

(2002) 06 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition No. 205 of 2002 (M/B)

Prakash Pant

APPELLANT

Vs

The Speaker of Uttaranchal Assembly and Another

RESPONDENT

Date of Decision : 25-06-2002

Acts Referred:

Constitution of India, 1950 — Article 118, 166, 208, 226

Citation : AIR 2002 Utt 11 : (2003) 2 UC 982 : (2003) 1 UD 46

Hon'ble Judges : Ashok A. Desai, C.J;P.C.Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.A. Desai, C.J.—According to the petitioner, the respondent No. 2 is not one who was authorized by the Election Commission to fill in a seat in the Assembly in terms of Article 173 of the Constitution of India. He was not given an oath under Form VII(B) of the Third Schedule. On 14th and 15th March, 2002 respondent No. 2 as a leader of the Sadan exercised the privilege which is without authority of law. The respondent No. 2 has no right to sit in the Assembly as a Leader of the House. With such averments, on 16-5-2002, the petitioner prayed for a writ to the Speaker-respondent No. 1, not to permit the Treasury Bench or State of Uttaranchal to elect the Leader of the House who is not a Member of the Assembly and to permit him to participate in a general debate of the Legislative Assembly.

2. The petitioner is principally seeking a prohibitory injunction against the Speaker of Assembly. However, as per the pleadings respondent No. 2 assumed office of Leader of the House on 14-3-2002, even before respondent No. 1 adorned the office of Speaker. Relief of injunction not to permit to elect as sought is thus futile. What is left out from the relief clause, is that the respondent No. 2 not be permitted to participate in the debate of Assembly.

3. Mr. L. P. Naithani, learned Senior Counsel could not dispute that the office of

the Leader of the House or for that matter of Opposition are not the creations of the Constitution or Statute. He, however, placed reliance on Article 118 of the Constitution which provides that each of the House of Parliament may make rules for the regulations, its procedure and the conduct of its business. Parliament (Lok Sabha) in pursuant thereof framed Rules known as Rules of Procedure and Conduct of Business in Lok Sabha. As per Clause 2(1) of the Rules, "Leader of the House" means the Prime Minister, if he is a Member of the House, or a Minister who is a Member of the House, and is nominated by Prime Minister to function as the Leader of the House.

4. Rule 25 reads thus :

"On days allotted for the transaction of Government business such business shall have precedence and the Secretary-General, shall arrange that business in such order as the Speaker may, after consultation with the Leader of House, determine."

5. The Leader of the House has thus been amongst other assigned specific role, for transaction of business in the House. Taking this premises, Mr. Naithani tried to urge that respondent No. 2 since not a member duly elected or as authorized under Article 173 of the Constitution, cannot be a Leader of the House.

6. Mr. Naithani, even otherwise could not point out any *pari materia* provision under the Rules framed in terms of the Article 208 by the State Legislature. His contention was procedural practice in Parliament or rules framed under Article 118 are need to be made applicable for the business of State Legislature in absence of any rule in that behalf under Article 208. Extremely, it is difficult to accept the submission.

Article 208 no doubt has been *pari materia* to Article 118 in pith and substance. However, they in function and operations are independent. In absence of such rule relating to Leader of House under Article 208, rules framed under Article 118 cannot occupy the vacuum or fill-in the void.

Moreover, Clause (2) of Article 208 provides :

"(2) Until rules are made under clause (1), the rules of procedure and Standing Orders in force immediately before the commencement of this Constitution with respect to Legislature for the corresponding Province shall have effect In relation to the Legislature of the State subject to such modification and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislature Council, as the case may be."

7. Crystally clear it is that in absence of any Rule, the Speaker has the exclusive prerogative to adopt such Rules as they were with necessary modifications, if any. Writ under Article 226, however, cannot be availed to enforce particular procedure or practice. Even otherwise the State Legislature is not subsidiary of the Parliament so as to adopt per force or enforce their Rules of business. This candidly negates the submission that the rules and procedure in case if any for

Parliament need to be made applicable to the business of State Legislature.

8. Even otherwise Article 118 is analogous to Article 166. They have no mandatory character. Rules framed thereunder are in their very nature directory and merely for convenience of transaction of business of the Parliament or Government. They are more in the nature of Code of instructions. Any deviation or non-compliance thereof do not entail any civil consequence to entitle any citizen to invoke Article 226 of the Constitution (reliance is placed on AIR 1977 Bom 1193 , Chandrakant Sakhambari v. State of Maharashtra).

9. Mr. Naithani then urged that Conventions or Traditions had a force of law in terms of Article 13 of the Constitution and they are enforceable under Article 226. According to him Leader of House in Lok Sabha need to be Member of the House is a convention in the Parliament which can be enforced by prerogative writ. The submission is devoid of substance. Such a Leader need to be member, is not by way of convention, but in adherence of Rules of business referred to above. Even otherwise, the learned Counsel couldn't point out any convention or custom in this behalf which is judicially recognized.

10. Beside this, the Court no doubt has obligation to uphold the Constitution and Laws of the land. However, in the democratic polity, the Court cannot take upon itself to regulate or implement certain conventions or traditions in legislative activity or business. Legislature performs sovereign function coupled with absolute prerogative to regulate the procedure within the constitutional parameters. The Court cannot usurp such authority to settle idealism or laudable norms or convention of business for the Legislature.

11. More interesting facet is still ahead. Similar question was raised in U.P. Assembly when the respondent No. 2 was a Member. The then Speaker on 8-12-1970 gave a ruling in the House that the Leader of Opposition is not the Statutory Officer. There is difference between the procedure followed in England and India. In England Member of one House cannot speak in other House. But, our Constitution permits that a non Member can become a Chief Minister or Prime Minister, which is not permissible in England..... It would have to be seen what is the convention in the House. He cited the example of Sri. C. B. Gupta..... He also referred to then Education Minister, who was not the Member of the either House. Therefore, this has also become a convention. He then referred to Morarji Desai, who lost the election and thereafter came through Legislative Council. He became Leader of the Legislative Assembly. He regularly worked and none objected. Therefore, he rules that whatever was convention till that date, must continue..... (Ref. : Proceedings of the U.P. Legislative Assembly dated 8-12-1970 as filed on record).

More pertinent aspect is thus :

12. When the same question was raised by the present petitioner in the Legislative Assembly of Uttaranchal, it was pointed out in the House..... that there were thirty Chief Ministers in U.P. (including the present Chief Minister)

since 1952 and out of them eight were not members of either House. Initially Mr. Chandra Bhan Gupta became Chief Minister on 7-12-1960. He was not the Member of either House. He remained Leader of the House and Chief Minister both. Thereafter, in 1963 Smt. Suchita Kriplani without being member of either House remained Chief Minister and Leader of the House both. In 1970 Sri T. N. Singh became Chief Minister and Leader of the House. In 1973, Sri Hemwati Nandan Bahuguna remained Chief Minister and Leader of the House. He too was not a member of either House. On 23-6-1977 Sri Ram Naresh Yadav was Leader of the House and Chief Minister both. On 9-6-1980 Sri B. P. Singh became Leader of the House and Chief Minister without being member of either House. Thereafter, on 25-6-1988 Sri Narain Datt Tiwari became Leader of the House and Chief Minister both..... On 3-6-1995 Ms. Mayawati became Chief Minister and Leader of the House both..... (Ref. : Proceedings of Uttaranchal Legislative Assembly dt. 20-3-2002 as filed on record).

13. Even this factual data indicate that the convention was otherwise. The person admitted in terms of Article 177 could act as a Leader of the House.

14. Apart from the legal debate, we repeatedly enquired to Mr. Naithani that by making a non-member a Leader of the House, whether the legality of legislative business has suffered or in any manner vitiated in the eye of law. To this apparently, there is no answer. Furthermore, Article 212 precisely protects the proceedings of the Legislature and prevents Judicial forum to examine the validity on the ground of procedural irregularity.

15. The State of Uttaranchal came into being on 9-11-2000 by drawing territories from the Uttar Pradesh. On December 11, 1958 erstwhile State of U.P. pursuant to clause-1 of Article 208 of the Constitution, framed Rules, known as "The U.P. Legislature Procedure and Conduct of, Business Rules. 1958. Clause-3(L) defines "Member" means Member of the House and inclusive of Minister and Advocate General in terms of Article 177. The definition clause or the Rules neither refer to Leader of the House nor lay down any qualifications therefor. The Legislature of Uttaranchal though not framed any Rule of their own, vide clause (2) of Article 208, the Speaker can adopt them as they are or with modification.

16. We observe that "Leader of the House" is in-house arrangement and is not a creation even of the Rules referred to. Such nomenclature could be a misnomer. Might it be. It seems to be to facilitate the business of the Legislature. As such, Judicially we cannot lay down a qualification for the holder of such designation.

17. Even otherwise, according to the petitioner, Clause (4) of Article 164 permits the Minister (including Chief Minister) to continue to be so if he is not a Member of the House, for a period of six months. Under Article 177 every Minister have a right to speak and otherwise to take part in proceedings of the Legislative Assembly. Even the Business of Rule of 1958 admit such person as Member of the House. Only restriction is that he is not entitled to vote. Having regard to this scheme, such Minister or Chief Minister has a positive and substantial role in

business of the Legislative Assembly. As such, even by implication we do not see that the constitutional scheme creates any legal impediment for such person like respondent No. 2 who is a Chief Minister to style or act as of Leader of the House, which according to us as observed, is merely in-House arrangement without having any legislative or constitutional sanction.

18. Petition is misconceived and devoid of merit. We dismiss the same. However no orders as to cost.