

(2020) 04 BOM CK 0004

In the Bombay High Court

Case No : AD-HOC No. WP-LD-VC-2 Of 2020

Ramkrishnan @ Rajesh Govindswamy Pillay, President
(Conveyor)

APPELLANT

Vs

State Of Maharashtra And Ors.

RESPONDENT

Date of Decision : 20-04-2020

Acts Referred:

Constitution Of India, 1950 — Article 163, 164(4), 166(3), 171, 171(1), 171(2), 171(3), 171(3)(a), 171(3)(b), 171(3)(c), 171(3)(d), 171(e), 171(3)(e), 171(5), 226

Citation : (2020) 04 BOM CK 0004

Hon'ble Judges : S.J.Kathawalla, J

Bench : Single Bench

Advocate : A.G.Damle, Vijay Killedar, A.A.Kumbhkoni, P.P.Kakade, B.V.Samant, M.M.Pable, P.G.Sawant, A.P. Shinde, Rahul Chitnis, Ashutosh Kulkarni

Judgement

1. The above Writ Petition is filed by the Petitioner for the following reliefs :

â??(a) Rule be issued and record and proceedings be called for.

(b) This Honâ??ble Court be pleased to issue Writ of Certiorari or any other appropriate writ in the nature of Writ of Certiorari and thereby be

pleased to quash and set aside the impugned decision dated 09.04.2020 passed in the illegally and unauthorisedly convened meeting of Council of

Ministers, thereby recommending the name of Respondent No. 2 for being nominated as Member of Legislative Council by in terms of Article 171 (3)

(e) of Constitution of India.

(c) Pending hearing and fnal disposal of the present Writ Petition, this Honâ??ble Court be pleased to stay the efect, implementation and / or

execution of the impugned decision dated 09.04.2020 passed in the illegally and unauthorisedly convened meeting of Council of Ministers, thereby

recommending the name of Respondent No. 2 for being nominated as Member of Legislative Council by in terms of Article 171 (3) (e) of Constitution of India.â??

2. According to the Petitioner, he is a social worker and an acclaimed sportsman. He is also affiliated to Bhartiya Janata Party (BJP) and at present he is a member of the Working Committee of BJP in the State of Maharashtra.

3. The State of Maharashtra through its Chief Secretary is arrayed as Respondent No.1. Respondent No. 2 â?" Shri Udhhav Bal Thackeray, is at

present the Chief Minister of the State of Maharashtra. Respondent No. 3 is the Honâ??ble Governor of State of Maharashtra. Respondent No. 4

â?" Shri Ajit Anant Pawar is presently the Deputy Chief Minister and Cabinet Minister (Finance) of the State of Maharashtra.

4. By the present Writ Petition, the Petitioner has challenged the decision dated 9th April, 2020 passed by the Council of Ministers thereby

recommending the name of Respondent No. 2 for being nominated as a member of the Legislative Council in terms of Article 173 (3) (e) of the Constitution of India.

5. The relevant facts and provisions of law are in brief set out hereunder :

5.1. That the General Assembly Elections in the State of Maharashtra were held by the State Election Commissioner on 21st October, 2019.

5.2. That on 28th November, 2019 the Respondent No. 2 - Shri Udhhav Bal Thackeray came to be elected as Chief Minister of the State of Maharashtra.

5.3. Respondent No. 2 - Shri Udhhav Bal Thackeray, who is elected as Chief Minister of the State of Maharashtra is admittedly not a Member of the

State Legislative Assembly or the State Legislative Council. He is required to be a Member of either of the houses before expiry of six months from

the date of his appointment i.e. on or before 28th May, 2020, failing which he shall cease to be the Chief Minister / Minister under Article 164 (4) of

the Constitution of India.

5.4. Article 171 of the Constitution of India pertains to the composition of legislative councils. Clause (1) of Article 171 provides that the total number

of members in the Legislative Council of a State having such a Council shall not exceed (one-third) of the total number of members in the Legislative

Assembly of that State and further provides that the total number of members in the Legislative Council of a State shall in no case be less than forty.

Clause (2) of Article 171 makes it clear that until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be

as provided in Clause (3) of Article 171. Sub Clauses (a) to (d) of Clause (3) of Article 171 prescribe the number of persons to be elected to the

Legislative Council, whilst Clause (e) of Article 171 provides nomination of the remainder by the Governor in accordance with the provisions of

Clause (5). Clause (5) of Article 171 provides that the members to be nominated by the Governor under Sub Clause (e) of Clause (3) shall consist of

persons having special knowledge or practical experience in respect of matters such as literature, science, art, co-operative movement and social

service.

5.5. Article 163 of Constitution of India reads thus :

â??163. Council of Ministers to aid and advise Governor. - (1) There shall be a Council of Ministers with the 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.â??

5.6. That on 9th April, 2020 a meeting of the Council of Ministers was held under the chairmanship of Respondent No. 4 - Shri Ajit Anant Pawar, who

is the Deputy Chief Minister, at which meeting it was decided to recommend to the Honâ??ble Governor that Respondent No. 2 - Shri Udhhav Bal

Thackeray be nominated as Member of the Legislative Council on one of the two seats that are vacant as on date under Article 171 (3) (e) of the

Constitution of India. The reason recorded for such proposal, was that on account of the pandemic, it is unlikely that the elections for Legislative

Council would be held.

6. The Petitioner has by the above Writ Petition impugned the said decision / proposal dated 9th April, 2020 taken by the Council of Ministers inter alia

on the following grounds :

i. That the purported meeting was held under the chairmanship of Respondent No. 4 "Shri Ajit Anant Pawar, Deputy Chief Minister, State of

Maharashtra, though the Chief Minister had not delegated the power to preside over the meeting of the Cabinet Ministers held on 9th April, 2020 in

favour of any Minister including the Deputy Chief Minister

ii. That the Chief Minister was not present in the meeting though he was not incapacitated in any manner to convene and preside over the meeting of

Cabinet Ministers.

iii. That the concept of Deputy Chief Minister is not at all constitutionally recognised and in fact the Division Bench of this Court has in the case of

Devidas Venkatarao Pawar Versus Gopinath Munde, reported in 1995 (2) Mah LJ 711 specifically held that describing any Minister as Deputy Chief

Minister was only descriptive. Therefore, the meeting dated 9th April, 2020 and the consequent decision and recommendation for nomination is itself

void being illegal and bad in the eyes of law.

iv. That the State of Maharashtra promulgated the Maharashtra Government Business Rules as per the mandate of Article 166 (3) of Constitution of

India. Further as per Rule 15, it is specifically contemplated that appropriate Instructions, in support of these Rules, can be issued by the Hon'ble

Governor on advice of the Chief Minister. Accordingly, various Instructions have been issued from time to time. However, as set out in the Petition

the meeting dated 9th April, 2020 was held in contravention of the said Rules and instructions.

v. That in spite of the above aspect being brought to the notice of Respondent No. 1 vide representation / objection dated 12th April, 2020 issued in the

nature of Press Release, the authorities have not applied their judicious mind.

vi. That since the decision dated 9th April, 2020 is by the Council of the Ministers itself, the Petitioner apprehends legal malafides and no fruitful

purpose will be served by approaching the State Authorities.

vii. That the impugned decision dated 9th April, 2020 is not only dehors the provisions of the Rules, but the same is a result of legal and factual

malafides, which warrants judicial review of the impugned decision / advice dated 9th April, 2020 in exercise of the extraordinary jurisdiction vested in

this Court under Article of 226 of

7. The learned Advocate General for the State of Maharashtra has raised the plea of maintainability of the present Writ Petition, which plea is kept

open since the Writ Petition is not admitted and / or disposed of finally today.

8. I have considered the submissions made in the Writ Petition and also by the learned Senior Advocate appearing for the Petitioner and the learned

Advocate General for the State of Maharashtra. The nomination of a member under Sub Clause (e) of Clause (3) of Article 171 of the Constitution of

India read with Clause (5) of that Article is a function to be exercised by the Honâ??ble Governor. Under Article 163 of the Constitution of India, the

Council of Ministers aid and advise the Honâ??ble Governor for such exercise. What the Council of Ministers have done here is giving such aid and

advice of appointing Respondent No. 2 - Shri Udhhav Bal Thackeray as member of the Legislative Council in terms of Article 171 (3) (e) of the

Constitution of India. They have thus made a proposal / recommendation to the Honâ??ble Governor to use the power conferred upon him under

Article 171 (3) (e) of the Constitution of India and appoint Respondent No. 2 - Shri Udhhav Bal Thackeray as a member of the Legislative Council of

the State of Maharashtra. The Petitioner himself has averred in para 2 of the Petition that the Honâ??ble Governor is bound â??only by the valid aid

and advice of Council of Ministers as per the constitutional mandate.â?? The Honâ??ble Governor has till date not taken any decision qua the proposal

/ recommendation received / to be received from the Council of Ministers. The Honâ??ble Governor whilst considering the proposal /

recommendation of the Council of Ministers is expected to consider whether the proposal / recommendation received from the Council of Ministers is

valid in law. In my view, the Courtâ??s interference at this stage is not at all required since any such interference at this stage would amount to

preventing the Honâ??ble Governor from taking an independent decision inter alia qua the validity of the proposal received by him. The reliefs sought

in the Writ Petition therefore appear to be premature. The Petitioner at this stage is not entitled to any urgent reliefs.

9. This order will be digitally signed by the Personal Assistant of this Court. All

concerned will act on production by fax or email of a digitally signed copy of this order.