Harsharan Verma

Vs

Union of India and Another

Special Leave Petition (Civil) No. 1742 of 1987

(CJI R. S. Pathak, Ranganath Misra JJ)

14.07.1987

ORDER

1. This application for special leave is directed against the order of the Lucknow Bench of the Allahabad High Court dated October 17, 1986, rejecting the petitioner's application in limine by a reasoned order under Article 226 of the Constitution challenging the appointment of Shri Sita Ram Kesari as a Minister of State of the Central Cabinet though he was not a Member of either House of Parliament then. There is a delay of 11 days in the making of this application and the petitioner who has appeared in person has not applied for condonation of delay. The petitioner appeared in person to support the application and relied upon the written note filed by him which is already a part of the record. He also filed a printed booklet where reference to the point in issue has been indicated.

2. Shri Sita Ram Kesari has admittedly ceased to be a Minister and the issue is no more a live one. It is a well accepted practice that courts do not undertake interpretation of the Constitution unless there be a live issue before them. The petitioner has indicated in his written not and reiterated the same during the oral submissions that for the last 25 years he has been raking up the same issue and no court has ever examined the tenability of his contention on merits. Since there is a question of limitation condonation of which has to be considered after giving the petitioner an opportunity to make loan application therefor, we wanted to be satisfied if there was on merit a point deserving consideration of this Court. We have, therefore, examined the tenability of the contention canvassed by the petitioner. As stated earlier, the High Court has by a reasoned order dismissed the writ petition in limine. Having heard the petitioner, we are inclined to agree that the High Court came to the correct conclusion. Two articles of the Constitution and a brief reference to the relevant debate in the Consituent Assembly clearly indicate that the submission advanced by the petitioner has no merit. Article 75 makes provision for Central Ministers. Clause (5) thereof provides :

> 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 ceases to be a Minister.

Article 88 provides :

> Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

The combined affect of these two articles is that a person not being a Member of either House of Parliament can be a Minister up to a period of six months. Though he would not have any right to

vote, he would be entitled to participate in the proceedings thereof. The petitioner admits that in the thirty-seven years of constitutional regime in this country there have been several instances where a person has held the office as Minister either at the Centre or in the State (there are corresponding provisions for the State), not being a member of the appropriate legislature at the time of appointment.

3. A brief reference to the proceedings of the Constituent Assembly would throw enough light on the question. A member of the Constituent Assembly proposed an amendment to the following effect :

> No person should be appointed a Minister unless at the time of his appointment, he is elected member of the House.

(This exactly is the proposition of the petitioner). Mr. Ambedkar opposed the amendment by saying :

> Now with regard to the first point, namely, that no person shall be entitled to be appointed a Minister unless he is at the time of his appointment an elected member of the House, I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this and it is perfectly possible to imagine that a person who is otherwise competent to hold the post of a Minister has been defeated in a constituency for some reason and which, although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of that particular constituency. It is not a reason why a member so competent as that should not be permitted to be appointed a member of the Cabinet on the assumption that he shall be able to get himself elected from the same constituency or from another constituency. After all the privileges that he is permitted is a privilege that extends only to six months. It does not confer a right on that individual to sit in the House being elected at all. My second submission is this that the fact that a nominated Minister is a member of the Cabinet does not either violate the principle of collective responsibility nor does it violate the principle of confidence because he is a member of the cabinet if is prepared to accept the policy of the Cabinet stands part of the Cabinet and resigns with the Cabinet when he ceases to have the confidence of the House, his membership of the Cabinet does not in any way cause any inconvenience or breach of the fundamental principles on which parliamentary government is based. Therefore, this qualification in my judgment is quite unnecessary.

The Constituent Assembly rejected the proposed amendment. The answer given in the debate of the Constituent Assembly meets the objection of the petitioner to the fullest extent. To appoint a non-member of the Parliament as a Minister does not militate against the constitutional mechanism; we agree with the High Court that such an appointment does neither militate against the democratic principles embodied in the Constitution. We endorse the view of the High Court and dismiss the application for special leave.

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