were given charges which a Minister is to hold, this appointment must be bad. I am of opinion, that this cannot be correct. Under the powers given to the Advisers, they work under the supervision, guidance and control of the Governor. Therefore, the power is kept with the Governor, while overall control of the administration is in the hands of Governor and for the facilities of efficient administration appointments were made of the Advisers and they were allotted works to be done by them in respect of different departments, but their functions were ultimately controlled, guided and supervised by the Governor who has a discretion to alter and modify any decision of the Advisers. In my opinion, therefore, that the said Advisers are nothing but officers under the Governor to carry out the functions as assigned by the Governor in his own discretion, but the ultimate decision for the action rests and always rested with the Governor and to none else.

6. In that view of the matter, in my opinion, the appointment cannot be challenged and the sub-delegation of powers, as argued by Mr. Chakravarty is not established.

7. In the result, this application must fail and is hereby dismissed.