

(2005) 02 AHC CK 0213
In the Allahabad High Court
Case No : Writ Petition No. 277 (M/B) of 2005

Nirdesh Kumar Dixit and Others

APPELLANT

Vs

Smt. Renuka Choudhury and Others

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Constitution of India, 1950 — Article 163, 164, 166, 166(3), 173
Salaries and Allowances of Ministers Act, 1952 — Section 3
Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 — Section 2
Uttar Pradesh Ministers and Deputy Ministers (Salaries and Allowances) Act, 1952 — Section 2
Constitution of India, 1950 — Article 163, 164, 166, 166(3), 173
Salaries and Allowances of Ministers Act, 1952 — Section 3
Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 — Section 2
Uttar Pradesh Ministers and Deputy Ministers (Salaries and Allowances) Act, 1952 — Section 2
Constitution of India, 1950 — Article 163, 164, 166, 166(3), 173
Salaries and Allowances of Ministers Act, 1952 — Section 3
Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 — Section 2
Uttar Pradesh Ministers and Deputy Ministers (Salaries and Allowances) Act, 1952 — Section 2

Citation : (2006) 5 AWC 4704 : (2005) 2 ESC 978

Hon'ble Judges : M.A. Khan, J; Jagdish Bhalla, J

Bench : Division Bench

Advocate : Ashok Pandey, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Bhalla, J.—Petitioners are said to be the Secretaries of "Rastra Raksha Manch" an Association formed under 19(1)(c) of the Constitution and are Advocates by profession. They have filed the present writ petition as Public Interest Litigation seeking a writ in the nature of quo-warranto against the respondent Nos. 1 to 75 functioning as State Minister either in the Union

Government or in the State of Uttar Pradesh inter alia on the ground that the Constitution does not provide for appointment of State Ministers and the third Schedule of the Constitution does not provide any separate form for the oath of office and secrecy of the State Ministers. The main reliefs sought for by the petitioners are reproduced hereunder :

(i) Issue a writ, order or direction in the nature of quo warranto asking the respondents 1 to 60 to show cause as to how they are functioning as State Ministers in Union or in the State of U.P.

(ii) Issue a writ, order or direction in the nature of certiorari thereby quashing the orders of appointment of respondents 1 to 60 after summoning their orders of appointment from them.

2. At the very outset, we would like to mention that the petitioners have earlier filed a Writ Petition No. 3549 (MB) of 2004; Nirdesh Kumar Dixit and Ors. v. State of U.P. and Ors., which was dismissed by a Division Bench of this Court comprising of Hon"ble Mr. Justice Tarun Chatterji (now Judge of Hon"ble Supreme Court) and Hon"ble Mr. Justice Rakesh Sharma. In the aforesaid writ petition, which was also in the nature of Public Interest Litigation the reliefs sought for were almost identical as prayed for in the present writ petition. The reliefs sought for in the aforesaid Writ Petition No. 3549 (MB) of 2004 are being reproduced herein under :

"(i) Issue a writ, order or direction in the nature of certiorari quashing thereby all orders issued by respondent No. 1 and awarding the status of Ministers or non ministers after summoning the same from respondent Nos. 1 and 3.

(ii) Issue a writ, order or direction in the nature of certiorari thereby quashing the categorization of Ministers into Cabinet Minister and State Ministers and by means of a writ in the nature of mandamus, direct the respondent Nos. 1 and 3 to treat all the Ministers equal and to permit all of them to participate in the meetings of the Council of Ministers being chaired by Prime Minister or Chief Minister.

3. The aforesaid Writ Petition No. 3549 (MB) of 2004 was dismissed on the ground of non-joinder of necessary parties and being defective.

4. The main contention of the learned Counsel for the petitioner is that the Government of India has created new constitutional office like Deputy or State Minister, which is not provided in the Indian Constitution. The Constitution provides for the appointment of Minister not the State Minister (Independent Charge), State Minister or Deputy Minister. Further the third Schedule of the Constitution provides for the oath of office and secrecy of the Ministers. It does not provide any form of oath and secrecy for the State Minister (Independent Charge) or State Ministers either in the State or in the Union and, as such, the appointment of the respondent Nos. 1 to 75 are void ab-initio.

5. Learned Counsel for the petitioner has referred to the Constitution of various

countries, namely, Cambodia, China, Egypt, Namibia, Nepal, Pakistan, Saudi Arabia and South Africa where the Constitution permits for appointment of State Ministers or Deputy Ministers and their duty is to assist the Cabinet Ministers in the performance of their duties whereas there is no such provision in the Indian Constitution. The State Ministers in our country, according to the petitioners, do not participate in the aid and advice process for which a Minister is appointed. Therefore, the oath of office and secrecy as State Minister is illegal.

6. Inviting our attention to Articles 74 and 75 of the Constitution which deals with the creation of Council of Ministers with the Prime Minister as head to aid and advice the President, learned Counsel has submitted that all the members of the "Council of Ministers" form one and the same class and such, one Minister cannot be asked to function under another Minister. The creation of a "Cabinet" by the Prime Minister and Chief Minister violates the Constitution and is *per se* illegal.

7. Lastly, it has been argued that the Opposite Parties Nos. 1 to 75 are not performing the constitutional duty of aid and advice and, as such, their appointment and their continuance as non functional member of the Council of Ministers is void *ab-initio* and is *per se* illegal and is liable to be quashed.

8. When confronted with the question as to why petitioners have not impleaded either the Union Government or the State of U.P. as the respondents, learned Counsel for the petitioner relying upon the decision of the Apex Court in *B.R. Kapur v. State of T.N.* 2001 (7) SC 1, submitted that a writ of *quo warranto* lies against a person, who is called upon to establish his legal entitlement to hold the office in question and in such a situation it would not be necessary to implead the appointing authority in the proceedings. There cannot be any dispute that immunity is granted to the President, Governors and Rajpramukhs under Article 361 of the Constitution. However, the Government of India may sue or be sued by the name of Union of India. Similarly, the Government of State may sue or be sued by the name of the State under Article 300 of the Constitution.

9. In our country, there is, at the top, a Central or the Union Government responsible to Parliament. Beside it there are State Governments, responsible to the State Legislature. The Union of India acting through the Central Government could be said to represent the whole all the people of India. The individual State acting through their Government and Minister could be said to represent the people of each individual States and their interest. The Council of Minister theoretically appointed by the Governor is certainly collectively responsible to the Legislative Assembly of the State. The object of collective responsibility is to make the whole body of persons holding ministerial office collectively responsible for such act of the others as are referable to their collective volition.

10. Before proceeding further, it would be apt to refer certain Articles of the Constitution, which are relevant and necessary for the purposes of this writ petition :

Article 74: (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice :

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any Court.

Article 75 : (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 :

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

11. Articles 163 and 164 occurring in Part VI of the Constitution deals with the Council of Ministers, appointment of Chief Minister and the other Ministers. Articles 163 and 164 reads as under :

Article 163 : (1) There shall be a Council of Ministers with 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.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any Court.

Article 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 Ministers shall hold office during the pleasure of the Governor :

Provided that in the States 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.

12. Article 53(1) of the Constitution says that the executive power of the Union shall be exercised by the President, directly or through officers subordinate to him in accordance with the Constitution and as per Article 74(1), the President is required to discharge his function with the aid and advice of the Council of Ministers. The Rules of Business enable these powers to be exercised by a Minister or any official subordinate to him, subject to the political responsibility of the Council of the Minister to the legislature. Article 77 which relates to the conduct of business of Government of India reads as under :

"77. Conduct of business of the Government of India.--(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India and for the allocation among Ministers of the said business."

13. Similar power as has been given to the President under Article 77(3), the Governor is required to discharge his functions with the aid and advice of Council of Minister under Article 166(3) of the Constitution. Article 166 deals with the conduct of Government Business and Clause (3) of the Article makes it obligatory upon the Governor to make rules for the convenient transaction of the business

of the Government and for the allocation amongst Minister. Article 166 reads as under :

Article 166 : (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution to act in his discretion.

14. Council of Ministers is responsible for each act done by the President (or the Governor in the respective State) or by the Government of India (or the State Government). The perusal of the aforesaid articles clearly establishes that the business of Council of Ministers may be distributed among several Ministers, under the aforesaid clauses. In view of aforesaid provisions, the President and the Governor is under obligation to frame Rules of Business and the President or the Governor, as the case may be, allocate all his functions to Ministers, except those which he is required by or under the Constitution to exercise in his own discretion. The Rules of Business, again, may empower the Minister-in-Charge of a subject to make Standing Orders regarding the disposal of cases under his charge; and by these Orders the Minister may direct the Secretary or other Minister to dispose of certain matters. By the rule of business, the Governor, cannot only allocate the various subjects among particular Minister, but also may go further and designate a particular official to discharge any particular function.

15. Allocation of business under Article 166(3) of the Constitution is not made with reference to particular laws which may be enforced at the time the allocation is made. It is also made with reference to the three lists of the VII Schedule to the Constitution for the executive powers of Centre and State together extends to matters with respect to which Parliament and Legislature of a State may make laws.

16. As averred above, the petitioners have not impleaded either Union Government or the State Government as respondents otherwise Rules made under Article 77(3) or Article 166(3) could have been placed before. However, in view of the mandatory obligation under Articles 77(3) and 166(3) a definite inference can be drawn that there exists some Rules for transaction of Business and allocation of work among the Ministers. Our inference is based on Article 77(3) and Article 166(3) of the Constitution, which lays down in clear words that the President or the Governor shall make rules for the transaction of business. At this juncture, it may be stated that in *A. Muralidhar and Others Vs. The State of*

Andhra Pradesh, , it has been held that it is not necessary to publish all the rules.

17. Since it has been vehemently argued that only the Cabinet Ministers are allowed to participate in the Cabinet Meeting to aid and advice and no Minister of State or Deputy Ministers do not play any role in aid and advice process as such it would be apt to refer the meaning of the word "Cabinet" as defined in various English Dictionaries. In "The New Lexicon Webster's Dictionary of the English Language", at page 135, the word "Cabinet" has been defined as the committee of Chief Ministers under a President or Prime Minister. In U.S.A., there is no provision for a cabinet in the Constitution, but it became a recognised part of executive policy to work with a cabinet. It is the President's advisory body composed of secretaries in charge of departments, who are not allowed to be members of either house of congress. There is no theory of collective responsibility and no responsibility to Congress. The cabinet is responsible to the President alone, and he is free to accept or reject its advise. In respect of England the word "Cabinet" has been defined as Chief Members of the Government appointed by, and under the Chairmanship of the Prime Minister. Historically, it evolved from the Cabinet Council, a committee of the Privy Council, under Charles.

18. In "Law Lexicon" published by "Wadhwa and Company Nagpur" the word "Cabinet" means the select council of a sovereign or of an executive Government; the collective body of Ministers who direct the Government of a country. It further describes as the cabinet at the present day is the principal directing force in English Government. Though only an informal council of the Crown, possessing no legal powers, and even unknown to the law (in other words, belonging not to the law, but to the custom of the Constitution), it exerts a guiding and controlling influence over the Crown and Parliament, over the legal Executive and the legal Legislature, which secures the harmonious working of the various Government institution and the unity of the Government. The word "Cabinet Council" has been defined as a Private Counsel; secret advice. "Those are Cabinet Councils, and not to be communicated". (Massinger, Duke of Milan ii, 1.).

19. In "The Chambers Dictionary, New Edition", the word "Cabinet" (at page 233) means the committee made up of a group of senior minister who together formulate policy in the Government of a country; in UK a meeting of this group of Minister; in US the Presidents Advisory Council, consisting of Heads of Government department. In "Oxford Advanced Learners Dictionary" (New Edition, page 156), the word "Cabinet" has been defined as a group of the most important Government Ministers or Advisor to a President, responsible for deciding on Government administration and policy: Members of the British Cabinet are chosen by the Prime Minister.

20. From the dictionary meaning, referred to above, it is imminently clear that in the Cabinet senior Ministers having important work are included and in Cabinet meeting only these Ministers participate to make and take policy decision and

this process is in vogue since long. Thus, the Deputy Minister or the Minister of State is excluded from participating in the Cabinet meeting, but it does not mean that they are not Ministers. These Deputy Ministers, or Minister of State discharge their functions and duties as are allocated to them under the rules of business.

21. The controversy, as involved in the present case, that there is no provision of oath for a Minister of State, Deputy Minister also arose earlier *K. M. Sharma Vs. Shri Devi Lal and others*, , when Devi Lal while taking oath as Central Minister described himself as Deputy Prime Minister. In this case it was argued before the Hon"ble Supreme Court that an oath as Deputy Prime Minister being not in accordance with the prescription of the Constitution the appointment of the person taking oath was vitiated. On the contrary, the Attorney General appearing on behalf of the Union of India stated that the form prescribed in the Third Schedule pursuant to the requirement of Article 75(4) of the Constitution is only for Minister of the Union. The Hon"ble Supreme Court held that as a substantial part of the oath was properly followed, the appointment was valid.

22. The oath prescribed in the Third Schedule of the Constitution can easily be categorised in two parts. One is descriptive and the other which contains the substantial part. The real purpose of the oath is that the person concerned must give an undertaking to bear true faith and allegiance to the Constitution and uphold the sovereignty and integrity of India. The Statement of Objects and Reasons notes the recommendations of the Committee on National Integration and Regionalism and it reads as under :

"That every candidate for the membership of a State Legislature or Parliament, and every aspirant to, and incumbent of, public office should pledge himself to uphold the Constitution and to preserve the integrity and sovereignty of the Union."

23. In *Virjiram Sutaria Vs. Nathalal Premji Bhavadia and Others*, , the question before the Hon"ble Supreme Court was that whether the candidate was not qualified to be chosen to fill a seat of the State Legislative Assembly inasmuch as he did not subscribe to an oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution as prescribed under Article 173. The Hon"ble Supreme Court held as under :

"The essential requirement of Article 173, read with Form VII-A, was that the person taking the oath or making the affirmation would bear true faith and allegiance to the Constitution and uphold the sovereignty and integrity of India. The words which precede this portion are merely descriptive of the person and of his nomination as a candidate."

24. It would be relevant to mention that the Constitution do not prescribes any separate form of oath for the Prime Minister and he being a member of the Council of Ministers, subscribes the same oath as the other Ministers are required to take. The only difference is that the Articles 74 and 75 prescribes that there

shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President and 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. Though there is no separate form for the oath, in respect of the Prime Minister, but while being sworn into office, he describes himself as Prime Minister as in the Constitution, there is a mention of Prime Minister. Similar is the position with regard to the Chief Minister, while taking oath of office. The oath register is signed by the incumbent holding office of Prime Minister as Prime Minister whereas the other signs as Minister. This practice is in vogue ever since 1950.

25. We would also like to add that the Parliament enacted (The) Salaries and Allowances of Ministers Act, 1952 in which Section 2 is the definition clause and it lays down that the Minister includes a Deputy Minister. Section 2 reads as under :

"2. Definition.--In this Act, "Minister" means a member of the Council of Ministers, by whatever name called, and includes a Deputy Minister."

26. The State of U.P. in order to provide salaries to be paid to the Ministers and the Deputy Minister enacted. The U.P. Ministers and Deputy Ministers (Salaries and Allowances) Act, 1952. In this Act the salary of the Minister was fixed Rupees 1,200/- per mensem whereas the salary of the Deputy Minister was fixed as Rupees 700/- per mensem. Similar is the distinction in providing residence to the Minister and a Deputy Minister. The Minister was entitled to free furnished residence with ground appurtenant thereto whereas the Deputy Minister was entitled to house rent allowance of Rs. 100/- per mensem.

27. The aforesaid Act was repealed and by Act No. 14 of 1981 a new Act was enacted by the State of U.P. which is known as the "Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981". In this Act, Section 2 (e) defines Minister and it mean, the Chief Minister, a Minister of State and Deputy Minister of the State. Section 2 (e) is reproduced herein :

"2(e) "Minister" means a member of the Council of Ministers of the Government of Uttar Pradesh and includes the Chief Minister, a Minister of State and a Deputy Minister of that State."

28. A perusal of Section 3 would indicate the difference of salary of a Minister and Deputy Minister. The Minister and Minister of the State were entitled to a salary of Rs. 2,500/- per month whereas the Deputy Minister was entitled to a sum of Rs. 2,250/-per month. Thus there is distinction in the status of a Minister and Deputy Minister and all the Ministers cannot be treated to be equal even though, they are the part of Council of Minister.

29. As Section 2 of the Salaries and Allowances of Minister Act, 1952 defines "Minister" which mean a member of council of the Minister by whatever name called and includes a Deputy Minister, Article 236(a) defines the expression

"District Judge" as including Judge of a City Civil Court, Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Cause Court, Chief Presidency Magistrate, Additional Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge.

30. In *M.L. Sharma v. Union of India*, the Hon'ble Supreme Court has held that it is open for the State Government under appropriate rules to classify such officers included in the inclusive definition not be District Judges proper and to belong to a category different from that. Therefore, there is no illegality if the Union Government or the State Government, as the case may be, categorises the Ministers in different category and assigns/allots certain functions under the rule of business. The classification of Ministers as Cabinet Minister, State Minister or Deputy Minister, it appears, have been made for the smooth functioning of the Government and the classification cannot be said to be a unreasonable classification. Further, the classification so made does not violate any provision or spirit of the Constitution.

31. For the reasons aforesaid, we are of the considered opinion that there is no illegality or infirmity in appointment and designation of Ministers as Cabinet Minister, Minister of State, Deputy Minister etc.

32. The writ petition, therefore, lacks merit and no interference is required under Article 226 of the Constitution.

Accordingly, the writ petition is dismissed.