

(2020) 01 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No. 2073, 10040 Of 2019

M.B. Adinarayana

APPELLANT

Vs

State Of Karnataka And Ors

RESPONDENT

Date of Decision : 04-01-2020

Acts Referred:

Constitution (Forty-fourth Amendment) Act, 1978 — Section 26
Karnataka Parliamentary Secretaries Salary, Allowance And Miscellaneous Provisions Act, 1963 — Section 3, 4, 5, 6

Citation : (2020) 01 KAR CK 0002

Hon'ble Judges : Abhay S. Oka, CJ;S.R. Krishna Kumar, J

Bench : Division Bench

Advocate : G.R. Mohan, Dhyan Chinnappa, B.V. Krishna

Final Decision : Allowed

Judgement

1. The question which arises for consideration in both the petitions is whether the Karnataka Parliamentary Secretaries Salaries, Allowances and Miscellaneous Provisions Act, 1963 (for short 'the said Act of 1963') as amended by the Karnataka Parliamentary Secretaries Allowances (Amendment) Act, 1999 is constitutionally valid? The said Act of 1963 empowers the Hon'ble Chief Minister to appoint Parliamentary Secretaries from amongst the members of the Karnataka Legislative Assembly and the Karnataka Legislative Council. In Writ Petition No. 2073 of 2019, there was a prayer to remove the 3rd to 10th Respondents from the posts of Parliamentary Secretaries. The said prayer does not survive for consideration, the reason being, those respondents are no longer the Parliamentary Secretaries.

LEGAL PROVISIONS

2. The said Act of 1963 made as originally enacted read thus:

"1. Short title and commencement.- (1) This Act may be called the Mysore Parliamentary Secretaries Allowances Act, 1963.

(2) It shall come into force at once.

2. Definitions.- In this Act, unless the context otherwise requires,-

(a) "Parliamentary Secretary" means a member of the Mysore Legislative Assembly or the Mysore Legislative Council appointed as a Parliamentary Secretary;

(b) "prescribed" means prescribed by rules made under this Act;

(c) "residence" includes the staff quarters and other buildings appurtenant thereto and the gardens thereof.

3. Residences of Parliamentary Secretaries.- (1) Each Parliamentary Secretary shall be entitled without payment of rent to the use of a furnished residence in the City of Bangalore throughout his term of office and for a period of fifteen days immediately thereafter, or, in lieu of such furnished residence, to a house rent allowance at the rate of one hundred and fifty rupees per mensem. The furnishing of the residence provided under this sub-section shall be on such scales as may be prescribed.

(2) In a residence used by a Parliamentary Secretary who is entitled to a house rent allowance in lieu of a furnished residence, three rooms shall be furnished by the State Government on such scales as may be prescribed, to be used for official purposes.

4. Charges payable by the Parliamentary Secretary and the Government.- (1) Each Parliamentary Secretary shall, in respect of the residence allotted for his use under section 3, be liable to pay, when the monthly charges for consumption of electricity in the residence exceed thirty five rupees in any month, the charges in excess of such sum.

(2) All other charges for the maintenance and upkeep of the residence provided under section 3, rates and taxes, and all expenditure for the layout and the maintenance of the gardens in such residence, shall be borne by the State Government.

5. Travelling and daily allowances of Parliamentary Secretaries.- (1) Every Parliamentary Secretary shall be entitled while touring on official business to travelling and daily allowances in respect of every journey by air, rail or road at the rates for the time being applicable to a Class- I Officer of the State Civil Service drawing a pay of one thousand and two hundred rupees or more per mensem.

Explanation.- 'Official business', for purposes of this section, means such business as the Minister to whom he is the Parliamentary Secretary specifies.

(2) For the period of his stay in the City of Bangalore in connection with official business, a Parliamentary Secretary shall be entitled to daily allowance at the rate of sixteen rupees per diem:

Provided that no daily allowance shall be payable under this sub-section on days on which daily allowance is payable to the Parliamentary Secretary by the State under the Mysore Legislature Salaries Act, 1956, or any rules or orders for the time being in force.

Explanation.- The Minister for whom he is the Parliamentary Secretary shall be the authority competent to certify the days on which such Parliamentary Secretary was required to stay in the City of Bangalore in connection with official business.

6. Medical attendance.- Subject to rules made by the State Government, a Parliamentary Secretary and the members of his family who are residing with and are dependent on him shall be entitled free of charge to accommodation in hospitals maintained by the State Government and to medical attendance and treatment.

Explanation.- For the purpose of this section, member of the family means the husband, wife, son, daughter, father, mother, brother or sister.

7. Parliamentary Secretary not to practise profession, etc.- A Parliamentary Secretary shall not, during the tenure of his office, practise any profession or engage in any trade or undertake for remuneration, any employment other than his duties as Parliamentary Secretary.

8. Power to make rules.- (1) State Government may, by notification in the Mysore Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything done under that rule."

3. We must note here that the said Act was substantially amended by the Karnataka Parliamentary Secretaries Allowances (Amendment) Act, 1999 (for short, 'the Amendment Act of 1999'). The said Act, as it stands today, after the amendment brought in the year 1999 reads thus:

"1. Short title and commencement - (1) This Act may be called the Karnataka Parliamentary Secretaries Salary, Allowance and Miscellaneous Provisions Act, 1963.

(2) It shall come into force at once.

2. Definitions - In this Act, unless the context, otherwise requires -

(a) "Parliamentary Secretary" means a member of the Karnataka Legislative Assembly or the Karnataka Legislative Council appointed as a Parliamentary Secretary by the Chief Minister;

(b) "prescribed" means prescribed by rules made under this Act;

3. Salary and allowances of Parliamentary Secretary - A Parliamentary Secretary shall be entitled to such salaries and allowances as are admissible to a Minister, Minister of State or a Deputy Minister under the Karnataka Minister's Salaries and Allowances Act, 1956, as may be specified by the Government from time to time.

4. Parliamentary Secretary not to draw salaries and allowances as member - A Parliamentary Secretary shall not, while he draws salary and allowances for his office, be entitled to any salary and allowances as a member.

5. Functions and duties of Parliamentary Secretary - The functions and duties of a Parliamentary Secretary shall be such as may be specified by the Chief Minister or a Minister to whom he is the Parliamentary Secretary.

6. Oath of office and of Secrecy - Before a Parliamentary Secretary enters upon his office, the Chief Minister shall administer to him the oath of office and of secrecy according to such form as may be specified by the Government in this behalf.

7. Parliamentary Secretary not to practice profession, etc - A Parliamentary Secretary shall not, during the tenure of his office, practice any profession or engage in any trade or undertake for remuneration, any employment other than his duties as Parliamentary Secretary.

8. Power to make rules - (1) The State Government may, by notification in the Karnataka Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything done under that rule".

Thus, there were very major changes brought about by the amendment Act of 1999. The said changes can be broadly summarized as under:

(a) The preamble well as the long title of the original Act provided that it was an Act to further provide for allowances to the Parliamentary Secretaries. By the Amendment Act of 1999, the word 'allowances' was substituted by the words 'Salary, allowances and miscellaneous provisions';

(b) Sections-3 to 6 of the original Act were replaced by the Amendment Act of 1999 and by introducing Section-3, for the first time, a provision was made that a Parliamentary Secretary shall be entitled to such salaries and allowances as are admissible to a Minister, Minister of State or a Deputy Minister under the Karnataka Minister's Salaries and Allowances Act, 1956. In the original Act, there was no provision for payment of salary and it provided for only for travelling allowance and Daily allowance to the Parliamentary Secretary;

(c) The newly incorporated Section-5 provided that the functions and duties of a Parliamentary Secretary shall be such as may be specified by the Chief Minister or the Minister to whom he is the Parliamentary Secretary. There was no provision providing for functions and duties of Parliamentary Secretaries in the original Enactment; and

(d) Under the original Act, there was no provision for administering of oath of office. But under Section-6 of the amended Act, the provision regarding administering of oath of office and secrecy to the Parliamentary Secretaries by the Chief Minister has been introduced.

4. We must also note that as late as on 18th November 2016, the Rule making power under the said Act of 1963 was exercised by framing the Karnataka Parliamentary Secretaries (Functions and Duties) Rules, 2016 (for short, 'the said Rules'). Rule-3 which lays down the functions and duties of Parliamentary Secretaries. The said Rules read thus:

"1. Title and commencement.- (1) These rules may be called the Karnataka Parliamentary Secretaries (Functions and Duties) Rules, 2016.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. Definitions.- (1) In these rules, unless the context otherwise requires.-

(a) 'Act' means the Karnataka Parliamentary Secretaries Allowances Act, 1963 (Karnataka Act 15 of 1963);

(b) 'Concerned Minister' means the Chief Minister or a Minister to whom he is the Parliamentary Secretary;

(2) The words and expressions used in these rules but not defined shall have the same meaning assigned to them in the Act.

3. Functions and Duties of Parliamentary Secretary.- The functions and duties of Parliamentary Secretary shall ordinarily be that as specified by the Chief Minister or a Minister to whom he is a Parliamentary Secretary which may be as follows, namely:-

(1) He shall be nodal person and also to assist in the legislative matters to the concerned minister.

(2) He shall brief the concerned minister the subjects which involves legislative

matters and to act as per directions of the said Minister.

(3) He shall assist and advice to execute legislative duties of the concerned Minister on the floor of the House. So that the Business of the House could be effectively function.

(3) He shall assist the concerned Minister to co-ordinate with Leader of the House, Chief Whip and Law and Parliamentary Affairs Minister while executing the duties of both the Houses of the State Legislature.

(4) He shall execute functions and duties delegated by the concerned Minister in respect of legislative matters from time to time.

(5) He shall maintain secrecy and confidentiality during the execution of his functions and duties.

(6) Such other duties as may be specified by the Chief Minister or the Minister to whom he is a Parliamentary Secretary."

THE CHALLENGE

5. The basic challenge is on the ground that the State Legislature lacked the legislative competence to make the said Act. The other challenge is on the ground that for all intents and purposes, the Parliamentary Secretaries are on par with the Ministers and the said Act enables the Hon'ble Chief Minister to cross the ceiling on number of Ministers prescribed under Article 164 (1-A) of the Constitution of India. Therefore, the said Act infringes the aforesaid Constitutional provision. These are broadly the two main grounds on which challenge has been incorporated.

6. We have heard the learned counsel appearing for the petitioner in the first petition, the Petitioner appearing in person in the other petition and the learned Additional Advocate General appearing for the State.

Submissions on behalf of the Petitioners:

7. The petitioners submitted that the State Legislature completely lacked the Legislative Competence to enact the said Act. Their submission is that entry-39 of list-II of Schedule VII of the Constitution does not empower the State Legislature to frame a Legislation dealing with the powers and privileges of the members of the Legislative Assembly and the Legislative Council. In support of their submissions, strong reliance was placed in both the petitions on the decision of the Apex Court in the case of *Bimolangshu Roy (dead) through Lrs - vs- State of Assam* and another (2018) 14 SCC 408 decided by a Bench of three Hon'ble Judges. It is submitted that the constitutional validity of the Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) Act, 2004 (for short, 'the Assam Act'), which is *pari materia* with the said Act was questioned before the Apex Court. The Apex Court held that the State Legislature had no power to enact such a law by deriving support either from Article 194 (3) of the Constitution of India or from the entry-39 of list-II.

Reliance is also placed by the petitioners on the decision of the Division Bench of the Calcutta High Court, in the case of Vishak Bhattacharya and others -vs- The State of West Bengal and others AIR 2015 Cal 187. The Act framed by the State of West Bengal Legislature on the Parliamentary Secretaries which is also *pari materia* with the said Act was challenged before the Calcutta High Court. It was held that in view of the express provision contained in the Article-164 (1-A) of the Constitution of India, the West Bengal Act was repugnant to the Constitution. Further, reliance was also placed on the decision of the Division Bench of the High Court of Judicature of Bombay, at Goa, in the case of Aires Rodrigues -vs- The State of Goa and others 2009 (111) BOMLR 737.

Submissions by the learned Additional Advocate General:

8. The learned Additional Advocate General submitted that the decision of the Apex Court in the case of Bimolangshu Roy (*supra*) is clearly distinguishable, as the provisions of the Assam Act were drastically different than the said Act. In fact, he invited our attention to the provisions of the Assam Act, which were the subject matter of challenge before the Apex Court. He submitted that Section-4 of the said Act provided that a Parliamentary Secretary shall be of the rank and status of a Minister of State and shall exercise such powers, discharge such functions and perform of such duties, as may be assigned to him by the Hon'ble Chief Minister. Thus, in Assam Act, there were specific statutory provisions conferring the status of a Minister of State on the Parliamentary Secretaries. He urged that merely because Section-3 of the said Act provides that a Parliamentary Secretaries shall be entitled to the salaries and allowances as are admissible to Hon'ble Ministers, the status of Hon'ble Minister is not conferred on the Parliamentary Secretaries. He relied upon the decision of the Division Bench of the Chhattisgarh High Court at Bilaspur, in the case of Rakesh Choubey and others -vs- State of Chhattisgarh and others Writ Petition (PIL) No.119 of 2016, decided on 13.04.2018. He submitted that in the said decision, there was a challenge to the validity of a local enactment providing for appointment of Parliamentary Secretaries. After having perused the provisions of Chhattisgarh Act, the Division Bench distinguished the decision of the Apex Court rendered in the case of Bimolangshu Roy's (*supra*) on the ground that it is not shown that Parliamentary Secretaries will have rank or status of the Ministers of State. He would respectfully submit that the law laid down by the Division Bench of the Chhattisgarh High Court squarely applies to the provisions of the said Act and therefore, the aforesaid decision of the Apex Court rendered in Bimolangshu Roy (*supra*) will have no application to the present case. He urged that the said Act only confers additional privileges on the member of both the Houses of Legislature and, therefore, Item 39 of List II is attracted. He urged that as per the provisions of the said Act, the Parliamentary Secretaries have no status of Hon'ble Ministers, but the said Act only deals with the powers and privileges of the members of the Legislature Assembly and Legislature Council which will be covered under Entry-39, list-II of Schedule VII of the Constitution of India.

Consideration of the submissions on the first ground of challenge of lack of legislative competence:

9. The first question is whether the exercise of enacting the said Act is referable to any specific provision of the Constitution in its Part VI dealing with the States or any of the Entries in List II of Schedule VII.

10. We have already quoted the provisions of the said Act as it existed prior to the amendment made by the Amendment Act of 1999. The un-amended Act did not even provide for administration of oath of the office and secrecy to the Parliamentary Secretaries. Section-6 of the amended Act provides for the same. The un-amended Act did not provide for the functions and duties of the Parliamentary Secretaries which are subsequently incorporated in the form of Section-5 of the amended Act. Most importantly, the un-amended provisions did not provide for payment of salaries to the Parliamentary Secretaries, but by incorporating Section-3, the Amended Act introduces a specific provision that Parliamentary Secretaries shall be entitled to such salary and allowances, as are admissible to Ministers, Ministers of State or Deputy Ministers under the Karnataka Minister's Salaries and Allowances Act, 1956, as may be specified from time to time. Section-4 introduced in the amended Act provides that Parliamentary Secretaries shall not, while they draw salary and allowances of their office, be entitled to any salary and allowances as Members of the Legislature Assembly or the Members of Legislative Council, as the case may be. As stated earlier, the Rule making power conferred on the Legislature was exercised in the year 2016 by framing the said Rules. Rule-3 of the said Rules provides that the functions and duties of a Parliamentary Secretary shall be ordinarily be that as specified by the Hon'ble Chief Minister or by the Minister to whom he is a Parliamentary Secretary which may include the following duties:

(a) He shall brief the concerned Minister on the subjects which involve Legislative matters;

(b) He shall assist and advise to execute Legislative duties of the concerned Ministers on the floor of the house so that the business of the house could be done effectively; and

(c) He shall execute the functions and duties entrusted by the concerned Minister, in respect of the Legislative matters.

11. It is true that there is no specific provision under the said Act, which specifically lays down that the Parliamentary Secretaries shall be entitled to the status of Hon'ble Ministers or Ministers of State or Deputy Ministers to whom, the Hon'ble Governor administers the oath of office on the advice of the Hon'ble Chief Minister. But, the said Rules show that there is hardly any difference between the role of a Deputy Minister or a Minister of State without independent charge and a Parliamentary Secretary. The most of the duties and functions of Parliamentary Secretaries are akin to the Legislative duties of a Deputy Minister or a Minister of State without independent charge. The drastic amendments

made by the amendment Act of 1999 makes the intention of the Legislature very clear. Firstly, as stated earlier, by the amended Act, a provision was made for the first time that the Parliamentary Secretaries shall be entitled to the salaries and allowances equivalent to the salaries and allowances admissible to the Hon'ble Ministers.

Secondly, a provision was also made to administer the oath of the office and secrecy to the Parliamentary Secretaries. Thirdly, Rule-3 of the said Rules makes it clear that even the concerned Minister is empowered to delegate the functions and duties in respect of the Legislative matters to the Parliamentary Secretary attached to him and one of the duties of the Parliamentary Secretaries is to assist and advice to execute the Legislative duties of the concerned Minister on the floor of the house. Hence, on a conjoint reading of the provisions of Section-3 to 6 introduced by an amendment Act and the provisions of Rule-3 of the said Rules, it is crystal clear that the said Act does not deal with the powers, privileges and immunities of the members of the Legislative Assembly or the Legislative Council and the committees of the said Houses. On the basis of what we have held above, the issue relating to Legislative competence of the State Legislature to enact the Act will have to be gone into.

Decision of the Apex Court in the case of Bimolangshu Roy (supra)

12. Coming to the decision of the Apex Court in the case of Bimolangshu Roy (supra), both the parties have extensively referred to the said decision. As observed earlier, the said decision dealt with the issue of validity of the Assam Act. Paragraph 24 thereof reads thus:

"24. In substance, the power to make the legislation flows from various sources: (1) express text of the Constitution; (2) by implication from the scheme of the Constitution; and (3) as an incident of sovereignty."

Paragraphs 26 to 32.2 are also material which read thus:

"26. Article 246 is one of the sources of authority to legislate under the Constitution of India. It declares that Parliament and the Legislatures of the various States have the "power to make laws with respect to any of the matters enumerated" in each of the three lists contained in the Seventh Schedule. It also makes clear that the power of Parliament is exclusive with respect to List I and that of the State Legislature with respect to List II. List III indicates various fields over which both Parliament as well as the State Legislatures would have authority to legislate concurrently subject of course to the discipline of Article 254.

27. Apart from declaration contained in Article 246, there are various other articles of the Constitution which confer authority to legislate either on Parliament or on a State Legislature, as the case may be in various circumstances. For example, Article 3 authorises Parliament to make a law either creating a new State or extinguishing an existing State. Such a power is

exclusively conferred on Parliament.

28. Article 326 while declaring a right of every citizen who is not less than 18 years of age to register as a voter at any election to the House of the People or to the Legislative Assembly of a State, authorises the appropriate legislature to disqualify any such citizen to be a voter on any one of the grounds specified under Article 326 by making a law. The authority to make such a law obviously flows directly from the text of Article 326 but not from Article 246. See also Articles 2, 3, 11, 15(5), 22(7), 32(3), 33, 34, 59(3), 70, 71(3), 98(2). The articles mentioned above are only illustrative but not exhaustive of the category.

29. It must be remembered that this Court repeatedly held that the entries in the various lists of the Seventh Schedule are not sources of the legislative power but are only indicative of the fields w.r.t. which the appropriate legislature is competent to legislate.

30. The task of this Court in identifying the scope of an entry in the lists contained in the Seventh Schedule is not easy. While examining the scope of the entries this Court must necessarily keep in mind the scheme of the Constitution relevant in the context of the entry in question.

31. A broad pattern can be identified from the scheme of the three lists, the salient features of which are (i) fields of legislation perceived to be of importance for sustaining the federation, are exclusively assigned to Parliament; (ii) State Legislatures are assigned only specified fields of legislation unlike the US Constitution; (iii) residuary legislative power is conferred on Parliament; (iv) taxing entries are distinct from the general entries; and (v) List III does not contain a taxing entry.

32. At the same time, it can also be noticed that there is no logical uniformity in the scheme of the three lists contained in the Seventh Schedule:

32.1. Power to legislate is conferred by some of the articles by an express grant either on Parliament or the State Legislature to make laws with reference to certain matters specified in each of those articles but there is no corresponding entry in the corresponding list indicating the field of such legislation. For example, under Article 3 Parliament is competent to create or extinguish a State. There is no entry in List I of the Seventh Schedule indicating that Parliament could make a law with regard to the creation of a new State or the extinguishment of an existing State.

32.2. On the other hand, with reference to some of the powers conferred expressly by the text of the Constitution, there is also a corresponding entry in the list. Entries 38, 39 and 40 in List II fall in this category."

(emphasis supplied)

13. Before we come back to the aforesaid decision, there is a well recognized rule of giving widest interpretation to the entries in Schedule VII. We may, at this

stage, take a note of exposition of law by the Apex Court in its well known decision in the case of Union of India vs Shah Goverdhan L.Kabra Teachers' College (2002) 8 SCC 406 which is also quoted with the approval in Bimolangshu Roy (supra). In Paragraph 6 of the decision in the case of Shah Goverdhan L.Kabra Teachers' College (supra), the Apex Court held thus:

"6. In view of the rival submissions at the Bar, the question that arises for consideration is whether the impugned legislation can be held to be a law dealing with coordinated development of education system within Entry 66 of List I of the Seventh Schedule or it is a law dealing with the service conditions of an employee under the State Government. The power to legislate is engrafted under Article 246 of the Constitution and the various entries for the three lists of the Seventh Schedule are the "fields of legislation". The different entries being legislative heads are all of enabling character and are designed to define and delimit the respective areas of legislative competence of the Union and the State Legislatures. They neither impose any restrictions on the legislative powers nor prescribe any duty for exercise of the legislative power in any particular manner. It has been a cardinal principle of construction that the language of the entries should be given the widest scope of which their meaning is fairly capable and while interpreting an entry of any list it would not be reasonable to import any limitation therein. The rule of widest construction, however, would not enable the legislature to make a law relating to a matter which has no rational connection with the subject-matter of an entry. When the vires of enactment is challenged, the court primarily presumes the constitutionality of the statute by putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude and the substance of the legislation will have to be looked into. The court sometimes is duty-bound to guard against extending the meaning of the words beyond their reasonable connotation in anxiety to preserve the power of the legislature."

(emphasis added)

14. Now coming back to the decision of the Apex Court in the case of Bimolangshu Roy (supra), we must quote the conclusions drawn by the Apex Court. In paragraph 36, the Apex Court held thus:

"36. As rightly pointed out by the petitioners, the existence of a dedicated article in the Constitution authorising the making of law on a particular topic would certainly eliminate the possibility of the existence of the legislative authority to legislate in Article 246 read with any entry in the Seventh Schedule indicating a field of legislation which appears to be closely associated with the topic dealt with by the dedicated article. For example, even if the Constitution were not to contain Entries 38, 39, 40 in List II the State Legislatures would still be competent to make laws w.r.t. the topics indicated in those three entries, because of the authority contained in Articles 164(5), 186, 194, 195, etc. Therefore, to place a construction on those entries which would have the effect of enabling the legislative body concerned to make a law not within the

contemplation of the said articles would be plainly repugnant to the scheme of the Constitution."

(emphasis added)

The ultimate conclusions are as under:

"40. The question therefore is - Whether the text of Article 194(3) and Entry 39 is wide enough to authorise the legislature to make the Act?

41. In view of the fact that the text of both Article 194(3) and the relevant portion of Entry 39 are substantially similar, the meaning of the clause "the powers, privileges and the immunities of a House of the legislature of a State ... and of the Members of a House of such legislature" must be examined.

42. In ascertaining the meaning of the clause, the scheme of Article 194 and the setting in which the said clause is placed is relevant. Article 194 occurs in Chapter III of Part VI of the Constitution which deals with the States. Chapter II of Part VI deals with the State Executive. Chapter III deals with the State Legislature. Various articles of Chapter III provide for establishment of a legislature (either unicameral or bicameral), the composition of such legislative bodies, the qualifications for membership of the legislative bodies and their durations, the offices of the legislature and their powers and responsibilities and all other allied matters.

43. Article 194 deals exclusively with the powers and privileges of the legislature, its Members and committees thereof. While clause (1) declares that there shall be freedom of speech in the legislature subject to the limitations enumerated therein, clause (2) provides immunity in favour of the Members of the legislature from any legal proceedings in any court for anything said or any vote given by such Members in the legislature or any committees, etc. Clause (3) deals with the powers, privileges and immunities of a House of the Legislature and its Members with respect to matters other than the ones covered under clauses (1) and (2).

44. Thus, it can be seen from the scheme of Article 194 that it does not expressly authorise the State Legislature to create offices such as the one in question. On the other hand, Article 178 speaks about the offices of Speaker and Deputy Speaker. Article 179 deals with the vacation of those offices or resignations of incumbents of those offices whereas Articles 182 and 183⁵² deal with the Chairman and Deputy Chairman of the Legislative Council wherever the Council exists. In our opinion, the most crucial article in this Chapter is Article 187 which makes stipulations even with reference to the secretarial staff of the legislature. the scope of Article 194(3) and Entry 39 of List II. Such a construction would be enabling the legislature to make a law which has no rational connection with the subject-matter of the entry On the face of such elaborate and explicit constitutional arrangement with respect to the legislature and the various offices connected with the legislature and matters incidental to

them to read the authority to create new offices by legislation would be a wholly irrational way of construing. "The powers, privileges and immunities" contemplated by Article 194(3) and Entry 39 are those of the legislators qua legislators.

45. For the abovementioned reasons, we are of the opinion that the Legislature of Assam lacks the competence to make the impugned Act. In view of the above conclusion, we do not see it necessary to examine various other issues identified by us earlier in this judgment. The writ petition is allowed. The impugned Act is declared unconstitutional."

(emphasis supplied)

Thus, in no uncertain terms, the Apex Court has held that the State Legislature lacks legislative competence to enact a law providing for the appointment of Parliamentary Secretaries.

15. It will be necessary to have a look at the Constitutional provisions of Part VI, with a view to ascertain whether the same empower the State Legislature to make enactments on the question involved in these writ petitions. Article 164 which is material reads thus:

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 [Odisha], 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.]

[(1B) 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 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 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.

16. Most importantly, clause (1-A) imposes upper ceiling on appointing number of Ministers. Clause (5) of Article 164 confers power on the State Legislature only to determine the salaries and allowances payable to the Hon'ble Ministers by a law. So, the State is empowered to legislate on the subject of salaries and allowances payable to the Hon'ble Ministers. There is corresponding Entry 40 in List II. Article-194 deals with the powers and privileges of the members of both the houses of the State Legislature. Clause (3) of Article 194 is material which reads thus:

"(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution Forty-fourth Amendment) Act, 1978].

195. Salaries and allowances of members.-Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined, by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of the Constitution applicable in the case of members of the Legislative Assembly of the corresponding province."

(emphasis added)

Entries 39 and 38 of List-II respectively are the Entries corresponding to Articles 194(3) and 195.

17. Under Chapter VI, the Constitution of India creates various posts such as the Hon'ble Chief Minister, Hon'ble Ministers, Hon'ble Speaker and Deputy Speaker of the Assembly, Hon'ble Chairman and Deputy Chairman of the Council. In Part VI which deals with the States, there is no provision therein for appointing Parliamentary Secretaries.

18. The very important conclusion of the Apex Court is that the powers and privileges and immunities as contemplated by Article 194 (3) and entry-39 of List II are those of the legislators qua Legislature. Here, we must quote the entries 38, 39 and 40 of list-II of Schedule-VII of the Constitution of India which read thus:

"38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.

39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

40. Salaries and allowances of Ministers for the State."

(emphasis added)

19. Thus, none of the Constitutional provisions referred above empower the State Legislature, even by implication, to enact a law for appointment of the Parliamentary Secretaries. Entry-39, List-II of Schedule-VII of the Constitution deals with the powers and privileges and immunities of the legislators qua Legislature, as held by the Apex Court. There was an argument canvassed on behalf of the State that the said Act confers additional privileges on members of both the Houses. However, on plain reading of the said Act, it seeks to provide for appointment of Parliamentary Secretaries and further seeks to define their powers and duties. The Apex Court has held that the State Legislature has no competence to enact a law providing for appointment of Parliamentary Secretaries. Moreover, the said Act does not confer any privileges on the members of both Houses as legislators qua Legislature.

20. The Entry-38 is applicable to only to the salaries and allowances of Members of both the Houses and the salaries and allowances to the Hon'ble Speaker and Deputy Speaker of the Legislative Assembly and the Hon'ble Chairman and Deputy Chairman of the Legislative Council. Entry-40 specifically deals with the salaries and allowances of the Hon'ble Ministers of the State. Now, coming to the provisions of the said Act, the provisions thereof deal with the Privileges, salaries, and functions as well as the duties of Parliamentary Secretaries. The

provisions do not deal with the powers, privileges and immunity of the members of both the Houses of Legislature. If we hold that Article 194(3) and Entry 39 of List II are the sources of legislative power for enacting the said Act, we will be going beyond their reasonable connotation, which is impermissible. Moreover, in no uncertain terms, the Apex Court in *Bimolangshu Roy* (supra) has held that the State Legislature lacks legislative competence to enact a law providing for the appointments of Parliamentary Secretaries. The issue whether the Parliamentary Secretaries have status of Ministers may have relevance only when we decide the other issue based on Article 164(1-A) of the Constitution.

Thus, in our considered view, the decision of the Apex Court rendered in *Bimolangshu Roy* (supra) squarely applies to the facts of the present case.

21. Now we come to the decision of the Chhattisgarh High Court in the case of *Rakesh Choubey* (supra). The conclusions of the Court in paragraph-12 of the said decision are material which reads thus:

12. In *Bimolangshu Roy* (supra), the Apex Court was dealing with a statute which contained a legislative declaration that the Parliamentary Secretaries ought to be of the rank and status of a Minister of the State. Noticing absence of legislative competence, the Apex Court declared the Assam Parliamentary Secretaries (Appointment, Salaries Allowances and Miscellaneous Provisions) Act, 2004; for short 'the Assam Act' as unconstitutional. However, as stated in the last paragraph of that judgment, other issues including, as regards Article 164(1) of the Constitution, were not answered. In the case in hand, the Parliamentary Secretaries who are among the Respondents are not shown to be having rank or status of a Minister of the State or the authority to exercise powers or discharge functions and perform duties of a Minister. Unlike the provisions of Section 7 of the Assam Act which was under challenge before the Apex Court, there is no provision under which the Parliamentary Secretaries in the State of Chhattisgarh, who are among the Respondents herein, would be entitled to salary and allowances as are admissible to a Minister. The terms of the notification under which they are working as Parliamentary Secretaries, after being administered oath of secrecy, do not equate them with any of the constitutional authorities in Chapter II of Part VI of the Constitution. They are also not posted with any authority to carry out any constitutional or statutory function. Their duty is only to assist the Minister to whom each of them were required to assist in terms of the impugned notification. *Bimolangshu Roy* (supra) does not, therefore, apply to the case in hand."

22. The Division Bench of the Chhattisgarh High Court held that the decision of the Apex Court in the case of *Bimolangshu Roy* (supra) is not applicable on the following two grounds:

(a) The Parliamentary Secretaries who are amongst the respondents therein are not shown to be having the rank or status of a Minister of State or the authority to exercise the power or discharge the functions and perform the duties of the

Ministers.

(b) Unlike the provisions of Section-7 of the Assam Act, there was no provision in the local law under which the Parliamentary Secretaries in the State of Chhattisgarh would be entitled to the salaries and allowances, as are admissible to Ministers of the State of Chhattisgarh.

23. With greatest respect, the decision of the Chhattisgarh High Court is completely contrary to what is held by the Apex in paragraph 44 of in the case of Bimolangshu Roy (supra). Hence, we are unable to agree with the view of the High Court. Thus, we are of the considered view that ex facie, the State Legislature of Karnataka lacked Legislative power to enact the said Act.

CONSIDERATION OF THE SECOND ISSUE

24. There is another aspect of the case based on the provisions of Article-164 (1-A) of the Constitution. We have already held in paragraph-11 above that there is hardly any difference between the role of a Deputy Minister and a Parliamentary Secretary. On a conjoint reading of the various provisions of the said Act and the said Rules, we have already come to the above conclusion, which shows that for all intents and purposes, the office of the Parliamentary Secretaries has trappings of the post of Hon'ble Ministers of State without independent charge or at least Hon'ble Deputy Ministers. The said Act will work as a device available to the Hon'ble Chief Minister to appoint the members of the Legislative Assembly and Legislative Council of his choice as parliamentary Secretaries, who cannot be made as Ministers due to constraints of Article 164(1-A). This will completely defeat and nullify the upper ceiling limit imposed by Article 164(1-A) of the Constitution of India on number of Ministers. Hence, even otherwise, the said enactment is ultra vires the constitutional mandate in Article 164(1-A).

25. In view of the dictum laid down by the Apex Court in the case of Bimolangshu Roy (supra) and for the foregoing reasons, we dispose of these writ petitions by passing the following:

ORDER

i) We hold that the State Legislature of Karnataka had no legislative competence to enact the Karnataka Parliamentary Secretaries Salaries, Allowances and Miscellaneous Provisions Act, 1963 as amended by Act No. 7 of 1999. The same is ab initio void being ultra vires the Constitution of India and hence, the provisions of the said Act are hereby struck down;

ii) The prayer (B) in W.P.No.2073 of 2019 does not survive for consideration.

ii) The writ petitions are allowed on the above terms with no orders as to the costs.