

U. N. A. Rao

Vs

Smt. Indira Gandhi

Civil Appeal No. 196 of 1971

(CJI S. M. Sikri, A. N. Grover, G. K. Mitter, K. S. Hegde, P. Jagmohan Reddy JJ)

17.03.1971

JUDGMENT

SIKRI, C.J. -

This appeal by certificate is directed against the judgment of the High Court of Judicature at Madras dismissing writ petition No. 63 of 1971, filed by U. N. R. Rao, appellant before us. In this petition the appellant had prayed that a writ of quo warranto be issued to the respondent, Smt. Indira Gandhi, and it be declared that the respondent has no constitutional authority to hold the office of and to function as Prime Minister of India.

2. In brief, the appellant contends that under the constitution as soon as the House of the People is dissolved under Article 85(2) of the constitution the Council of Ministers, i.e., the Prime Minister and other Ministers, cease to hold office. According to him this follows plainly from the wording of Article 75(3), which provides that "the council of Ministers shall be collectively responsible to the House of the people". How can the council of Ministers be responsible to the House of the people when it has been dissolved under Article 85(2) ? According to him no void in the carrying out of government will be created because the president can exercise the Executive Power of the Union either directly or through officers subordinate in accordance with the constitution as provided in Article 53(1) of the constitution.

3. In constitutional matters it is advisable to decide only those points which necessarily arise for determination on the facts of the case. It seems to us that a very narrow point arises on the facts of the present case. The House of the People was dissolved by the president on December 27, 1970. The respondent was the Prime Minister before the dissolution. Is there anything in the Constitution, and in particular in Article 75(3), which renders her carrying on as Prime Minister contrary to the constitution ? It was said that we must interpret Article 75(3) according to its own term regardless of the conventions that prevail in the United Kingdom. If the words of an Article are clear, notwithstanding any relevant convention, effect will no doubt be given to the words. But it must be remembered that we are interpreting a constitution and not an Act of parliament, a constitution which establishes a parliamentary system of Government with a Cabinet. In trying to understand one may well keep in mind the conventions prevalent at the time the constitution was framed.

4. Speaking for the Court (Mukherjea, C.J.) observed in *Ram Jawaye Kapur v. State of Punjab* ((1955) 2 SCR 225, 236-37 : AIR 1955 SC 549 : 1955 SCJ 504) : "The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our constitution has set up. Our constitution, though federal in its structure, is modelled on the British Parliamentary system where

the executive is deemed to have the Primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the state. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the state.

In India, as in England, the executive has to act subject to the control of the Legislature; but in what way is this control exercisable by the Legislature ? Under Article 53(1) of our constitution, the executive power of the Union is vested in the President but under Article 75 there is to be a Council of Minister with the Prime Minister at the head to aid and advice the president in the exercise of his functions. The President has thus been made a formal or constitutional head of the executive and the real executive powers are vested in the Minister or the Cabinet. The same provisions obtain in regard to the Government of States; the Governor or the Rajpramukh, as the case may be, occupies the position of the head of the executive in the State but it is virtually the Council of Minister in each State that carries on the executive Government. In the Indian Constitution, therefore, we have the same system of Parliamentary executive as in England and the Council of Ministers consisting, as it does, of the members of the Legislature is, like the British Cabinet, "a hyphen which joins a buckle which fastens the legislative part of the State to the executive parts". The Cabinet enjoying, as it does, a majority in the Legislature concentrates in itself the virtual control of both legislative and executive functions; and as the Minister constituting the Cabinet are presumably agreed on fundamentals and act on the Principle of collective responsibility, the most important questions of policy are all formulated by them".

In *A. Sanjeevi Naidu v. State of Madras* (A.I.R. 1970 SC 1102 : 1106: (1970) 1 SCC 443 : 1970 (Cri) 196) it was urged on behalf of the appellants in that case that "the Parliament has conferred power under section 68(C) of the (Motor Vehicles Act, 1939) to a designated authority. That power can be exercised only by that authority and by no one else. The authority concerned in the present case is the State Government. The Government could not have delegated its statutory functions to any one else. The Government means the Governor aided and advised by his Ministers. Therefore the required opinion should have been formed by the Minister to whom the business had been allocated by 'the Rules'. It was further urged that if the functions of the Government can be discharged by any one else then to doctrine of Ministerial responsibility which is the very essence of the cabinet form of Government disappears; such a situation is impermissible under our Constitution".

5. Speaking of behalf of the Court, Hedge, J., repelled the contentions in the following words :

"We think that the above submissions advanced on behalf of the appellants are without force and are based on a misconception of the principles underlying our Constitution. Under our Constitution, the Governor is essentially a constitutional head, the administration of State is run by the Council of Ministers. But in the very nature of things, it is impossible for the Council of Ministers to deal with each and every matter that comes before the Government. In order to obviate that difficulty the constitution has authorised the Governor under sub-article (3) of Article 166 to make rules for the more convenient transaction of business of the Government of the State and for the allocation amongst its Ministers, the business of the Government. All matters excepting those in which Governor is required to act in his discretion have to be allocated to one or the other of the Ministers on the advice of the Chief Minister.

Apart from allocating business among the Ministers, the Governor can also make rules on the advice of his Council of Ministers for more convenient transaction of business. He cannot only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But this again he can do only on the advice of the Council of Ministers.

The Cabinet is responsible to the Legislature for every action taken in any of the ministries. That is the essence of joint responsibility."

6. Let us now look at the relevant Articles of the Constitution in the context of which we must interpret Article 75(3) of the constitution. Chapter 1 of part V of the constitution deals with the Executive Article 52 provides that there shall be a president of India and Article 53(1) vests the executive power of the Union in the President and provides that it shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. The last five words are important inasmuch as they control the President's action under Article 53(1). Any exercise of the executive power not in accordance with the Constitution will be liable to be set aside. There is no doubt that the President of India is a person who has to be elected in accordance with the relevant provisions of the Constitution but even so he is bound by the provisions of the Constitution. Article 60 prescribes the oath or affirmation which the President has to take. It reads :

"I, A.B., do swear in the name of God/solemnly affirm that I will faithfully execute the office of President (or discharge the functions of the president) of India and will to the best of my ability preserve protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

Articles 74 and 75 deal with the Council of Ministers. They read thus :

"Article 74. - (1) There shall be a Council of Ministers with the Prime Minister at the head to aid advise the president in the exercise of his functions.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any Court.

Article 75. - (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Minister shall hold Office during the pleasure of the President.

(3) The Council Of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

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(7) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until parliament so determines, shall be as specified in the Second Schedule."

7. It will be noticed that Article 74(1) is mandatory in form. We are able to agree with the appellant that in the context the word 'shall' should be read as 'may'. Article 52 is mandatory. In other words "there shall be a president of India" So is Article 74(1). The Constituent Assembly did not choose the President system of Government. If we were to give effect to this contention of the appellant we would be changing the whole concept of the Executive. It would mean that the President need not have a Prime Minister and Ministers to aid and advise in the exercise of his functions. As there would be no 'Council of Ministers, nobody would be responsible to the House of the People. With the aid of advisers he would be able to rule the country at least till he is impeached under Article.

8. It seems to us that we must read the word 'shall' as meaning 'shall' and not 'may'. If Article 74(1) is read in this manner the rest of the provisions dealing with the Executive must be read in harmony with. Indeed they fall into place. Under Article 75(1) the President appoints Prime Minister, and under Article 75(2) they hold office during the pleasure of the president. The president has not said that it is his pleasure that the respondent shall not hold office.

9. Now comes the crucial clause three of Article 75. The appellant urges that the House of People having been dissolved this clause cannot be complied with. According to him it follows from the provisions of this clause that it is was contemplated that on the dissolution of the House of People the Prime Minister and the other ministers must resign or be dismissed by on with the aid of the services. As we have shown above, Article 74(1) is mandatory and, therefore, the President cannot exercise the executive power without the aid and advice of the Council of Ministers. We must then harmonise the provisions of Article 75(3) with Article 74(1) and Article 75(2). Article 75(3) bring into existence what is usually called "Responsible Government". In other words the Council of Ministers must enjoy the confidence of the House of People. While the House of People is not dissolved under Article 85(2)(b), Article 75(3) has full operation. But when 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. We are not concerned with the case where dissolution of House of People takes place under Article 83(2) on the expiration of period of five years prescribed therein, for parliament has provided for contingency in Section 14 of the Representation of Peoples Act, 1951.

10. On our interpretation other articles of the constitution have full play; e.g., Article 77(3) which contemplates allocation of business among Ministers, and Article 78 which prescribes certain duties Prime Minister.

11. We are grateful to the learned Attorney-General and the appellant for having supplied to us compilations containing extracts from various books on constitutional Law and extracts from the debates in the constitution Assembly. We need not burden this judgment with them. But on whole we receive assurance from the learned authors and the speeches the view we have taken is the right one, and is in accordance with commotions followed not only in the United Kingdom but in other country following a similar system of responsible Government.

12. In the result the appeal fails and is dismissed, but there will be order as to costs in this Court.

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