

(1968) 05 AHC CK 0021
In the Allahabad High Court
Case No : Writ Petition No. 463 of 1968

Virendra Swarup	Vs	APPELLANT
President of India and Others		RESPONDENT

Date of Decision : 24-05-1968

Acts Referred:

Constitution of India, 1950 — Article 183, 226
Representation of the People Act, 1951 — Section 157, 67A, 74

Citation : AIR 1969 All 56

Hon'ble Judges : R. Chandra, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : Sudhir Shanker, K.K. Narain, Devendra Swarup and Shailendra Swarup, for the Appellant;

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—Shri Virendra Swarup (hereinafter referred to as the petitioner) has approached this Court under Article 226 of the Constitution of India and has prayed for the issue "of an order, direction or writ in the nature of certiorari" to quash the order contained in letter dated 13-5-1968 (annexure 2) and for "an order, direction or writ in the nature of mandamus directing the respondents not to implement or give effect to the aforesaid order". There is also the prayer for a writ of mandamus directing the respondents Nos. 1 and 2 not to withhold the amenities and emoluments of the petitioner as Deputy Chairman of the Legislative Council so long as he continues to be the member of the Council. In addition there is the usual prayer for the issue of any other writ or direction as this Court may in the circumstances of the case deem it fit and proper to issue.

2. The respondent No. 1 is the President of India, the respondent No. 2, the Governor of U. P., the respondent No. 3, the State of U. P. and the respondent No. 4, Sri Darbari Lal Sharma. "

3. The petitioner was elected as member of the U. P. Legislative Council (hereinafter referred to as the Council) for six years on 6th of May, 1962 from

the Graduates" Constituency. On 16th of February, 1965, he was elected the Deputy Chairman of the Council. On the completion of six years, a fresh election was held to elect a member to the Council from the same constituency on 21st April, 1968. The counting of votes took place on 22-4-1968 and the petitioner who was a candidate was declared elected having secured the largest number of votes. The notification notifying the election of the petitioner issued u/s 74 of the Representation of the People Act was made on 6th of May, 1968.

4. According to the petitioner, the Governor of U. P. directed Sri Parmatma Saran Pachauri, Secretary of the Council to announce that Sri Darbari Lal Sharma was to function as the Deputy Chairman also from 6th of May 1968. Thereupon Sri Pachauri issued letters to the members of the Council on 13th of May, 1968. The letter reads:

"Mujhe apko yeh soochit karne ka adesh hua hai ki Sri Rajyapal ne Bharat Ka Sambidhan ke anuchchhed 184 ke khand (1) dwara prapta adhikaron ka prayog karte hue Sri Darbari Lal Sharma sadasya, Vidhan Parishad ko dinank 6 May, 1968 se Vidhan Parishad ke "Sabha pati" pad ke kartavyon ko palan karne ke lie niyukta kia hai." (Underlined ("here into " ") by us).

It is said that the word Sabhapati has been wrongly written for Up-Sabhapati in this letter. Our original impression was that in a hurry this letter though relating to the appointment of Sri Darbari Lal Sharma as Chairman of the Council has wrongly been filed in this case. We thought that the petitioner must have received in his capacity as a member the letter appointing Sri Darbari Lal Sharma as Chairman and the one authorising him to perform the functions of the Deputy Chairman and inadvertently the wrong letter was filed. However, in view of what we have been told at the Bar we proceed on the assumption that in this letter the word Sabhapati has been wrongly written for Up-Sabhapati.

5. The petitioner's contention is that he never ceased to be a member of the Council and between the expiry of his term, commencing in 1962 and the start of his fresh term in 1968 there was no interval with the result that he never ceased to be a member of the Council. Placing reliance upon Article 183 of the Constitution of India, it was strenuously contended by Mr. Jagdish Swarup, learned counsel for the petitioner, that the petitioner continues to be the Deputy Chairman of the Council inasmuch as he never ceased to be a member. It is submitted that the office being full the Governor had no jurisdiction to direct the Secretary of the Council to announce that Sri Darbari Lal Sharma was to function as Deputy Chairman in his capacity as a member of the Council.

6. Article 183 so far as relevant for our purposes reads:

"A member holding office as Chairman or Deputy Chairman of a Legislative Council --

(a) shall vacate his office if he ceased to be a member of the Council;

Mr. Jagdish Swarup contends that between the expiry of the petitioner's 1962

term and the beginning of his 1968 term there has been no lapse of time and the continuity in his membership was never broken. Learned counsel emphasises the use of the words "if he ceases" and contradistinguishing them from "when he ceases" contends that the intention of the Constituent Assembly was to allow the Chairman or the Deputy Chairman to continue if he is re-elected for the next succeeding term.

7. There is a similar provision with regard to the Speaker and the Deputy Speaker of an Assembly, the same being Article 179 the relevant part of which reads:

"A member holding office as Speaker or Deputy Speaker of an Assembly -

(a) shall vacate his office if he ceases to be a member of the assembly;

Both the provisions use the same words i. e. "If he ceases to be a member" and the expressions must have the same meaning in the two provisions as the provisions fall in the same act and deal with similar matters.

8. The learned counsel next places reliance upon Section 67A of the Representation of the People Act which reads:

"Date of election of candidate. -- For the purposes of this Act, the date on which a candidate is declared by the returning officer under the provisions of Section 53 or Section 66, to be elected to a House of Parliament or of the Legislature of a State shall be the date of election of that candidate."

The argument is that by virtue of the provisions of Section 67A of the Representation of the People Act, the petitioner became a member of the Legislative Council on the date when the result of his election was announced which in the present case according to the petitioner's averment is 22nd of April, 1968, and for that reason he never ceased to be a member.

9. It is the petitioner's own case that the term of his office by virtue of his election in 1962 was to expire on "the midnight of 5th of May, 1968." (Vide his writ petition).

10. If the petitioner's argument that he became a member again on 22nd of April, 1968, be taken as correct, it would lead to the unacceptable conclusion that the petitioner again became a member of the Council for the fresh term on the 22nd of April, 1968, i. e. 13 days before the term of his office as a member by virtue of his election in 1962 came to an end. If some one else were elected instead of him, according to this argument there would be two members for thirteen days from the same constituency -- a conclusion which is impossible of acceptance.

Very clearly, the submission is not correct. The provisions of Section 67A occur in the Representation of the People Act which has been enacted "to provide for the conduct of elections . . . the qualifications and disqualifications for membership . . . the corrupt practices and other offences at or in connection

with such election". As is well known, the process of election is a long one. It starts on the day when nominations are made. After nominations, there is scrutiny of the nomination papers. Thereafter the election is held. After that the votes are counted and the result of the election declared. Thereafter the result of the election is notified in the Government Gazette. It is for the purposes of notification u/s 74 of the Representation of the People Act that the petitioner would be treated to have been elected as a member on 22nd of April, 1968. Obviously, before the new term starts, the process of election should be completed and that is why Section 67A had to be enacted. In our judgment, Section 67A does not confer on a person elected any rights to the office of the member unless and until his election is notified and unless and until the term for which he is elected commences.

11. Section 157 of the Representation of the People Act is headed as "Commencement of the term of office of members of the Legislative Councils". It reads:

"(1) The term of office of a member of the Legislative Council of a State whose name is required to be notified in the Official Gazette u/s 74 shall begin on the date of such notification.

(2) The term of office of a member of the Legislative Council of a State whose name is not required to be notified u/s 74 shall begin on the date of publication in the Official Gazette of the declaration containing the name of such person as elected u/s 67 or of the notification issued under Sub-clause (e) of Clause (3) of Article 171, announcing the nomination of such person to the Council, as the case may be."

It is clear from this provision that a member of a council is elected for a term and that the term begins on the date on which the notification is issued.

12. The Council may be a continuing body in the sense that it is never dissolved but the persons elected to it become members only on the date of the commencement of their term and cease to be members on the date on which their term expires. If they are re-elected, then their fresh term starts from the date on which the notification is issued.

13. The notification in respect of the petitioner's election in 1968 was issued on 6th of May, 1968 as the following recital in it would show:

"In pursuance of the provision of Clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following. English translation of notification No. E-7521/XVII-A-91-68, dated May 6, 1968."

The notification reads:

"Whereas elections have been held in pursuance of the notification issued u/s 16 of the Representation of the People Act, 1951 (43 of 1951) for the purpose of filling the seats of the members of the Uttar Pradesh Legislative Council retiring

on the 5th May, 1968, on the expiration of their term:

Now, therefore, in pursuance of Section 74 of the said Act, the names of the members elected by the various council constituencies and by the members of the U. P. Legislative Assembly at the said elections, and of the members nominated to the said Council by the Governor under Sub-clause (e) of Clause (3) of Article 171 of the Constitution, are hereby notified for general information.

1. Members elected by the Council Constituencies.

Name of constituency

Name of member

3. Kanpur-Cum-Jhansi Graduates" Constituency

Sri Virendra Swarup.

From the aforesaid notification it is clearly established that the petitioner's term starting in 1962 expired on the 5th May, 1968 and the term consequent to his election in 1968 started on 6th of May, 1968. Consequently, the petitioner ceased to be a member by virtue of his election in 1962 and again became a member by virtue of his election in 1968.

14. For practical purposes there might not have been a break in the continuity of his membership but notionally and legally there was such a break though it might have been for a flash of a second.

15. Mr. Jagdish Swarup contends that between the end of 5th of May, 1968 at midnight and the beginning of 6th of May 1968 at midnight there was no interval of time with the result that the petitioner never ceased to be a member of the Council. He has placed reliance upon the following two cases in support of his contention. -

1. English v. Cliff (1914) 2 Ch. 376 at p. 381.

2. Tomlinson v. Bullock (1878) 4 QBD 230 at p. 232.

In our opinion, these cases cannot be of help for interpreting the language of Article 183 of the Constitution of India. Those decisions are in respect of different statutes. Those cases do not deal with elections.

16. The first case was one of trust and the question that was raised in that case related to the construction of a settlement Warrington J. observed as follows:

". . . .The trust in the present case is to arise at the expiration of the term of twenty one years, and if looked at from one point of view that trust, arises coincidently with the last moment of the term, although, if looked at from another point of view, it may be said to arise at some infinitesimally small fraction of time after the last moment of the term. In my opinion, however, the only sensible view to be taken of such a limitation is that the term determines

and the trust arises at the very same moment of time, and if looked at in that way, it is impossible to say that the trust arises at a later period than that allowed by law . .

The observations extracted above clearly show that in such cases there is no uniform rule and two views are possible: (obviously depending upon the terms of the Statutes) one that the next term starts coincidentally with the last moment of the last term and the other being that it starts after some infinitesimally small fraction of time after the last moment of the last term.

17. The second case deals with the question as to on what date an Act will be deemed to have come into force. Lush J. observed:

The only point of time which this Act makes material is the day on which the royal assent was given. It thus recognizes the well known maxim that the law takes no notice of the fractions of a day, and except where there are conflicting rights between subject and subject, for the determination of which it is necessary to ascertain the actual priority, such is the universal rule -- an Act which comes into operation on a given day becomes law as soon as the day commences."

It would be noticed that the rule enunciated in the above extract does not extend to a case of conflicting rights between subject and subject. Inasmuch as in the present case another person could be elected in place of the petitioner, the conflict between his rights and that of the petitioner can be clearly visualised. This case, therefore, does not support Mr. Jag-dish Swaroop. In any case it is clearly distinguishable, as is the first case.

18. Admittedly, the petitioner was elected in 1962 for a period of six years and according to his own case as set up in his petition the period of his first term came to an end on the midnight of 5th of May, 1968. It is also clear that his present term started on 6th of May, 1968, i.e. the date on which the notification was issued. At present, he is a member of the Council not by virtue of his election in 1962 but by virtue of his election in 1968 and on account of the notification issued on 6th of May, 1968. The consequences of his election in 1962 came to an end. He is a member now as a consequence of a fresh election in 1968. Consequently, we are of the opinion that he ceased to be a member by virtue of his election in 1962 but again became a member by virtue of his election in 1968. It cannot therefore be said that he did not cease to be a member on the completion of his 1962 term. As said earlier, the gap of time between the close of the 1962 term and the start of 1968 term may be only a flash of a second, but in the eye of law and notionally there was a break, and clearly, for a flash of a second, the petitioner ceased to be a member.

19. We have already pointed out that the language of Article 179(a) of the Constitution is the same as the language of Article 183(a). Both the provisions use the words "if he ceases to be a member."

20. There cannot be any manner of doubt that in the case of the Speaker or the

Deputy Speaker of an Assembly no sooner his term is over he would cease to be a member even though he might have been elected for the next term even during the continuance of the existing term. If the Speaker or the Deputy Speaker cease to be members in spite of their re-election in the next succeeding term, we see no reason why the Chairman or the Deputy Chairman do not so cease to be members. The Constituent Assembly in its wisdom has used the same expression in the two Articles, even though it knew that a Legislative Assembly would dissolve and a Council would not. It is a settled rule of interpretation of statutes that when the same words are used in two different provisions of the same Act and the two provisions deal with similar matters then the words must be given the same meaning in both the provisions: *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*,

21. In our opinion, the expression "when he ceases to be a member" mean "when he ceases to be a member either by virtue of the closure of his term, or because of his resignation or removal from office in the same term". We find some support for this view from the marginal note to Article 183 which is "Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman". It is settled law that a marginal note in the Constitution is a part of the Constitution and furnishes some clue to the meaning and purpose of the Article: *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*,

22. Articles 178 to 187 are headed as "Officers of the State Legislature" and find place in Part VI of the Constitution. An analysis of this part of the Constitution shows that parallel provisions have been made for the Speaker and the Deputy Speaker of an Assembly and the Chairman and the Deputy Chairman of a Council. Article 178 provides for election by an Assembly of its Speaker and Deputy Speaker. For the Council, its counterpart is Article 182 which provides for the election by a Council of the Chairman and the Deputy Chairman.

23. Article 179 deals with the vacation and resignation of, and removal from, the offices of the Speaker and Deputy Speaker. For a Council, its counterpart is Article 183 which deals with the vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman. Article 180 deals with the power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker. Its counterpart for purposes of a Council is Article 184 which deals with the power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman. Art. 181 provides that the Speaker or the Deputy Speaker shall not preside while a resolution for his removal from office is under consideration. Its counterpart for the Council is Article 185 which provides that the Chairman or the Deputy Chairman shall not preside while a resolution for his removal from office is under consideration. Article 186 provides for salaries and allowances of the Speaker and Deputy Speaker of an Assembly and the Chairman and Deputy Chairman of a Council, and Article 187 deals with the secretariat of State Legislature. The various provisions enumerated above

clearly show that for all purposes the Chairman and the Deputy Chairman of a Council have been equated with the Speaker and the Deputy Speaker of an Assembly. Clearly the scheme of the Constitution is to have similar provisions in respect of the two sets i. e. the Speaker and Deputy Speaker one set and the Chairman and the Deputy Chairman the other set. That being the position, and inasmuch as a Speaker or a Deputy Speaker admittedly ceases to be a Speaker or a Deputy Speaker on the closure of his term even though re-elected for the next succeeding election, it must be held that a Chairman and a Deputy Chairman also so cease to hold his office. In our opinion, Article 183(a) deals with the consequences that will ensue in the existing term, of a member and has no relation with the succeeding term.

24. Properly analysed, the argument of Mr. Jagdish Swarup is that inasmuch as the petitioner has got re-elected, he continues to be the Deputy Chairman to-day and would continue to be so for the next six years, i. e., until the end of his present term and in case he is re-elected, again he would continue so long as he succeeds in getting re-elected, without there being a fresh election for that office. In our judgment that never could be the intention of the Constituent Assembly. While interpreting a democratic Constitution any interpretation which may result in a person perpetually continuing in an elected office in spite of his term coming to an end must be repelled. Such an interpretation will be a negation of democracy and would result in elected officers of a Legislature becoming life tenure-holders.

25. Inasmuch as we are satisfied that there is no substance in the merits of the case, we have not examined the question whether in the instant writ petition the order of the Governor can be challenged or whether the President or the Governor can be made a party to these proceedings.

26. The petition is dismissed.