

(1995) 09 KAR CK 0037
In the Karnataka High Court
Case No : Writ Appeal No. 2624 of 1995

Venkatesh Babu

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:

Constitution of India, 1950 — Article 164

Citation : (1996) 5 KarLJ 47

Hon'ble Judges : M. L. Pendse, C.J.;A. J. Sadashiva, J

Judgement

M.L. Pendse, C.J.-Appeal admitted. Sri Advocate General waives service on behalf of the respondents. By consent appeal taken on Board and called out for hearing.

An interesting argument about true ambit of Articles 163 and 164 of the Constitution was ably presented in this appeal, preferred to challenge the order dated January 3, 1995 passed by the learned Single Judge summarily dismissing the writ petition filed under Article 226 of the Constitution. The petitioner sought a writ of quo warranto, restraining respondents 2 and 3 to hold the office of the Chief Minister and Deputy Chief Minister respectively unless a fresh oath is administered by the Governor.

2. The five years duration of IX Karnataka Assembly was to expire on 17th December, 1994. The poll for electing Members of the X Karnataka Assembly was held and results were declared by 10th December, 1994. Respondents 2 and 3 were not Members of the (IX Assembly but were duly elected in the poll held in December 1994. The ruling party lost the majority in the poll results declared and the Chief Minister submitted resignation of his Council of Ministers and which was duly accepted by the Governor. The party to which respondents 2 and 3 belong secured majority in the poll and the Governor called upon respondents 2 and 3 to hold the posts of Chief Minister and Deputy Chief Minister on 11th December, 1994. The Governor administered oath of office to respondents 2 and 3. The Election Commission published a notification contemplated under Section 73 of Representation of the People Act, 1951 in the Government Gazette on 14th

December, 1994 and on such publication the Assembly was deemed to have been duly constituted. The first meeting of the newly elected Members of the X Assembly was convened on 27th December, 1994. Respondents 2 and 3 have continued to hold their respective offices all along.

3. On these undisputed facts the petitioner approached this Court and claimed that respondents 2 and 3 are not legally entitled to hold the office after the dissolution of the IX Assembly unless the Governor administers a fresh oath to these respondents. It was claimed that on the expiry of the term of the IX Assembly the offices of Chief Minister and Deputy Chief Minister automatically comes to an end and on Constitution of fresh assembly it was incumbent upon the Governor to administer fresh oath to enable respondents 2 and 3 to continue in office. The petitioner claimed that unless the oath is administered by Governor to respondents 2 and 3 in respect of the X Assembly, respondents 2 and 3 are debarred from discharging the official functions. The relief sought by the petitioner was resisted by the respondents by claiming that the tenure of the office of Chief Minister does not depend upon the tenure of the Assembly. It was claimed that it is open for the governor to appoint any person as the Chief Minister and such person even though not a Member of any House is entitled to continue in office for a duration of six consecutive months and would cease to hold the office, in case he is not elected to any of the Houses during that period. The respondents further claimed that as respondents 2 and 3 were duly elected as Members of the X Karnataka Assembly it was not necessary for the Governor to administer fresh oath of office. The learned Single Judge found merit in the contention urged on behalf of the respondents and dismissed the writ petition and that has given rise to the filing of this appeal.

4. Smt. Pramila, learned Counsel appearing on behalf of the appellants submitted that the plain reading of Articles 163, 164 and 172 of the Constitution would indicate that every Legislative Assembly, unless sooner dissolved, shall continue for five years from the date appointed from its first meeting and expiration of the said period shall operate as dissolution of the assembly. It was urged that Article 163 prescribes that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor and Article 164(2) makes the Council of Ministers collectively responsible to the Legislative Assembly of the State. It was contended that the Council of Ministers appointed by the Governor are collectively responsible to the Legislative Assembly and such collective responsibility is to a particular assembly and not to the successive assemblies. The Counsel urged that though respondents 2 and 3 were duly elected as Members of X Karnataka Assembly, on expiration of the duration of the IX Assembly it was incumbent upon the Governor to appoint a fresh Council of Ministers and administer oath of secrecy. The learned Advocate General on the other hand submitted that the assumption that the Council of Ministers are appointed to a particular assembly and would vacate the office on dissolution of such assembly is fallacious. It was urged that the Council of Ministers including the Chief Minister holds office at the pleasure of the Governor and the term of

the office is not co-extensive with the term of the assembly. The dissolution of the assembly and/or expiry of five years would not automatically bring to an end the appointment of Council of Ministers made by the Governor and consequently it is wholly unnecessary for the Governor to administer fresh oath of office.

5. Article 168 of the Constitution prescribes that every State shall have a Legislature which shall consist of the Governor and two Houses in certain States including Karnataka. Article 172 of the Constitution sets out that 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 on the expiration of the said period of five years shall operate as a dissolution of the assembly. Article 163 sets out 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. Article 164(1) then 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(3) provides that before a Minister enters upon his office, the Governor shall administer to him the oath of office and of secrecy according to the Forms set out for the purpose in the Third Schedule. Item V of Schedule III is Form of oath of office for a Minister of State while Item VI is a Form of secrecy for a Minister of State. Both the Forms do not indicate that the office is held for any duration. Article 164(4) provides that a Minister who for any period of six consecutive months is not a Member of a Legislature of the State shall on expiration of that period cease to be a Minister. The sub-article thus makes it clear that it is open for the Governor to appoint a person either as the Chief Minister or as a Minister, even though such person is not a Member of the Legislature of the State at the relevant time. The sub-article prescribes that such person who is not a Member of any of the Houses should get elected as Member of either of the Houses within a period of six months from the date of holding of the office as a Minister or Chief Minister, for entitlement to continue in office.

6. With these constitutional provisions it is now necessary to examine the claim of the petitioner that it was incumbent upon the Governor to administer fresh oath of office and oath of secrecy to respondents 2 and 3 to entitle them to continue in the respective posts. The claim of the petitioner is that respondents 2 and 3 were administered oath of office on 11th December, 1994, a date on which IX Karnataka Assembly had not still run out of its term of five years. It was submitted that it was open for the Governor to appoint respondents 2 and 3 to the post even though they were not Members of the IX Assembly but their appointment could not be continued after expiration of the IX Assembly and Constitution of the X Assembly. The submission is that the term of the office of Minister and Chief Minister is co-extensive with the term of assembly which was in existence on the date of their appointment and in case such persons desire to hold the posts after reconstitution of the fresh assembly, then the Governor is required to appoint them afresh and administer fresh oaths. The bone of

contention is whether the terms of office of Minister and Chief Minister automatically comes to an end on either dissolution of the assembly or on expiry of period of five years as contemplated under Article 172 of the Constitution. In our judgment, the assumption of the petitioner that the term of office is co-extensive with that of the assembly is not accurate. The appointment of Chief Minister and the other Ministers made by the Governor is not for a fixed duration and Ministers hold office during the pleasure of the Governor. It is always open for the Governor to remove the Chief Minister or a Minister even during the subsistence of the term. The doctrine of pleasure as understood entitles the Chief Minister and the Minister to remain in office as long as the Governor so thinks. The Council of Ministers is appointed to aid and advise the Governor in exercise of its functions and the Constitution sets out that the posts are held during the pleasure of the Governor. It is open for the Governor to appoint any person as the Chief Minister or the Minister even though such person is not a Member of either House of the State Assembly and the only impediment for continuation in that post is that such person should get elected as Member of either Houses within a period of six months from the date of the appointment. In our judgment, Article 164(4) is

clear answer to the claim of the petitioner that the term of office of respondents 2 and 3 automatically comes to an end on expiry of period of five years of the IX Assembly. In the present case respondents 2 and 3 were not Members of the IX Assembly but the Governor was entitled to appoint them to the respective posts and only requirement was that such person should get himself elected as Member of the House within a period of six months. It is not in dispute that both respondents 2 and 3 were duly elected in the elections in the result declared on 10th December, 1994 and became Members of the X Karnataka Assembly which was deemed to have been constituted on 14th December, 1994. The requirement of Article 164(4) was clearly complied with. In our judgment, merely because the Governor administered oath during the subsistence of the term of IX Assembly to respondents 2 and 3 that would not automatically lead to the conclusion that respondents 2 and 3 are not entitled to hold office after the expiry of the IX Assembly and Constitution of the X Assembly, without fresh oath being administered. In our judgment, the claim of the petitioner that fresh oath is required to be administered as soon as the IX Assembly was dissolved and X Assembly was constituted is not correct and respondents 2 and 3 are legally holding their respective offices. The appellant is therefore not entitled to a writ of quo warranto and the appeal must fail.

7. Accordingly, appeal is dismissed, but there will be no order as to cost.