

(1986) 01 AHC CK 0034
In the Allahabad High Court
Case No : Writ Petition No. 655 of 1986

Udai Narain Sinha

APPELLANT

Vs

The Council of Ministers and Another

RESPONDENT

Date of Decision : 24-01-1986

Acts Referred:

Constitution of India, 1950 — Article 163, 164, 174, 174(2), 226
Representation of the People Act, 1951 — Section 15(2), 73

Citation : AIR 1986 All 357

Hon'ble Judges : S. Saghir Ahmad, J;G.B. Singh, J

Bench : Division Bench

Advocate : H.N. Prasad, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S. Saghir Ahmad, J.—The petitioner by means of this petition has prayed for the following reliefs: --

"A. A Writ of certiorari, order or direction in the nature of certiorari quashing the notification issued by the Election Commission Annexure-2 to this writ petition.

B. A writ, order or direction in the nature of mandamus commanding the opposite party No. 2 to comply with the order passed by the Governor Annexure-5 to this writ petition.

C. A writ of quo warranto asking opposite party No. 1 to show to whom they are responsible under Article 164(2) of the Constitution.

D. A writ of mandamus, order or direction in the nature of mandamus commanding opposite party No. 2 to recover amount at the rate of Rs. 500/- for per sitting from the member of so-called IX Legislative Assembly as debt due to the State in compliance of Article 193 of the Constitution.

E. A writ of mandamus, order or direction in the nature of mandamus commanding the Governor of Uttar Pradesh to recommend the President Rule

immediately in the State of Uttar Pradesh as Legislative Assembly has been dissolved and at present there is no Assembly which can function as Representative of peoples.

F. A writ of mandamus, order or direction in the nature of mandamus for bearing the Chief Minister of Uttar Pradesh to perform any-action as the Chief Minister of so-called 9th Legislative Assembly in Uttar Pradesh.

G. A writ, order or direction as this Hon''ble Court may deem fit in the nature and circumstances of the case.

H. And to allow cost of the writ petition"

2. It is contended by the petitioner that 8th Legislative Assembly of Uttar Pradesh commenced on 27th June, 1980 and therefore it had to continue till 27th June, 1985. In the meantime, a notification was issued on 30th Jan. 1985 by the Governor of Uttar Pradesh u/s 15(2) of Representation of the People Act, 1951 (hereinafter referred to as the Act) calling upon all assembly constituencies in the State to elect members for the purposes of constituting a new Legislative Assembly. The Election Commission by its separate Notification dt. 30-1-85 fixed 6th Feb. 1985 as the date for making nominations, 7th February as the date for scrutiny of nominations and 9th Feb. 1985 as the last date for withdrawal of the candidature. A separate date for poll was also fixed. After the elections for constituting the new Legislative Assembly were held, a notification was issued by the Election Commission u/s 73 of the Act on 10th March, 1985 by which the names of the elected members were notified. The same day a notification was issued by the Governor of Uttar Pradesh under Sub-clause (b) of Clause (2) of Article 174 of the Constitution by which the U. P. Legislative Assembly was dissolved. On the same day, i.e., on 10th March, 1985, the resignations of the Chief Minister and the members of his Cabinet were accepted by the Governor vide Annexure-6. The next day, i.e. on 11th March, Sri Narain Dutt Tewari was appointed the Chief Minister of U.P.

3. Sri Udai Narain Sinha, who has appeared before us in person and has argued the case, has raised three principal contentions; (i) on the issuance of a notification u/s 73 of the Act, new Uttar Pradesh Legislative Assembly was constituted on 10th March, 1985 which was dissolved by the Governor of Uttar Pradesh by a notification issued on the same date under Article 174 of the Constitution. There was therefore no Assembly in existence which could be convened for the Budget Session; (ii) even if it is held that there was a new Assembly constituted on 10th March, 1985 it could not legally function as the old Assembly constituted on 27th June, 1980 had to remain in existence till 27th June, 1985 and, therefore, no Council of Ministers could be formed prior to that date; (iii) Article 327 authorises the Parliament to make laws with regard to all matters relating to or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and "all other

matters necessary for securing the due constitution of such House or Houses". This cannot be construed to authorise the Parliament to make law that the State Assembly shall be deemed to be constituted with effect from a specific date.

4. We are not impressed by any of the above contentions raised by Sri Sinha.

5. It is not disputed that in order to constitute a new Legislative Assembly the relevant notifications were issued under the Act as also under the Constitution by the Election Commission and the Governor. After the elections were held there was, admittedly, a notification issued by the Election Commission u/s 73 of the Act, The provisions contained in Section 73 may be reproduced below :

"73. Where a general election is held for the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be notified by the Election Commission in the Official Gazette, as soon as may be after the results of the elections in all the constituencies other than those in which the poll could not be taken for any reason on the date originally fixed under Clause (d) of Section 30 or for which the time for completion of the election has been extended under the provisions of Section 153, have been declared by the Returning Officer under the provisions of Section 53 or, as the case may be, Section 66, the names of the members elected for those constituencies and upon the issue of such notification that House or Assembly shall be deemed to be duly constituted :

Provided that the issue of such notification shall not be deemed-

(a) to preclude-

(i) the taking of the poll and the completion of the election in any Parliamentary or Assembly constituency or constituencies in which the poll could not be taken for any reason on the date originally fixed under Clause (d) of Section 30; or

(ii) the completion of the election in any Parliamentary or Assembly constituency or constituencies for which time has been extended under the provisions of Section 153; or

(b) to affect the duration of the House of the People or the State Legislative Assembly, if any, functioning immediately before the issue of the said notification."

6. A perusal of the provisions quoted above would indicate that on the issuance of notification u/s 73 by the Election Commission, the Assembly is treated to have been duly constituted. Such notification was undoubtedly issued on 10th March, 1985 and, therefore, a new Assembly stood constituted on that date.

7. Under Article 172 of the Constitution the duration of a State Legislature for which it can continue is five years from the date appointed for its first meeting. The expiration of the period of five years is to automatically operate as the dissolution of the Assembly. Article 172(1) may be quoted below :

"172(1). Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly :

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate."

8. This Article clearly contemplates dissolution at any earlier stage. It also contemplates that every Legislative Assembly shall continue for five years from the date appointed for the first meeting. It, therefore, clearly contemplates that the Assembly can be dissolved only after its term has commenced. This Article is to be read along with Article 174 which is reproduced below : -

"174(1). The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time--(a) prorogue the House or either House; (b) dissolve the Legislative Assembly."

Article 174(2)(b) clearly contemplates that the Governor may dissolve a Legislative Assembly.

9. In the instant case by notification dt. 10th March, 1985 the Legislative Assembly was dissolved. The contention of Sri Sinha is that because in that notification which is contained in Annexure-5 the word "Eight" was not mentioned, it would be treated to have dissolved the new Assembly which was constituted in pursuance of the notification issued by the Election Commission on the same date u/s 73 of the Act.

10. The Legislative Assembly constituted in the year 1980 would have, undoubtedly, continued till 27th June, 1985 but then a notification was issued by the Governor u/s 15(2) of the Act calling upon all the Assembly constituencies in the State to elect members. A perusal of this notification, which is contained in Annexure-1 will show that this notification was issued pursuant to the decision to hold a general election in the State of U. P. for the purpose of constituting a new Legislative Assembly on the expiration of the duration of the existing Legislative Assembly. The existing Legislative Assembly was admittedly the 8th Legislative Assembly. It was on the expiration of the duration of this Assembly that a new Legislative Assembly was proposed to be constituted after fresh General Elections. It is not disputed by Sri Sinha that pursuant to the issuance of the notification contained in Annexures Nos. 1 and 4 issued respectively by the Governor u/s 15(2) and by the Election Commission u/s 30 of the Act, fresh General Elections were held in the State which were followed by the Notification

dt. 10th March, 1985 issued by the Election Commission u/s 73. Since, u/s 73 of the Act a notification was issued by the Election Commission on 10th March, 1985 a new Assembly stood constituted on that date. It was, therefore, no longer necessary to allow the old Legislative Assembly to complete the full term of five years. The Governor, therefore, in exercise of his powers under Article 174(2)(b) read with Article 172 of the Constitution dissolved the then existing Assembly. Since after the dissolution, there was no Assembly in existence of which the Council of Ministers could claim confidence, the Chief Minister as also members of his Cabinet submitted their resignation to the Governor which was accepted. But in view of the provisions contained in Article 163 of the Constitution which provides that there shall be a Council of Ministers to advise the Governor, the Chief Minister and members of his Cabinet were directed by the Notification contained in Annexure-6 to look after the Government work till a new Cabinet was constituted. As laid down by the Supreme Court in U.N.A. Rao Vs. Smt. Indira Gandhi, the Council of Ministers has to continue until its successor assumes charge of office under the Constitution. During the intervening period, therefore, a writ of quo warranto will not lie against the Chief Minister or any member of his Cabinet.

11. The next day a new Chief Minister was appointed by the Governor (vide Notification dt. 11-3-85 contained in Annexure-3).

12. In the above circumstances it cannot be said that the new Legislative Assembly did nor come into existence. As pointed out earlier a new Assembly stood constituted on the notification issued by the Election Commission u/s 73 of the Act which is to continue for five years from the date appointed for its first meeting as contemplated by Article 172 of the Constitution.

13. Sri Sinha has invited our attention to para 8 of the petition in which reference has been made to two Supreme Court decisions. This para of the petition may be quoted below :

"8. That with reference to language used by the Governor in notification. A true copy of the same is attached to this petition as Annexure-5 Uttar Pradesh Legislative Assembly which was composed before 9th March, 1985 deem to have been dissolved with effect from 10th March, 1985 as such other Assembly forming part of legislature was known as the Eight Legislative Assembly in Uttar Pradesh.

Now it is no more a controversial point as the Hon''ble Supreme Court settled the law in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, at page 18 which was approved by a Larger Bench in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, at page 858 para 8 as follows :

"Public orders publicly made in exercise of a statutory authority cannot be construed in the light of explanation subsequently given by the Officer making the order of what he meant or of what was in his mind or what he intended to

do. Public orders made by Public authorities are meant to have public effect and are intended to affect the acting and conduct of those of whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older."

The decision of the Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, which is based on an earlier decision of that Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, cannot be applied in the facts of the present case because in the present case no other meaning is sought to be given to the notification of 10th March, 1985 by the opposite parties.

14. We have considered the notification and we are definitely of the opinion for the reasons already recorded that even in the absence of word "Eighth" the notification purported to dissolve the Assembly which was then in existence and which would have, but for its dissolution, completed the five year term on 27th June, 1985.

15. Article 327 of the Constitution provides as under : --

"327. Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, election to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses."

16. The emphasis of Sri Sinha is on the words "all matters necessary for securing due constitution of such House or Houses". The phrase quoted above, cannot, according to Sri Sinha envisage that it would be open to the Election Commission to issue a notification that the Legislative Assembly of a State stands constituted.

17. We are not impressed.

18. The phrase "all other matters necessary for securing the constitution of such House or Houses" is couched in a language which is to be given widest meaning. The words "matters necessary for securing due constitution" would necessarily include the issuance of notification for the due constitution of the House. If such a law has been made by the Parliament and the Election Commission under that law has issued a notification for the due constitution of the house, that law cannot be said to be violative of the provisions of Article 327 of the Constitution.

19. That being so, there does exist a validly constituted Legislative Assembly and, therefore, the reliefs claimed in this petition cannot be granted. The petition being without merits is dismissed summarily.

20. Immediately after the above judgment was dictated. Sri Sinha made an oral request for leave being granted to him for filing an appeal in the Supreme Court.

In our opinion, the petition does not raise any substantial question of law of general importance. We have already held above that the contention raised in this petition are without merits. The leave prayed for is, therefore, rejected.