

ALLAHABAD HIGH COURT

Arun Kumar Rai Chaudhary

Vs.

Union of India

C.M.W.P. No.10968 of 1991

(V.N. Khare and M.P. Kenia, JJ.)

13.08.1991

JUDGEMENT

V.N. Khare, J.

1. On 15-5-1991 while dismissing the writ petition we directed that the reasons for dismissal of the writ petition will be given later on. We are accordingly giving the reasons for our judgment in this writ petition.

2. By means of this writ petition under Article 226 of the Constitution the petitioner who is a citizen of India and claims to be a freedom fighter has questioned the continuance of Sri Mulayam Singh Yadav as a Chief Minister of Uttar Pradesh and his Council of Ministers. It is prayed that a writ of quowarrant be issued to Sri Mulayam Singh Yadav to show cause under what authority he purports to act as Chief Minister of State of U.P. and further to oust him from the office of Chief Minister of Uttar Pradesh as he has no constitutional authority to hold the said office and function as such.

3. It is not disputed that Sri Mulayam Singh Yadav was appointed by the Governor as Chief Minister of Uttar Pradesh and on his advice the Council of Ministers were appointed. Subsequently on the advice of the Chief Minister the Governor of U.P. dissolved the Legislative Assembly of Uttar Pradesh and fresh poll for constituting the Legislative Assembly was ordered.

4. The argument advanced on behalf of the petitioner is that after the Legislative Assembly is dissolved, the Chief Minister and Council of Ministers cease to continue and in the present situation the President ought to have promulgated President Rule in the State of Uttar Pradesh under Article 356 of

the Constitution of India.

5. After hearing the learned counsel we find that the argument advanced has no merit. Part VI of the Constitution of India deals with the provisions relating to the States of Union of India. Article 154 (i) provides that the executive power of the State shall vest in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. Article 155 of the Constitution lays down that the Governor shall be appointed by the President by warrant under his hand and seal. Article 163 (1) provides 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, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. Article 164 (1) of the Constitution further provides that the Chief Minister shall be appointed by the Governor and the other Minister 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. The relevant article on which emphasis has been laid on behalf of the petitioner is Clause (2) of Article 164 of the Constitution which provides that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

6. The argument in nut shell is that once State Legislative Assembly is dissolved, the Council of Ministers cannot be made responsible to the Legislative Assembly and, therefore, it ceases to function. No doubt under Article 164 (2) of the Constitution the Council of Ministers with the Chief Minister at the head is required to enjoy the confidence of Legislative Assembly when the Legislative Assembly is in existence and has not been dissolved. A situation may arise when the Legislative Assembly is dissolved and in such a case the Council of Ministers cannot possibly enjoy the confidence of Legislative Assembly. If the contention of the petitioner is accepted, the question arises who is going to aid and advise the Governor of State. As noticed earlier executive power of the State vests in the Governor of the State but the Governor cannot exercise executive power without aid and advice of the Council of Ministers which is mandatory in form and therefore, we have to give a harmonious construction of Articles 154, 163 and 164 of the Constitution and by giving such interpretation we are of the opinion that after the Legislative Assembly is dissolved, the Council of Ministers continue to aid and advise the

Governor and sub-Clause (2) of Article 164 of the Constitution would not be applicable.

7. This question came up for consideration before Supreme Court in the case of *U. N. R. Rao v. Indira Gandhi* ¹ and *Thiru K. N. Rai Gopal v. M. Karuna Nidhi* ². The Supreme Court while interpreting Articles 74 and 75 as well as Articles 163 and 164 of the Constitution held that even if the House is dissolved, the Council of Ministers continues. These decisions squarely cover the case before us. Following these decisions we hold that after the Governor of the State of U.P. dissolved the Legislative Assembly and directions were issued for holding fresh poll for constituting the Legislative Assembly, the Council of Ministers continues. Further there being no failure of constitutional machinery within the meaning of Article 356 of the Constitution, the contention that the President of India ought to have promulgated President Rule in the State for carrying on the function of the Government must be rejected.

8. We accordingly find no merit in the petition which deserves to be dismissed.

Petition dismissed.

Cases Referred.

1. (AIR 1971 SC (1002))
2. (AIR 1971 SC p. 1551)