

(2013) 04 AP CK 0125

Andhra Pradesh High Court

Case No: Writ Petition No. 8359 of 2013

Uppu Venkataramana

APPELLANT

Vs

State of A.P. and
Others

RESPONDENT

Date of Decision: April 30, 2013

Acts Referred:

- Constitution of India, 1950 - Article 163, 163(2), 164, 164(1)

Citation: (2013) 5 ALD 240 : (2013) 4 ALT 584

Hon'ble Judges: N.V. Ramana, Acting C.J.; Vilas V. Afzulpurkar, J

Bench: Division Bench

Advocate: P.V. Krishnaiah, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

N.V. Ramana, J.

In this writ petition, the petitioner seeks a Writ of Quo Warranto against the 5th respondent requiring him to show as to the authority, as per law, under which he is holding the Office of the Chief Minister of the State and further seeking the relief for declaring the appointment of the 5th respondent as Chief Minister as unconstitutional and violative of Article 164(1) of the Constitution of India. We have heard Mr. P.V. Krishnaiah, learned counsel for the petitioner.

2. The sheet anchor of the learned counsel for the petitioner is a press report in the Hindu dated November 25, 2010, on the basis of which it is alleged that the 5th respondent has not been elected as leader by the Congress Legislature Party and consequently, the letter of the P.C.C. President addressed to His Excellency, the Governor of Andhra Pradesh signed on 24.11.2010 describing the 5th respondent as having been unanimously elected as the leader of the Congress Legislature Party is incorrect. Learned counsel further submits that His Excellency, the Governor invited

the 5th respondent to form the Government on the basis of the aforesaid letter of the P.C.C. President and consequently he contends that in the absence of any resolution of the Congress Legislature Party, there is no material in support of the 5th respondent being elected as the leader of the majority Legislature Party in the State. Learned counsel, therefore submits that the 5th respondent is disqualified from holding the Office of the Chief Minister as his appointment itself is unconstitutional.

3. During the course of hearing, learned counsel has taken us through the historical events preceding the appointment of the 5th respondent by showing us the manner in which the majority Legislature Parties, in the past, elected its leader and the manner in which the said decision was communicated to the then Governor, who has there upon invited such leader to be sworn in as Chief Minister. Similar such instances where Chief Ministers in the past were invited by the Governor following similar procedure are shown to us from the papers filed by the petitioner and it is contended that in the case of the 5th respondent, admittedly, the Congress Legislature Party of the State reportedly resolved to request the Congress President to select a new leader and on such selection, the 5th respondent is nominated by the Congress President and was thereafter sworn in as Chief Minister. Learned counsel submits that in the absence of the 5th respondent being unanimously elected as leader of the Congress Legislature Party, he could not have been invited to form the Government and thereby his appointment as Chief Minister is unconstitutional.

4. Generally a Writ of Quo Warranto can be issued only if the appointment is contrary to the constitutional provisions and statutory rules. Now the issue that falls for consideration before us is whether any constitutional provision has been violated while appointing the 5th respondent as Chief Minister of the State of Andhra Pradesh by His Excellency the Governor, whether the discretion exercised by His Excellency the Governor can be called in question before us?

5. While considering the contentions raised on behalf of the petitioner in the light of Article 163 and 164 of the Constitution of India, it would be appropriate to extract the said article, which reads thus:

163. 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 is 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 to 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.

164. Other provisions as to Ministers--(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.

6. Article 163(2) of the Constitution mandates that the Governor under the Constitution is required to act in his discretion and such discretion cannot be called in question. Section 163(3) says that the advice tendered to the Governor by the Council of Ministers shall not be enquired into by any Court. Till the judgment of the Hon'ble Apex Court in [S.R. Bommai and others Vs. Union of India and others etc.](#), in several cases, Courts have consistently taken the view that such discretion of the Governor cannot be questioned before a Court of Law. The power of the Governor to appoint the Chief Minister under Article 164(1) fell for consideration in [Mahabir Prasad Sharma Vs. Prafulla Chandra Ghose and Others](#), it was held in Para No. 43 as follows:

43.

Can it be said that in such circumstances because the Governor appointed a Chief Minister in exercise of his powers under Article 164(1) without the advice of a Chief Minister, the appointment of the new Chief Minister must be held to be invalid? I again think not. In appointing a Chief Minister, therefore, the Governor must act in his own discretion. It is for him to make such enquiries as he thinks proper, to ascertain who among the members of the Legislature ought to be appointed the Chief Minister and would be in a position to enjoy the confidence of the majority in the Legislative Assembly of the State. To my mind, it is clear that there is no force in the contention raised on behalf of the petitioner, and the supporting respondents, that the appointment of Dr. P.C. Ghose as the Chief Minister is invalid because it was made by the Governor in his own discretion and without the advice of the Council of Ministers.

7. The decision of House of Lords in Council of Civil Service Union vs. Minister for the Civil Service and others [1985] AC 374, at page 418, records the dicta of Lord Roskill. It would be appropriate to extract the same for convenience.

But I do not think that that right of challenge can be unqualified. It must, I think, depend upon the subject matter of the prerogative power which is exercised. Many examples were given during the argument of prerogative powers which as at present advised I do not think could properly be made the subject of judicial review. Prerogative powers such as those relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of ministers as well as others are not, I think, susceptible to judicial review because their nature and subject matter are such as

not to be amenable to the judicial process. The courts are not the place wherein to determine whether a treaty should be concluded or the armed forces disposed in a particular manner or Parliament dissolved on one date rather than another.

8. In Bommai's case, their Lordships" have ruled that the Court can require the Union of India to disclose the material upon which the satisfaction of the President is based and from such disclosure courts can come to a conclusion whether any material is existing for the advice. Thus, from this decision of the Hon"ble Apex Court, the discretion of the Governor or the President are not absolutely beyond the pale of judicial scrutiny.

9. The foundation of the doctrine of judicial review is in the constitution. The constitution is the supreme law of the land and all orders passed by the authorities either under the provisions of the Constitution or under the provisions of the statutory laws must be in conformity with the constitutional mandate. Always it must be kept in mind that a person who holds office under the Constitution cannot assume power beyond what is envisaged in the constitutional scheme, in such cases, it has to be tested by applying the parameters of judicial review. Under our constitutional scheme, the Governor is the formal and constitutional head of the Executive, though the real power vests with the cabinet on whose advice the Governor ordinarily acts. There are certain exceptional situations, he acts on his initiative. One of that situation is the selection of the Chief Minister which demands that the candidate should command a majority in the house. The acts of the Governor are in any way violative of fundamental rights or constitutional right, they are subject to judicial review, though His Excellency the Governor is not answerable to any Court.

10. It would be evident from articles 163 and 164 that there is no constitutional provision making it incumbent upon the leader of the majority party to form the Government. There is nothing in the two articles that the Governor is bound to call upon the leader of the majority in the house to form the Ministry. The learned counsel for the petitioner also accepts that there is no procedure prescribed as to who should be appointed as Chief Minister. Apart from that, it is evident from the letter of P.C.C. President, which is signed by him on 24.11.2010 that the 5th respondent was unanimously elected as the leader of the Congress Legislature Party. No contra material is brought to our notice wherein the aforesaid statement is disputed by any member of the Congress Legislature Party nor there any material, even prima facie, to accept that the selection of the 5th respondent by the Congress President and as endorsed by the Congress Legislature Party, was disputed by any member of the Congress Legislature Property. Even as per the averments of the petitioner, once the Congress Legislature Party unanimously adopted one line resolution to abide by the selection made by the Congress President, such nominee by the Congress Party, automatically would stand elected as the Leader of the Congress Legislature Party.

11. Now we would like to deal with the other contention of the petitioner counsel that the previous convention and practice has not been followed. We are afraid that such previous conventions and practices verbalized is not found in the constitution and breach of convention or practice, is not enforceable through the constitutional court and cannot be taken as a mandatory procedure to issue a writ of quo warranto as sought for by the petitioner. The petitioner has miserably failed to establish that there is any violation of constitutional provision while appointing the 5th respondent as Chief Minister.

12. Hence we are of the considered opinion that the discretion exercised by His Excellency the Governor in appointing the 5th respondent as Chief Minister is not violative of any constitutional provision or contrary to any statutory rule. In view of our above discussion, we find no substance whatsoever in the contentions raised on behalf of the petitioner by the learned counsel and this Public Interest Litigation is liable to be dismissed at the threshold.

13. The writ petitioner has ventured to invoke the jurisdiction of this Court professing public interest only to sensationalize the issue, apparently for the purpose of publicity. This public interest litigation lacks basic verification of facts and lacks bona fides. We are also fortified in our view by the judgment of the Supreme Court in [Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others](#), wherein the Apex Court, while rejecting the locus of the petitioner, who was a lawyer, to file petition in public interest, observed as under:-

A person acting bona fide and having sufficient interest in the proceedings of public interest litigation will alone have a locus standi and can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

We, therefore, strongly deprecate such practice and dismiss this writ petition with exemplary costs quantified at Rs. 10,000/-(Rupees Ten Thousand Only).