
(2002) 09 AHC CK 0191
In the Allahabad High Court
Case No : Writ Petition No. 4786 (M/B) of 2002

Social Action for People's Rights and Another	APPELLANT
Vs	
State of Uttar Pradesh	RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Constitution of India, 1950 — Article 163(1), 164, 164(1), 164(2), 178

Citation : AIR 2003 All 250

Hon'ble Judges : Vishnu Sahai, J; Kamal Kishore, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; S.C. Misra, A.G., for the Respondent

Final Decision : Dismissed

Judgement

Vishnu Sahai, J.—Petitioner No. 2 Major Sheshmani Nath Tripathi (Retd.), who styles himself as the President of Petitioner No. 1 - Social Action for People's Rights, an association of individual citizens of India possessing rights and freedom guaranteed to a citizen of India, has preferred the present writ petition (which has been registered under the caption of Public Interest Litigation), under Article 226 of the Constitution of India with a prayer that this court be pleased to declare the appointment of the present Chief Minister of U. P. Miss Mayawati, made on 3rd May, 2002, when the U. P. Legislative Assembly was non-existent, as unconstitutional and ultra vires of Clause (2) of Article 164 of the Constitution of India. It has also been prayed that any other relief which this Court feels just and proper be granted to the petitioners.

2. In short, the factual matrix from which this writ petition arises, is as under :-- On 26-2-2002 Election Commission issued a notification u/s 73 of the Representation of the People Act, 1951 constituting the 14th Legislative Assembly in the State of Uttar Pradesh. Since the election results showed that the mandate of the voters was fractured and no single party was in a position to individually form a Government; on 26-2-2002, itself, Mr. Babu Ram Kushwaha,

the Private Secretary of Vice-President of Bahujan Samaj Party, (hereinafter referred to as B. S. P.,) informed His Excellency. The Governor of Uttar Pradesh that B. S. P. will not support Mr. Mulayam Singh Yadav of Samajwadi Party to form the Government. Mr. Mulayam Singh Yadav met the Governor and staked his claim to form the Government, on which the Governor asked him to furnish a list of the members supporting his claim but he did not furnish the same. Mr. Raj Nath Singh, leader of the Vidhan Mandal Dal of Bhartiya Janata Party along with Mr. Lalji Tandon also met the Governor and apprised him that Bhartiya Janta Party had decided not to support any party and the said stand was reiterated by letter dated 5-3-2002. A day earlier i.e. on 4-3-2002, Mr. Ajit Singh, President Rashtriya Lok Dal had met the Governor and informed him in writing that his party consisting of 14 M. L. As would not support the Samajwadi Party in formation of the Government. In these circumstances. the Governor sent his report to the President of India, who on 8-3-2002 issued a proclamation under Article 356 of the Constitution of India, whereby some provisions of the Constitution were suspended; the assembly was kept in suspended animation; and President's rule was imposed in the State of Uttar Pradesh. Between 27-4-2002 and 29-4-2002 the Presidents of various political parties like Janata Dal (United), Rashtriya Lok Dal, legislators of Loktantrik Party, Mr. Raj Nath Singh, leader of B. J. P. Vidhayak Dal, leader of Vidhan Mandal Dal of Lok Jan Shakti Party and independent M. L. A's from Puwayan (District Shahjahanpur) Mr. Mithilesh Kumar, from Hasanpur (District Gautam Budh Nagar) Mr. Arun Kumar Yadav, from District Gorakhpur, Mr. Jitendra Kumar Jaiswal, and Mr. Ram Nath Saroj (from District Pratapgarh) informed the Governor of U.P. that they were prepared to support the Government to be formed under the leadership of Ms. Mayawati. On 29-4-2002 Ms. Mayawati (leader of Vidhan mandal Dal of B. S. P. and Vice-President of B. S. P.) requested the Governor of U.P. that B. S. P. under her leadership had decided to form a coalition Government with Bhartiya Janata Party and Sahyogi Dals (supporting parties) and the total number of such members was in majority and they had given her letters of support. Consequently Ms. Mayawati requested the Governor to invite her to form a coalition Government. On the report of the Governor of U. P., on 3-5-2002, the proclamation dated 8-3-2002 imposing the President's rule in the State of U.P. was revoked and on the said date, itself, Ms. Mayawati was sworn in as the Chief Minister of Uttar Pradesh. Some other ministers were also sworn in on her advice, and she was allowed 21 days time to prove her majority in the U. P. Legislative Assembly.

On 13-5-2002 newly elected members of the Legislative Assembly were administered path and affirmation, in terms of Article 188 of the Constitution of India. On 14-5-2002 Mr. K.N. Tripathi was elected as Speaker of the Legislative Assembly, under Article 178 of the Constitution of India. On 17-5-2002 Legislative Assembly passed the vote of confidence in favour of Ms. Mayawati, the Chief Minister of U. P.

3. We have heard petitioner No. 2 in person for the petitioners and Mr. S.C.

Misra, learned Advocate General of the State of U. P. for the respondent (State of U. P.). The main submission of petitioner No. 2 is that Article 164(1) of the Constitution of India, which provides that 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", is subject to the provisions contained in Article 164(2) of the Constitution of India, which read that "the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State." Petitioner No. 2 strenuously urged that since the Council of Ministers by virtue of the provisions contained in Article 164(2) of the Constitution of India is collectively responsible to the Legislative Assembly of the State and on 3-5-2002 the members of the legislative Assembly of the State had not taken oath or affirmation in terms of Article 188 of the Constitution of India and the Speaker had not been elected as mandated by Article 178 of the Constitution of India the Legislative Assembly could not transact business in terms of Article 189 of the Constitution of India and the Constitutional mandate that the Council of the Ministers was collectively responsible to the Legislative Assembly of the State was breached and the action of the Governor of U. P., under Article 164(1) of the Constitution of India, in appointing Ms. Mayawati as the Chief Minister of the Council of Ministers was ultra vires of the provisions contained in Article 164(2) of the Constitution of India.

4. The learned Advocate General, on the other hand, refuting the submission of the 2nd petitioner invited our attention to para 17 of the decision rendered by the Apex Court in the case of Pashupati Nath Sukul and Others Vs. Nem Chandra Jain and Others, He contended that in para-17 the Apex Court has laid down that on publication of the notification u/s 73 of the Representation of the People Act, an assembly would be deemed to be duly constituted. He urged that since notification u/s 73 of the Representation of the People Act had been issued by the Election Commission on 26-2-2002 the Legislative Assembly would be deemed to have been constituted and therefore, the submission of the 2nd petitioner that the Council of Ministers under Article 164(1) of the Constitution of India was not collectively responsible to Legislative Assembly under Article 164(2) of the Constitution of India, was misconceived. Learned Advocate General also invited our attention to para 10 of the Division Bench decision of this Court reported in Har Sharan Varma Vs. Tribhuvan Narain Singh, Chief Minister, U.P. and Others, , wherein it has been laid down thus :-- "The electorate has no direct hand in the appointment of the Chief Minister or even of the Council of Ministers. What the Governor has to take care of is that the Council of Ministers is made by Article 164(2) collectively responsible to the Legislative Assembly of the State and the Council of Ministers should, therefore, be such as would command the confidence of the Legislative Assembly. If the Governor feels satisfied that a majority of the members of the Legislative Assembly have confidence in a particular person, even if he is not a member of the Legislative Assembly or of the Legislative Council, and they want him to form the Council of

Ministers, then the requirements of Clause (2) of Article 164 shall be satisfied and no express provision or principle underlying this democratic Constitution will be violated. The learned Advocate General contended that since the Governor on the basis of cogent material was satisfied that since the coalition headed by Ms. Mayawati enjoyed confidence of the Legislative Assembly, there was no constitutional impediment in his way in appointment Ms. Mayawati as the Chief Minister.

5. We have given our anxious consideration to the rival contentions and are constrained to observe that in our judgment this writ petition does not merit admission. However we make no bones in observing that we are not impressed with the first submission canvassed by the learned Advocate General because para 17 of Pashupati Nath Sukul's case (supra) only lays down that on publication of a notification u/s 73 of the Representation of the People Act, an Assembly would be deemed to be constituted and for a Council of Ministers appointed under Article 164(1) of the Constitution of India to fulfil the requirements in Article 164(2) of the Constitution of India, it is necessary that not only should the legislative Assembly be duly constituted but also be functional and for the same oath or affirmation by its members under Article 188 of the Constitution of India, and election of its speaker under Article 178 of the Constitution of India, would be necessary and then and then only would the Legislative Assembly be able to transact its business under Article 189 of the Constitution of India; under which provision Ms. Mayawati, the Chief Minister of U. P. had to seek confidence of the Legislative Assembly.

6. But we have no reservations in observing that the submission of the 2nd petitioner that existence of the Legislative Assembly in terms of Articles 188, 178 and 189 of the Constitution of India is a condition precedent before the Council of Ministers can be sworn in under Article 164(1) of the Constitution of India, is misconceived. We say this because apart from the fact that the Constitution does not stipulate that the legislative Assembly has to be in existence in terms of the said Articles before a Council of Ministers can be sworn in under Article 164(1), the whole scheme of the provisions of Constitution, if read harmoniously, as it should be, leads to this inference,

7. Article 164(1) of the Constitution of India provides that "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."

Article 164(1) provides that "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."

Article 164(2) reads :-- "The Council of Ministers shall be collectively responsible

to the Legislative Assembly of the State."

8. In our view if the aforesaid three Articles are read conjunctively, as they should, be it would become manifest that unless a State is under President's Rule, by virtue of a proclamation issued by the President of India under Article 356 of the Constitution of India, there shall always be a Council of Ministers with the Chief Minister as its head, to aid and advise the Governor in exercise of his functions excepting those which he is by or under the Constitution required to exercise or in his discretion. In our judgment, in a case like the present where members of the Legislative Assembly had not taken oath or affirmation under Article 188 of the Constitution of India, the Speaker had not been appointed under Article 178 of the Constitution of India, and the Legislative Assembly was not in a position to transact its business under Article 189 of the Constitution of India, Article 164(2) would not be operational. The view, which we have taken, receives assurance by the logic furnished by the Apex Court and the ratio laid down by it in the case *U.N.A. Rao Vs. Smt. Indira Gandhi*, A perusal of paragraph Nos. 1, 2, 3, 6, 7, 8, and 9 of the said decision shows that U.N. Rao had preferred an appeal, by certificate, against the judgment of the Madras High Court, dismissing his writ petition, wherein he had prayed that a writ of quo warranto be issued against the respondent Smt. Indira Gandhi because the House of the People was dissolved by the President of India on December 27, 1970 and therefore, the respondent Smt. Indira Gandhi, who was the head of the Council of Ministers, was not accountable to the House of the People in terms of Article 75(3) of the Constitution of India, Repelling the said contention the Apex Court held that the provisions contained in Articles 74 and 75 must be read harmoniously, It held that Article 74(1) of the Constitution of India, which provided that "There shall be a Council of Ministers with the Prime Minister fit the head to aid and advise the President who shall in the exercise of his functions act in accordance with the said advice" was mandatory and the provisions contained in Articles 75(3), 74(1) and 75(2) should be harmoniously read. In para 9 the Apex Court laid down "In other words the Council of Ministers must enjoy the confidence of the House of the People. While the House of People is not dissolved under Article 85(2)(b), Article 75(3) has full operation. But when it is dissolved the Council of Ministers cannot naturally enjoy the confidence of the House of People. Nobody has said that the Council of Ministers does not enjoy the confidence of the House of People when it is prorogued. In the context, therefore, this clause must be read as meaning that Article 75(3) only applies when the House of People does not stand dissolved or prorogued.

9. In our view since the provisions --contained in Article 163(1) are *pari materia* to those contained in Article 74(1); those contained in Article 164(1) are *pari materia* to those contained in Article 75(1); and those contained in Article 164(2) are *pari materia* to those contained in Article 75(3), it follows as a logical imperative that till the time members of the Legislative Assembly do not take oath or affirmation under Article 188 of the Constitution of India, the Speaker is not appointed under Article 178 of the Constitution of India and the Legislative

Assembly is not in a position to transact its business in terms of Article 189 of the Constitution of India, Article 164(2) of the Constitution of India would not be operational.

For the aforesaid reasons we do not find any merit in the submission of petitioner No. 2.

10. Before proceeding to the operative part of this order, we would like to deal with another submission canvassed by the learned Advocate General, namely that since this petition has been vexatiously filed by the petitioner No. 2 heavy costs be imposed on him, The learned Advocate General urged that unless this is done persons like petitioner No. 2, who seek cheap popularity or harbour a latent vendetta or both, against high constitutional functionaries, would keep on tiling such frivolous petitions, We have reflected over the said submission and are constrained to observe that we do not find any merit in it. In our view, this petition cannot be castigated as vexatious and the 2nd petitioner, who raised an apparently arguable question in it, was perfectly justified in filing it. It is well settled that in a matter of public interest petition citizen has the right to file a writ petition under Article 226 of the Constitution of India. In our view, the exercise of such a right is necessary for a healthy democracy and we certainly do not want to silence it, for times to come, by saddling petitioner No. 2 with heavy costs, as urged by the learned Advocate General, because then there is the danger of our democratic policy, which is a basic feature of our Constitution, coming under peril.

11. For the aforesaid reasons, we dismiss this writ petition.