

(1995) 02 KAR CK 0041
In the Karnataka High Court
Case No : Writ Petition No. 24975 of 1994

Prof. B.B. Patil Okaly

APPELLANT

Vs

Y.K. Puttasome Gowda and others

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 316 (1)
Evidence Act, 1872 — Section 123

Citation : AIR 1996 Kar 14 : (1995) ILR (Kar) 816 : (1995) 2 KarLJ 537

Hon'ble Judges : S. Rajendra Babu, J

Bench : Single Bench

Advocate : R.N. Narasimha Murthy and P.S. Manjunath, for the Appellant; H.K. Vasudeva Reddy, V. Gopala Gowda, M.R. Janardhana, K. Vishwanath and T.S. Mohammed Ali, for the Respondent

Judgement

1. The petitioner was appointed as a Member of the Karnataka Public Service Commission (hereinafter referred to as the KPSC) in terms of Art. 316 of the Constitution of India on 5-3-1991 and he assumed office on 25-3-1991. The 1st respondent was appointed as Member of the KPSC on 14-10-1991 and he assumed office on 2-12-1991. The term of office of Dr. Doddegowda who was the Chairman of the KPSC came to an end on 27-7-1994. The petitioner claims that he having been appointed earlier to the 1st respondent as Member of the KPSC, he is senior to him and he became the first Member, while the 1st respondent became the second Member of the KPSC and the established convention is to appoint the Chairman of the KPSC by following the seniority in appointment in KPSC. On the expiry of the term of Dr. Doddegowda, the 1st respondent was appointed as Chairman of the KPSC under the Notification issued on 26th July, 1994 by the Governor and that notification also made appointment of certain other persons as Members thereof.

2. It is alleged that the appointment of the 1st respondent as Chairman of the KPSC is contrary to the Karnataka Government (Transaction of Business) Rules, 1977 (hereinafter referred to as the Business Rules) as the Cabinet did not take

any decision nor advised the Governor of Karnataka to appoint the first respondent as Chairman, but authorised the Chief Minister to select a person of his choice. The Cabinet which is the only authority under the Rules to take a decision abdicated its power in favour of the Chief Minister. The first respondent was part of the rally held by the Vokkaliga community on 25-7-1994 and leaders of the said community met the Chief Minister after the rally along with respondent-1 and pressurised the Chief Minister to appoint him as Chairman of KPSC. In order to get political support of the Vokkaliga community the Chief Minister yielded to their pressure and advised the Governor to appoint the 1st respondent as Chairman of the KPSC. It is, therefore, urged that the appointment of the 1st respondent is contrary to the provisions of the Business Rules, 1977 and hence is seeking for a writ in the nature of quo warranto under Article 226 of the Constitution against the 1st respondent and also to declare the appointment of 1st respondent as illegal and void and to direct the respondents to consider the case of the petitioner for such appointment.

3. The grounds urged in the petition that the convention of observing the seniority amongst the Members in the matter of appointment to the post of Chairman was not followed and the allegation that the first respondent participated in the rally held by the Members of the Vokkaliga community wherein the Chief Minister promised the appointment of 1st respondent are not urged at the time of hearing. The only contention urged now is that the advice to the Governor to appoint the 1st respondent as the Chairman of the KPSC was not given by the Cabinet, but by the Chief Minister; that on 8th July, 1994 without any deliberation the Cabinet authorised the Chief Minister to advice the Governor to appoint a person of his choice as Chairman of KPSC; that, therefore, the appointment of the 1st respondent as Chairman of the KPSC made by the Governor under Article 316(1) of the Constitution is illegal and unconstitutional; that under Item 25 of the First Schedule to the Business Rules, 1977 the proposal for appointment of Chairman and Members of the Public Service Commission shall be dealt with only by the Cabinet. Under Rule 20 of the Business Rules, such appointment should be made only by the Cabinet and not by any other person. The petitioner contends that he has information which he believes to be true that the State Cabinet did not consider any panel of names for selecting the Chairman but it abdicated its powers to the Chief Minister to recommend to the Governor the name of a person of his choice to be appointed as the Chairman of the KPSC.

4. The learned Counsel for the petitioner relying upon the decision of the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, ., *Haridwar Singh Vs. Bagun Sumbrui and Others*, , *Haridwar Singh v. Bagun Sumburi*, submitted that violation of Rules of Business would result in the action of the Government being contrary to law and the same should be struck down. It is submitted, in the present case there is no denial of the fact that the matter was not considered by the Cabinet and the decision is only that of the Chief Minister and, therefore, there is complete abdication of the duty imposed upon the Cabinet to make

proposals regarding the appointment of Chairman and other Members of the KPSC. In this context, the learned Counsel relied upon certain passages in the framing of India's Constitution, a study by Sri B. Shiva Rao, so as to impress upon me the importance of the Public Service Commission and the necessity to follow strictly the procedure prescribed in the Business Rules in the matter of appointment of the Chairman and other Members of the KPSC. At page 726 there is reference to this matter and it reads as follows :

".... the Union Constitution Committee had recommended that the appointment of the Chairman and Members of the Federal Commission should be made by the President on the advice of his Ministers, while the Provincial Constitution Committee had suggested that Provincial Commissions should be appointed by the Governors acting in their discretion. Commenting on this point B. G. Kher, the then Premier of Bombay, suggested that appointments to the Provincial Commission should also be made on the advice of the Cabinet. The Provincial Constitution Committee was not apparently convinced of this, and retained its recommendation that these appointments should be made by the Governor in his discretion; but in presenting the report of the Committee to the Constituent Assembly on July 15, 1947 Vallabhbhai Patel said that the appointment of the Chairman and Members of Provincial Public Service Commission would generally be made by the Governor on the advice of his Cabinet or Ministry."

Therefore it is submitted that the public interest demands the Governor can make appointment to posts of Chairman and other members of Public Service Commission only on the advice given by the Cabinet. It is submitted that such decision should be after deliberation by the Cabinet and their collective wisdom is necessary.

5. This argument is met by the learned Advocate General in a brief and terse manner by pointing out that under Art. 163(3) of the Constitution of India this Court cannot enquire into whether any advice was tendered by the Ministers to the Governor at all and there being a threshold bar it is not open to this Court to consider the question at all as to whether any advice was tendered by the Cabinet or by any of the Minister composing it or only the Chief Minister and, therefore, this petition is liable to be dismissed. This argument of the learned Advocate General is supported by the learned Counsel appearing for the first and the fourth respondents. Commenting on the necessity to abide by the Rules of Business, the learned Advocate General pointed out that the scope of Article 166(3) of the Constitution is limited only to the framing of rules for the convenient transaction of the business of the Government and not to confer any right on any party and the rules so framed cannot be used to overcome what is barred under Art. 163(3). Even assuming the contention to be correct that there was authorisation to the Chief Minister by the Cabinet to make proposal regarding appointment of the Chairman of the KPSC, there is no delegation or abdication but power is exercised by the Cabinet itself.

6. A careful perusal of the pleadings in this petition and a close look at -the

contentions advanced by the petitioner would in substance indicate that the petitioner is seeking this Court to find out whether any advice was tendered by the Cabinet to the Governor in the matter of appointment of Chairman of the KPSC and whether any advice was tendered by the Chief Minister alone and not by the Cabinet.

7. In exercise of the powers conferred under Article 166 of the Constitution of India, Governor has framed the Business Rules for the more convenient transaction of the business of the Government and under Rule 20 of the said Rules, cases specified in the First Schedule shall be brought up before the Cabinet after submission to the Minister-in-charge of the Department. Under Item 25 of the First Schedule, it is provided that the Cabinet has to make the proposal for appointment of Chairman and Members of the KPSC. Cases other than those specified in the First Schedule could be dealt with by the respective Ministers and can be brought before the Cabinet at the instance of the Chief Minister or the Minister-in-charge of the Department with the consent of the Chief Minister.

8. Article 163(3) of the Constitution reads as follows :

"Art. 163(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."

This Article consists of two propositions --(i) the question whether any advice was tendered to the Governor by the Ministers shall not be inquired into by any Court. It would not be therefore correct to say that action was taken by the Governor without taking any advice from or consulting the Ministers and as such inquiry is open in that regard; (ii) the question as to what advice was tendered by the Ministers to the Governor shall not be inquired into in any Court. The resultant position is that as a legal consequence of this provision that the resolution or other deliberations at the meetings of the Council of Ministers or advice finally tendered in pursuance of such deliberation to the Governor are immune from inquiry in any court irrespective of the provisions of the Evidence Act. The Government is not obliged to furnish any information in that regard nor can the Court make inquiry into the question of ministerial advice tendered or as to the nature of such advice. On the scope and ambit of Article 163(3), it has been held by several decisions is the same as Article 74 of the Constitution with reference to the President and Council of Ministers of the Union Government, while the former is in relation to the Governor and Council of Ministers of a State Government. On this question, the Supreme Court in *S.R. Bommai and others Vs. Union of India and others etc. etc.*, had occasion to consider the scope in relation to imposition of President Rule under Article 356 of the Constitution and in that context the ministerial advice tendered to the President and the scope of scrutiny thereof was considered. The unanimous opinion rendered by the learned Judges is to the effect that in the matter of imposition of President's Rule question as to whether any advice was tendered to the President is not open to scrutiny though not as to the material on the basis of which such advice is

tendered which could be looked into and in relation to such documents privilege u/s 123 of the Evidence Act could be claimed subject to the limitations thereto. In explaining the extent of bar under Article 74(2), it is stated that inquiring into question whether any, and if so, what advice was tendered by the Ministers to the President is barred. Thus the object of Article 163(3) is not to exclude any material or documents from the scrutiny of the courts, but to provide that an order issued by or in the name of the President could not be questioned on the ground that it was either contrary to the advice tendered by the Ministers or was issued without obtaining any advice from the Ministers. Its object was to make the question whether the President had followed the advice of the Ministers or acted contrary thereto, non justiciable. What advice, if any, was tendered by the Ministers to the President was thus to be beyond the scrutiny of the court. The actual advice tendered by the Council of Ministers gets immunity from production and the court shall not inquire into the question whether and if so what advice was tendered by the Ministers. In other words, the material other than the advice tendered by the Minister to the Governor, if found necessary, may be looked into. Thus the Cabinet decision authorising the Chief Minister or the Chief Minister tendering any advice to the Governor cannot be looked into or examined by this Court in view of the clear bar under Article 163(3) of the Constitution of India.

9. The argument articulated on behalf of the petitioner is that this Court is enquiring into a stage anterior to the tendering of advice that is. at the stage of formulation of advice by the Cabinet, the action of the Cabinet having been disclosed already, it is not impermissible for this Court to examine the same. As stated earlier, the Constitutional bar is clear as to the consideration of the question as to whether any advice was tendered at all by the Cabinet or only tendered by a Minister and therefore, I find it difficult to accept the contention advanced on behalf of the petitioner in this regard that it is still open for this Court to inquire into the same to give a finding that the action of the Governor is ultra vires the Business Rules. If the Business Rules alone held the field, perhaps an enquiry could have been made into and a finding given thereof. But, in view of the constitutional immunity in regard to inquiry contained in Article 163(3), I find no hesitation in refusing to inquire into the question whether any advice was tendered by the Cabinet or by the Chief Minister alone to the Governor.

10. In such matters, when a question arises as to a case where a Cabinet is charged with responsibility, but advice is tendered in that regard by the Chief Minister or any other Minister alone to the Governor, it is the Governor alone who can decide such a matter and not the court before which such question is raised for it cannot enquire into such a question. Under Article 163(1) the Governor is to be aided and advised by Council of Ministers with the Chief Minister at the head and under Article 167 it is the duty of the Chief Minister to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation and to furnish information called for by him and if the Governor so requires, to submit

for consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. In case if the Governor thinks that the Rules of Business have been violated, it is certainly open to him to call upon the Cabinet to take a decision in the matter. Therefore, I find it hard to accept the contention advanced on behalf of the petitioner that in such cases the court also has power to enquire into the same. In view of the constitutional position as explained above, this petition is liable to and is dismissed. Rule discharged.

11. Petition dismissed.