
(2017) 08 AP CK 0036
In the Andhra Pradesh High Court
Case No : 26898 of 2017

Pakkala Suribabu

APPELLANT

Vs

State of Andhra Pradesh, & oRS.,

RESPONDENT

Date of Decision : 23-08-2017

Acts Referred:

Constitution of India, Article 356(1), Article 164 (1) -
Andhra Pradesh Reorganisation Act, 2014,, Section 17, Section 2 (a), Section 19 (1)

Citation : (2017) 08 AP CK 0036

Hon'ble Judges : V.Ramasubramanian, T. Rajani

Bench : DIVISON BENCH

Advocate : P.V. Krishnaiah

Judgement

1. The petitioner, who is an advocate and who claims to be the General Secretary of the Andhra Pradesh Congress Committee, has come up with the above writ petition seeking issue of a writ of quo warranto to call upon the 4th respondent (originally arrayed as the 5th respondent, but who became the 4th respondent on account of the 2nd respondent being deleted from the array of parties) to show cause as to under what authority he is holding the office of the Chief Minister of the State of Andhra Pradesh.

2. Heard Mr. P.V. Krishnaiah, learned counsel appearing for the petitioner. The learned Advocate General for the State of Andhra Pradesh takes notice for the respondents.

3. The case of the petitioner is that elections to the Assembly of the combined State of Andhra Pradesh were held on 30-04-2014 and 07-05-2014; that the Andhra Pradesh Reorganisation Act, 2014, though published in the Gazette of India on 01-03-2014, came into force on 02-06-2014, by virtue of being notified as the "Appointed Day" in terms of Section 2 (a) of the Act; that Section 19 (1) of the A.P. Reorganisation Act, hereinafter referred to as the Act, enabled allocation of only "sitting members of the Legislative Assembly of the existing

State of Andhra Pradesh"; that Section 21 (1) of the Act, provided for the continuance of the Speaker of the Legislative Assembly of the existing State and also provided for the election of the Deputy Speaker of that Assembly, who could also become the Deputy Speaker of the Assembly of the Successor State; that without following these statutory prescriptions, the Governor appointed the 4th respondent herein as the Chief Minister of the State of Andhra Pradesh and that therefore the 4th respondent has no legal authority to continue in office.

4. We have carefully gone through the pleadings and the documents filed along with the writ petition and also considered the submissions made by Mr. P.V. Krishnaiah, learned counsel for the petitioner.

5. At the outset, we are of the view that the writ petition is an abuse of the process of court. There are three reasons for this conclusion of ours. They are: (i) The Legislative Assembly of the State of Andhra Pradesh was constituted in June, 2014 and the 4th respondent was sworn in as the Chief Minister. Now a period of 3 years and 2 months have passed. We do not know what the petitioner was doing all these days. The learned counsel for the petitioner attempted to justify the inaction on the part of the writ petitioner by stating that the illegalities committed by the Constitutional Authorities can be challenged at any time and that the petitioner did not realize the seriousness of these illegalities. But this apology of a reason, cannot be accepted. After allowing an elected representative to hold office for more than 60% of the entire tenure, his authority to continue in office, cannot be challenged. It is especially so when the person making the challenge is no common man, but an advocate and also the leader of a National Political Party. It does not lie in the mouth of the petitioner to say that he realized the seriousness of the illegalities only now.

(ii) It is not as though the Legislative Assembly of the State of Andhra Pradesh alone was convened after the appointed day. By virtue of Section 19 (3) of the Act, the Legislative Assemblies of both the States of Andhra Pradesh and Telangana were deemed to be constituted only on the appointed day and the Governor followed the very same procedure in respect of both the States, for the appointment of the Chief Ministers and Council of Ministers, in terms of Article 164 (1) of the Constitution. But the petitioner has chosen, for reasons which we are unable to decipher, to assail only one of the two actions taken by the Governor. Therefore, the motive behind the present writ petition is little suspicious.

(iii) In paragraph 18 of the affidavit in support of the writ petition, the petitioner has claimed that he made a representation dated 15-03-2017 to the Election Commission of India, highlighting all the facts and that since the Election Commission did not consider his representation dated 15-03-2017, he was compelled to file the writ petition. The copies of two representations, both dated 16-03-2017 (not dated 15- 03-2017 as claimed in para 18 of the affidavit) are filed by the petitioner as Exhibits P.1 and P.2 along with the writ petition. While one representation is purportedly addressed to the State Election Commission,

the other is addressed to the Election Commission of India. The mode of service/dispatch of both these representations is not indicated in the affidavit and could not also be found out from Exhibits P.1 and P.2. No evidence of having handed over the representations personally or having sent them by post, is filed along with the material papers. In any case, the grievance made out in both these representations, has nothing to do with the subject matter of the writ petition. The grievance made out in both these representations is that another Political Party by name YSR Congress, should not be allowed to use the name and photograph of late Y.S. Rajasekhar Reddy, as he was a leader of the Indian National Congress and that therefore, the appropriation of his name and photograph by others should not be permitted. In other words, the representation said to have been made by the petitioner to the Election Commission of India, has nothing to do with the subject matter of the present writ petition and we do not know how the non-consideration of the representation in relation to an entirely different matter, could give a cause of action for a writ of quo warranto as against another person. Therefore, the averments in para 18 of the affidavit projecting a cause of action, to put it mildly, are incorrect, even if not false.

6. De hors the above technical issues, let us deal with the grounds on which a writ of quo warranto is sought. As we have pointed out earlier, the case of the petitioner is that immediately after the election to the Legislative Assembly of the Combined State of Andhra Pradesh was over, the Governor ought to have convened the Assembly, invited the leader of the Party which secured a majority to form the Government and appointed the Chief Minister and Council of Ministers before taking recourse to Section 19.

7. For testing the correctness of the above contention, it is necessary to take note of the sequence of events, as they unfolded. (i) A Proclamation was issued by the President under notification bearing No.G.S.R.132 (E), dated 01-03-2014 assuming to himself, all the functions of the Government and also the powers of the Legislature by keeping the Legislative Assembly of the State under suspended animation;

(ii) On 01-03-2014, the assent of the President was received and Act No.6 of 2014 was published in the Gazette of India;

(iii) On 04-03-2014 a notification was published in the Gazette of India, appointing 02-06-2014 as the appointed date for the purposes of the Act, in terms of Section 2 (a);

(iv) On 05-03-2014, the election schedule was issued;

(v) On 28-04-2014 the President issued another notification bearing No.G.S.R.298 (E) extending the period of Proclamation, since the Proclamation issued on 1-3-2014 expired on 30-04-2014;

(vi) On 30-04-2014, elections were held in the areas earmarked for the

successor State of Telangana;

(vii) On 07-05-2014, elections were held in the areas earmarked for the State of Andhra Pradesh;

(viii) On 02-06-2014, the Act came into force;

8. Having seen the timeline of events, let us have a look at a few provisions of the Act and a few provisions of the Constitution. The case of the petitioner is that under Section 21 (1) of the Act, the person who was holding office as the Speaker of the Legislative Assembly of the existing State of Andhra Pradesh, immediately before the appointed day should have continued to be the Speaker of that Assembly on and from that date namely 02-06-2014 and that it is only after convening the Assembly of the existing State that the allotment of sitting members could have been made under Section 19 (1).

9. Section 19 of the Act reads as follows: "(1) Every sitting member of the Legislative Assembly of the existing State of Andhra Pradesh elected to fill a seat in that Assembly from a constituency which on the appointed day by virtue of the provisions of section 17 stands allotted, with or without alteration of boundaries, to the State of Telangana shall, on and from that day, cease to be a member of the Legislative Assembly of Andhra Pradesh and shall be deemed to have been elected to fill a seat in the Legislative Assembly of Telangana from that constituency as so allotted.

(2) All other sitting members of the Legislative Assembly of the existing State of Andhra Pradesh shall continue to be members of the Legislative Assembly of that State and any such sitting member representing a constituency, the extent or the name of which are altered by virtue of the provisions of section 17, shall be deemed to have been elected to the Legislative Assembly of Andhra Pradesh by that constituency as so altered.

(3) Notwithstanding anything contained in any other law for the time being in force, the Legislative Assemblies of Andhra Pradesh and Telangana shall be deemed to be duly constituted on the appointed day."

10. Section 19 (1) uses the expression "sitting member". This expression is defined in Section 2 (i) as follows: "Sitting member", in relation to either House of Parliament or of the Legislature of the existing State of Andhra Pradesh, means a person who immediately before the appointed day, is a member of that House;"

11. On the appointed day namely 02-06-2014, there was no Legislative Assembly in the existing State of Andhra Pradesh. What was in place in the existing State of Andhra Pradesh on the appointed day was only the Proclamation issued by the President under Article 356 of the Constitution. In other words, there could have been no one, during the continuance of the President's Proclamation, who satisfied the definition of the term "sitting member", for the application of Section 19 (1).

12. In fact, the petitioner, who is an Advocate and a leader of a Political Party, does not even appear to know the state of things that prevailed from 01-03-2014 to 02-06-2014 in the State. Therefore, it has become necessary for us to take judicial notice of what happened during the relevant period. By a Proclamation, issued under G.S.R.132 (E), dated 01-03-2014 the President assumed to himself the functions of the Government and also declared that the powers of the Legislature shall be exercised by or under the authority of the Parliament, by keeping the Legislative Assembly under suspended animation. Since this first Proclamation was due to expire on 30-04- 2014, the President of India issued another Proclamation in G.S.R.298 (E) dated 28-04-2014. By the said Proclamation, the President of India dissolved the Legislative Assembly of the State. Therefore, when the elections were held on 30-04-2014 and 07-05-2014, there was no Assembly in the existing State. Hence, the Governor could not have summoned the House that stood dissolved.

13. The Governor could not also have summoned the new House immediately after the declaration of results on 16-05-2014, since the House itself got constituted, by a deeming fiction only on 02- 06-2014. Sub-section (3) of Section 19 made it clear that the Legislative Assemblies of the States of Andhra Pradesh and Telangana shall be deemed to be duly constituted on the appointed day. Sub-section (3) contains a non obstante clause.

14. Therefore, when there was no "sitting member" who could satisfy the definition of the term under Section 2 (i) and when the new Legislative Assembly, after bifurcation, was deemed to be duly constituted only on 02-06-2014, the question of the Governor convening the existing Assembly before 02-06-2014 did not arise. There was no existing Assembly from 1-3-2014 at least until 02-06-2014, for the Governor to convene. The argument of the petitioner might have had some semblance of validity only if the Proclamation issued under Article 356(1) had been revoked or varied by another Proclamation in terms of clause (2) of Article 356 or ceased to operate in terms of clause (4) of Article 356.

15. The power of the Governor to summon the House of the Legislature of the State stems from Article 174(1) of the Constitution. There was no House of the Legislature of the State, before 02-06- 2014, to be summoned by the Governor. From 01-03-2014 to 02-06- 2014, the Presidential Proclamation was in force and the new Assembly, to which members were elected in April/May, 2014, was constituted only on the appointed day namely 02-06-2014, by virtue of the deeming fiction under Section 19 (3) of the Act. Therefore, the Governor could have summoned the House, only after its constitution under Section 19 (3) of the Act on 02-06-2014. Hence, the argument that the Governor ought to have summoned the House before 02-06- 2014 is completely devoid of any merit and made with scant regard to the statutory prescription.

16. In fact, Article 188 of the Constitution obliges every member of the Assembly to make and subscribe to an oath or affirmation, before taking his seat. Article 193 makes it a punishable act, if a member sits or votes before complying with

the requirements of Article 188. Articles 188 and 193 read as follows: 188. Oath or affirmation by members Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule. 193. Penalty for sitting and voting before making oath or affirmation under Article 188 or when not qualified or when disqualified -- If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of Article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

17. Interestingly, Article 188 uses the expression "member of the Assembly" and requires such a person to subscribe to an oath or affirmation before taking his seat. Therefore, an impression may be created that irrespective of taking a seat or subscribing to an oath, a person elected from a constituency, would become a member. But, Article 193 uses a different language. It says "if a person sits or votes as a member of the Legislative Assembly". Article 193 does not use the expression "if a member sits or votes".

18. The consequences of a person not complying with the requirements of Article 193 came up for consideration before the Supreme Court, first in *Pashupati Nath Sukul v. Nem Chandra Jain*. One of the two questions that arose for consideration in that case was as to whether a person elected as a member of the Legislative Assembly, but who has not made and subscribed to the oath or affirmation, can validly propose a person as a candidate at an election held for filling a seat in the Rajya Sabha. While answering the question in the affirmative, the Supreme Court made a distinction between Legislative functions and Non-Legislative functions and held that even before taking oath, a person elected to be a member, can discharge non-legislative functions. The said decision of a 3 Member Bench of the Supreme Court was followed by another 3 Member Bench of the Supreme Court in *Madhukar Jetly v. Union of India*.

19. Therefore, the Governor could have summoned the House in the existing State of Andhra Pradesh before 2-06-2014 and made an allocation under Section 19 (1) of the Act- (1) only if there had been no Presidential Proclamation;

(2) only if the House had been constituted in violation of Section 19(3) of the Act; and

(3) only if there had been sitting members who were eligible to take part in Legislative functions.

20. In the absence of any of the above, we do not know how the contention revolving around Section 19 is raised by the petitioner.

21. The next contention of the petitioner revolves around Section 21 of the Act. But the provisions of Section 21 of the Act, have no relevance to the issue on hand. They relate to the appointments of Speaker and Deputy Speaker and the making of the rules of procedure and conduct of business of the Legislative Assembly.

22. Therefore, in fine, we find no merits in the writ petition and the same deserves to be dismissed. Accordingly, it is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.