SUPREME COURT OF INDIA

Ashok Pandey

Vs

K. Mayawati and Others

Writ Petition (Civil) 296 of 2007

(Arijit Pasayat and P. P. Naolekar, JJ)

13.06.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. This petition is filed under Article 32 of the Constitution of India, 1950 (in short the Constitution) seeking a writ of quo warranto against respondent Nos.1 and 2. Essentially, the grievance is that respondent Nos. 1 and 2 are not qualified to be appointed as Chief Minister and Minister respectively as they were members of the Rajya Sabha and thus disqualified under Article 164(4) read with Article 164(1) of the Constitution. The basic stand is that since they were members of the Rajya Sabha the requirement of their being elected to the State Legislative Assembly within a period of 6 months does not apply to them as they are already legislators of the Rajya Sabha.

2. While appreciating the stand we shall take note of the provisions on which emphasis is laid by the petitioner who appears in person.

3. Article 164 (1) and (4) read as follows:

(1) 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.

4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

4. It is also necessary to take note of Article 163 which reads as follows:

Council of Ministers to aid and advise Governor-(1) There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not have acted in his discretion.

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

5. By virtue of Article 177 of the Constitution any Minister even if he is not a member of either House of Legislature of the State would be entitled to be present at the meeting of either House of Legislature assembled together at the time of address of the Governor as contemplated by Article 175. Article 164 (4) provides that the Minister who for any period of six months is not a member of Legislature of the State shall at the expiration of the period cease to be a Minister. The plain words cannot be cut down in any manner and confined to a case where a Minister is a member of the Legislature of the State loses for some reason his seat in the State Legislature. There is nothing in the Constitution which would make the appointment of the Chief Minister and Minister, none of whom are the members of the State Legislature, illegal. (See Har Sharan Verma v. Shri Tribhuvan Narain Singh Â . In the said case it was held that appointment of a person as Chief Minister cannot be challenged on the ground that he was not a member of the Legislature of the State at the time of appointment.

6. An amendment was proposed to the Constituent Assembly that the following should be incorporated:

A minister shall at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the State, as the case may be, but the amendment was not accepted. (See Constituent Assembly Debates dated Ist June, 1949 Vol. (VIII) page 521).

7. 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.

8. The petitioner has submitted that in a democratic set up a person who is not a member of the Legislature will not be appointed as the Minister.

9. Article 144(3) of the Draft Constitution which corresponds to Article 164(4) of the Constitution reads:

144(3) A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

10. During the debate on this draft Article, Mr. Mohd. Tahir, MP, proposed the following amendment:

That for clause (3) of Article 144, the following be substituted:

(3).....

A Minister shall, at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the State, as the case may be.

11. Speaking in support of the proposed amendment, Mr. Tahir said in the Constituent Assembly:

This provision appears that it does not fit with the spirit of democracy. This is a provision which was also provided in the Government of India Act of 1935 and of course those days were the days of imperialism and fortunately those days have gone. This was then provided because if a Governor finds his choice in someone to appoint as Minister and fortunately or unfortunately if that man is not elected by the people of the country, then that man used to be appointed as Minister through the back door as has been provided in the Constitution and in the 1935 Act. But now the people of the States will elect members of the Legislative Assembly and certainly we should think they will send the best men of the States to be their representatives in the Council or Legislative Assembly. Therefore, I do not find any reason why a man who till then was not elected by the people of the States and which means that, that man was not liked by the people of the States to be their representative in the Legislative Assembly or the Council, then Sir, why that man is to be appointed as the Minister.

Dr. Ambedkar opposing the amendment replied: 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 he 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.

12. After the debate the proposed amendment was negatived and Article 144(3) was adopted.

13. The absence of the expression 'from amongst members of the Legislature' in Article 164(1) is indicative of the position that whereas under that provision a non-legislator can be appointed as a Chief Minister or a Minister but that appointment would be governed by Article 164(4), which places a restriction on such a non-member to continue as a Minister or the Chief Minister, as the case may be, unless he can get himself elected to the Legislature within the period of six consecutive months from the date of his appointment. Article 164(4) is therefore not a source of power or an enabling provision for appointment of a non-legislator as a Minister even for a short duration. It is actually in the nature of a disqualification or restriction for a non-member, who has been appointed as a Chief Minister or a Minister, as the case may be, to continue in office without getting himself elected within a period of six consecutive months. [(See S.R. Chaudhuri v. State of Punjab and Ors. Â 21

14. In Dr. Janak Raj Jai v. H.D. Deve Gowda Â 3 it was held that a member of the Legislative Assembly could be appointed as Prime Minister. The position in law was highlighted in paragraphs 4 and 5 noted as follows:

4. The petitioner, however, applied before the High Court of Delhi for a review of its impugned judgment on the ground that he had subsequently discovered that after being appointed as the Prime Minister of India, Shri Deve Gowda had retained his membership of the Karnataka Legislative Assembly. He resigned from his membership of the Karnataka Legislative Assembly on becoming a Member of the Rajya Sabha. The High Court of Delhi rightly rejected the review petition since in a review petition, such new grounds could not be urged. The petitioner has challenged the rejection of this ground before us.

5. In order not to leave any grievance, we briefly deal with this additional submission also. Under Article 75(5), a person who is not a Member of either House of Parliament can be appointed a

Minister for a period of six consecutive months. If during this period he is not elected to either House of Parliament he will cease to be a Minister. We have not been shown any Article of the Constitution under which a person who is elected to a State Legislature is prohibited from being appointed as a Minister under Article 75(5). In fact, Article 75(5) is widely worded. It covers every person who is not a Member of either House of Parliament. Such a person can be appointed as a Minister and can remain as a Minister only for a period of six consecutive months unless he is elected to either House of Parliament within that period. If he is not so elected, he shall cease to be a Minister on the expiry of six consecutive months. The same provision is applicable to the Prime Minister for reasons which we have set out in our judgment in the case of S.P. Anand v. H.D. Deve Gowda Â 6. There is no disqualification which can be spelled out under Article 75(5) in respect of a member of a State Legislative Assembly who is appointed under Article 75(5).

15. It would be necessary to take note of The Prohibition of Simultaneous Membership Rules, 1950 (in short the Rules). The said rules were promulgated in exercise of powers conferred by Clause (2) of Article 101 and Clause (2) of Article 190 of the Constitution which read as follows:

1. These Rules may be called the Prohibition of Simultaneous Membership Rules, 1950.

2. The period at the expiration of which the seat in Parliament of a person who is chosen a member both of Parliament and of a House of Legislature of a State specified in the First Schedule to the Constitution of India (hereinafter referred to as 'the Constitution') shall become vacant, unless he has previously resigned his seat in the Legislature of such State, shall be fourteen days from the date of publication in the Gazette of India or in the Official Gazette of the State, whichever is later, of the declaration that he has been so chosen.

3. The period at the expiration of which the seat of a person who is chosen a member of the Legislatures of two or more States specified in the First Schedule to the Constitution in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislature of all but one of the States, shall be ten days from the later or, as the case may be, the latest of the dates of publication in the Official Gazettes of such States of the declarations that he has been so chosen.

16. In view of what has been stated by this Court in the aforesaid decisions, the inevitable conclusion is that this petition is sans merit and deserves to be dismissed which we direct.