
Harendra Pratap Singh Vs Nitish Kumar

Letters Patent Appeal No. 61 of 2014

Court: Patna High Court

Date of Decision: March 28, 2014

Acts Referred:

Constitution of India, 1950 – Article 132, 163, 164, 164(1), 164(1A)

Citation: AIR 2014 Patna 1 : (2015) 2 PLJR 272

Hon'ble Judges: S.P. Singh, J; I.A. Ansari, J

Bench: Division Bench

Advocate: Lalit Kishore, Principal Add. Advocate General, Advocate for the Respondent

Judgement

I.A. Ansari, J.

It may not be improper to premise that although the spirit of an instrument, especially of a Constitution, is to be respected

not less than its letter, yet the spirit is to be collected chiefly from its words. It would be dangerous in the extreme to infer from extrinsic

circumstances that a case for which the words of an instrument expressly provide shall be exempted from its operation. Where words conflict with

each other, where the different clauses of an instrument bear upon each other and would be inconsistent unless the natural and common import of

words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But if in any case the plain

meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that

instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case would be so

monstrous that all mankind would without hesitation unite in rejecting the application".

Justice Marshall in *Sturges v. Crowninshield*, 4 L Ed 529 (1819)

This Letters Patent Appeal arises out of an order dated 16.12.2013, made in Civil Writ Jurisdiction Case No. 15535 of 2012, whereby a learned

single Judge of this Court has dismissed the writ petition of a practising Advocate of this Court, who professes to be a public spirited person. The

cause, which the petitioner seeks to project, and the reliefs, which he seeks to achieve, need to be, first, taken note of. We, therefore, set out, in a

nutshell, the cause with which the writ petitioner came to this Court.

Factual Preface

2. With the help of the writ petition, made under Article 226 of the Constitution of India, the petitioner, who, as indicated above, is a practising

Advocate of this Court and professes to be a public spirited person, sought for a writ of quo warranto commanding removal of Dr. Manmohan

Singh as the Prime Minister of India, who was so appointed, on 22.05.2009, by the President of India. The petitioner also sought for a writ in the

nature of quo warranto directing removal of Shri Nitish Kumar as the Chief Minister of Bihar, who was sworn in as Chief Minister of this State on

24.11.2010.

3. The solitary ground of challenge to the appointments of Dr. Manmohan Singh as the Prime Minister of India and of Shri Nitish Kumar as the

Chief Minister of Bihar rests on the interpretation of Article 75(1-A) and Article 164(1-A) of the Constitution of India respectively.

4. Before we ascertain the correct interpretation attributable to Clause (1-A) of Article 75 and Clause (1-A) of Article 164, it is prudent to point

out that Article 79 makes it clear that for the Union, there shall be a Parliament, which shall consist of the President and two Houses to be known

respectively as the Council of States and the House of the People meaning thereby that the Parliament does not consist of the House of the People

alone; but also includes the Council of the States and the President. In other words, Article 79 makes it clear that there are two Houses of

Parliament, namely, the Council of States and the House of the People; and these two Houses, along with the President, constitute Parliament.

5. In the same manner in which Article 79 lays down the composition of Parliament, Article 168 embodies provisions relating to composition of the

Legislatures, in the States, by laying down that for every State, there shall be a Legislature, which shall consist of the Governor, and, in the States

of Andhra Pradesh, Bihar, Maharashtra, Karnataka, Tamil Nadu and Uttar Pradesh, two Houses; whereas, in other States, one House. Article

168 further makes it clear that wherever there are two Houses in a State, one shall be known as the Legislative Council (Vidhan Parishad) and the

other as the Legislative Assembly (Vidhan Sabha) and where there is only one House, it shall be known as the Legislative Assembly.

6. The Parliament, thus, consists of the House of the People, also known as Lok Sabha, and the Council of States, also known as Rajya Sabha.

As far as Bihar is concerned, the State Legislature consists of two Houses, namely, Vidhan Sabha as well as Vidhan Parishad, i.e., Legislative

Assembly and the Legislative Council.

7. It is relevant to note that Article 74 of the Constitution of India lays down that there shall be a Council of Ministers with the Prime Minister at the

head to aid and advise the President, who shall, in the exercise of his functions, act in accordance with such advice provided that the President may

require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice

tendered after such reconsideration; but the question whether any, and if so what, advice was tendered by Ministers to the President shall not be

inquired into in any Court.

8. Turning to Article 163, we note 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 insofar as he is, by or under the Constitution, required to exercise his functions or any of them in his discretion

and if any question arises whether any matter is or is not a matter as respects which the Governor is, by or under the 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 and that the question whether any, and if so, what advice was

tendered by Ministers to the Governor shall not be inquired into in any Court.

9. Because of the fact that by introduction of Clause (1-A) of Article 75 and of Clause (1-A) of Article 164, which form the basis of challenge to

the appointments of Dr. Manmohan Singh and Shri Nitish Kumar as the Prime Minister of India and the Chief Minister of this State respectively, it

needs to be pointed out that Clause (1-A) came to be inserted in Article 75 and Article 164 of the Constitution of India by the

(Ninety-First Amendment) Act, 2003, with effect from 1st of January, 2004.

10. Article 75 and Article 164, as the same stood before the Constitution (Ninety-First Amendment) Act, 2003, need to be, therefore, taken note

of and are accordingly reproduced below:

75. Other provisions as to Ministers.--

(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 Ministers 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.

(6) 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"".

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:

Provided that in the State of Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha, there shall be a Minister in charge of tribal welfare who may

in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out

for the purpose in the Third Schedule.

(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.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the

Legislature of the State so determines, shall be as specified in the Second Schedule"".

11. A bare reading of Article 75, as the same stood before its amendment by the Constitution (Ninety-First Amendment) Act, 2003, shows that it

is the President, who appoints the Prime Minister and it is on the advice of the Prime Minister that the President appoints other Ministers to hold

office during the pleasure of the President.

12. While, thus, all the Ministers of a Council of Ministers are appointed by the President, the distinction lies in the appointment of Prime Minister

inasmuch as Prime Minister's appointment is on President's discretion, though this discretion is required to be exercised on the constitutional

norms and scheme of governance and, as far as the remaining Ministers of the Council of Ministers are concerned, they, too, are appointed by the

President, but on the advice of the Prime Minister.

13. What is, now, of immense importance to note is that Clause (5) of Article 75 of the Constitution of India clearly shows that a person, who may

not be a Member of either House of Parliament, can be appointed as a Minister, but he cannot continue as a Minister on expiry of a period of six

consecutive months unless he is, in the meanwhile, elected as a Member of either House of Parliament.

14. Thus, in the case of Union, a Minister, in the Council of Ministers, can be appointed without his becoming a Member of either House of

Parliament.

15. Similarly, in the case of a State, the Chief Minister is appointed by the Governor and it is on the advice of the Chief Minister that the Governor

appoints other Ministers to hold office during the pleasure of the Governor.

16. Coupled with the above, Clause (4) of Article 164, same as Clause (5) of Article 75, lays down that a person, who may not be a Member of

the Legislative Assembly of the State or a Member of Legislative Council of the State--if Legislative Council exists in the State--can be appointed

as a Minister subject to the condition that he cannot continue as a Minister on expiry of a period of six consecutive months unless he is, in the

meanwhile, elected as a Member of the Legislative Assembly of the State or as a Member of the Legislative Council of the State if the Legislative

Council exists in the State.

Interpretational Contentions

17. It is the contention of the appellant herein that while a Minister, other than the Prime Minister, can be appointed for a period not exceeding six

months without his becoming a Member of either House of Parliament, the Prime Minister cannot be appointed unless he is a Member of the

House of the People (Lok Sabha). Strength for this contention is sought to be derived by the appellant from the insertion of Clause (1-A) of Article

75, with effect from 1.1.2004, by the Constitution (Ninety-First Amendment) Act, 2003.

18. Same is the argument advanced by the appellant in respect of the appointment of a Chief Minister in the sense that the appellant contends that

while any person, without being a Member of the Legislative Assembly of the State or of the Legislative Council of the State--where Legislative

Council exist--may be appointed as a Minister for a period not exceeding six months, no person can be appointed as Chief Minister unless he is an

elected Member of the Legislative Assembly of the State. Support for this submission is sought to be derived by the appellant by taking recourse

to Clause (1-A) of Article 164.

19. In view of the fact that the appellant's case rests principally on the correct interpretation of Clause (1-A) of Article 75 and Clause (1-A) of

Article 164, we reproduce hereinbelow Clause (1-A) of Article 75 and Clause (1-A) of Article 164:

2. Amendment of Article 75.--In Article 75 of the Constitution, after clause (1), the following clauses shall be inserted, namely:--

(1-A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent, of the total number

of members of the House of the People.

(1-B).....

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3. Amendment of Article 164.--In Article 164 of the Constitution, after clause (1), the following clauses shall be inserted, namely:--

(1-A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent, of the

total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Ministers, in a State shall not be less than twelve:

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the

commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent, or the number specified in the first

proviso, as the case may be, then, the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within

six months from such date as the President may by public notification appoint.

(1-B).....

20. Referring to Clause (1-A) of Article 75 and Clause (1-A) of Article 164, the appellant contends that Clause (1-A) shows that the total number

of Ministers, including the Prime Minister, in the Council of Ministers, shall not exceed fifteen per cent, of the total number of Members of the

House of the People and, therefore, a person, according to the appellant, cannot be appointed as Prime Minister unless he is a Member of the

House of the People and, similarly, a person, contends the appellant, cannot be appointed as a Chief Minister, unless he is a Member of the

Legislative Assembly of the State concerned.

21. It has been contended, on behalf of the respondents, that Clause (1-A) has been introduced not for prescribing the qualification of a Minister

including the Prime Minister, but for determining the total number of Ministers, which the Council of Ministers in the Union Government or in a

State, shall have and, in this regard Article 75(1-A) makes it clear that the number of Ministers, in the Council of Ministers of the Union

Government, cannot exceed fifteen per cent, of the total number of members of the House of the People and, similarly, the number of Ministers, in

the Council of Ministers, in a State Government, cannot exceed total number of the members of the Legislative Assembly of the State concerned.

22. If the provisions, embodied in Clause (1-A), are to be interpreted as prescribing conditions precedent for appointment of a person as a

Minister, then, it would logically follow that Clause (1-A) refers to not only Prime Minister, but also other Ministers of the Council of Ministers of

the Union Government. Consequently, if what the appellant contends is correct, not even a Minister, far less a Prime Minister, can be appointed

from amongst a person, who is not a Member of the House of the People. Similarly, a Minister, far less a Chief Minister, in a State, cannot be

appointed unless he is an elected member of the Legislative Assembly of the State concerned. This interpretation, if attributed to Clause (1-A),

would render redundant Clause (5) of Article 75 as well as Clause (4) of Article 164, which lay down, at the cost of repetition, as follows:

Article 75. Other Provisions as to Ministers.--

(1) xxx xxx xxx

(1-A) & (1-B) xxx xxx xxx

(2) to (4) xxx xxx xxx

(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.

(6) xxx xxx xxx

Article 164. Other provisions as to Ministers.--

(1) xxx xxx xxx

(1-A) xxx xxx xxx

(1-B) xxx xxx xxx

(2) & (3) xxx xxx xxx

(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.

(5) xxx xxx xxx

Acceptable Interpretation

23. In our considered opinion, and justifiably, Mr. Lalit Kishore, learned Principal Additional Advocate General, is correct, when he submits that

the basic rule of interpretation, including interpretation of the provisions of Constitution, is that the Court shall avoid attributing such a meaning to a

provision or the term, appearing in the Constitution or a statute, which would render the remaining provisions redundant and otiose. If the

interpretation of Clause (1-A), which the appellant advances, is acceded to by this Court, the result would be that notwithstanding the fact that

Clause (5) of Article 75 permits appointment of a person, who may not be a member of either House of Parliament, as a Minister, in the Union

Government, for a period not exceeding six months, Clause (1-A) of Article 75 would make it impermissible to appoint such a person as a

Minister in the Council of Ministers in the Union Government if he is not an elected member of the House of the People. Since such an

interpretation, if attributed to Clause (1-A), would render Clause (5) of Article 75, if we may reiterate, redundant and otiose Clause (1-A) of

Article 75 has to be, therefore, given such a meaning, which would enable Clause (5), too, to survive.

24. Considered thus, it becomes crystal clear that Clause (1-A) of Article 75 merely helps in determining the total number of Ministers, including

Prime Minister, in the Council of Ministers, in the Union Government, and this number cannot exceed fifteen per cent, of the total number of

members of the House of the People. No different can be the interpretation of Clause (1-A) of Article 164 and the irresistible conclusion, which

one arrives, is that Clause (1-A) of Article 164 merely aims at fixing the total number of Ministers, including the Chief Minister, in the Council of

Ministers, in the State Government and the total number of Ministers cannot exceed fifteen per cent, of the total number of members of the

Legislative Assembly of the State.

25. In other words, in order to control the numerical size of the Council of Ministers, Clause (1-A) of Article 75 and Clause (1-A) of Article 164

have been introduced so that the Council of Ministers, in the Union Government, and/or the Council of Ministers, in a State Government, does not

become so large that it renders Constitutional scheme of governance impracticable and adversely affect the quality of governance.

26. In short, Clause (1-A) of Article 75 puts a cap on the total number of Ministers, which the Council of Ministers, in the Union Government, can

have and this number has been kept at fifteen per cent, of total number of House of the People. Similarly, in terms of Clause (1-A) of Article 164,

a State cannot have, in its Council of Ministers, either a Minister or Chief Minister if the number exceeds fifteen per cent, of the total number of the

members of the Legislative Assembly of the State concerned.

27. To put it a little differently, it is for the purpose of determining the total number of the Ministers, in the Council of Ministers, in the Union

Government, that Clause (1-A) of Article 75 provides that the total number of Ministers cannot exceed fifteen per cent, of the number of members

of the House of the People and, in the case of a State, total number of Members in the Council of Ministers cannot exceed fifteen per cent, of the

total number of the members of the Legislative Assembly of the State.

28. Clause (1-A) of Article 75 cannot, therefore, be interpreted to mean, contrary to what Clause (5) states, that unless a person is a member of

the House of the People, he cannot be appointed as a Minister in the Council of Ministers in the Union and, similarly, Clause (1-A) of Article 164

cannot be interpreted to mean that unless a person is a Member of the Legislative Assembly of a State, he cannot be appointed as a Minister in a

State Government.

29. The above impression that the object of insertion of Clause (1-A) in Article 75 as well as Clause (1-A) in Article 164, was to fix the maximum

numerical strength of Council of Ministers, both, at the Union as well as at the State level, thereby reduce to a reasonable number an abnormally

large Council of Ministers can be very well gathered from the Statement of Objects and Reasons of the Constitution (Ninety-First Amendment)

Act, 2003. The Statement of Objects and Reasons, leading to Ninety-First Amendment of the Constitution, is, therefore, reproduced below:

Statement of Objects and Reasons Demands have been made from time to time in certain quarters for strengthening and amending the Anti-

defection Law, as contained in the Tenth Schedule to the Constitution of India, on the ground that these provisions have not been able to achieve

the desired goal of checking defections. The Tenth Schedule has also been criticised on the ground that it allows bulk defections while declaring

individual defections as illegal. The provisions for exemption from disqualification in case of splits as provided in paragraph 3 of the Tenth Schedule

to the Constitution of India has, in particular, come under severe criticism on account of its destabilising effect on the Government.

2. The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of May, 1990, the Law Commission of India in its 170th

Report on ""Reform of Electoral Laws"" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of

March 31, 2002 have, inter alia, recommended omission of said paragraph 3 of the Tenth Schedule to the Constitution of India pertaining to

exemption from disqualification in case of splits. The NCRWC is also of the view that a defector should be penalised for his action by debarring

him from holding any public office as a Minister or any other remunerative political post for at least the duration of the remaining term of the existing

Legislature or until, the next fresh elections whichever is earlier. It is proposed to accept these suggestions.

3. The NCRWC has also observed that abnormally large Councils of Ministers were being constituted by various Governments at Centre and

States and this practice had to be prohibited by law and that a ceiling on the number of Ministers in a State or the Union Government be fixed at

the maximum of 10% of the total strength of the popular House of the Legislature.

4. In the light of the above, it is proposed to amend the Constitution by omitting paragraph 3 of the Tenth Schedule to the Constitution of India and

to provide that the size of the Council of Ministers should not be more than 10% of the strength of House or Houses concerned whether

Unicameral or Bicameral. However, in case of smaller States like Sikkim, Mizoram and Goa having 32, 40 and 40 Members in the Legislative

Assemblies respectively, a minimum strength of seven Ministers is proposed.

5. The Bill seeks to achieve the objects mentioned above.

(Emphasis is added)

30. A careful reading of the Statement of Objects and Reasons, leading to Ninety-First Amendment of the Constitution, makes it abundantly clear

that insertion of Clause (1-A) in Article 75 as well as Clause (1-A) in Article 164 is aimed at stopping the practice of having abnormally large

Council of Ministers, both at the Central as well as the State level, and though, in this regard, the recommendation of the National Commission to

Review the Working of the Constitution (NCRWC), in its report of March 31, 2002, was to fix the maximum number at ten per cent, of the total

strength of the Popular House of the Legislature, Parliament has, eventually, fixed the maximum number of the Council of Ministers at the Union

and the State level at fifteen per cent, of the total number of Members of the House of the People, in the case of Union Government, and total

number of Members of the Legislative Assembly, in the case of States, barring some smaller States, where the maximum number of the Council of

Ministers has been fixed by the Ninety-First Amendment itself.

31. If the Statement of Objects and Reasons, which led to Ninety-First Amendment of the Constitution, are kept clear in mind, it necessarily

follows that Clause (1-A) of Article 75 or Article 164 basically fixes the total number of Ministers, including the Prime Minister, in the Council of

Ministers, in the Union Government, as well as the total number of Ministers, including the Chief Minister, at the State level, by prescribing fifteen

per cent, of the total number of members of the House of the People, in the case of Union, and fifteen per cent, of the total number of members in

the Legislative Assembly of the States.

32. Clause (1-A) of Article 75 as well as Clause (1-A) of Article 164, thus, we may reiterate, aim at fixing the total number of Ministers, including

the Prime Minister, in the case of Union Government, and the total number of Ministers, including the Chief Minister, in the Council of Ministers, in

the case of a State. Clause (1-A) of neither Article 75 nor of Article 164 can be stretched to mean, or be treated as having laid, the criterion or

qualification for a person to become a Prime Minister or Chief Minister, as the case may be.

Is the Issue Unprecedented?

33. The conclusions, which we have drawn above, are well supported by the decision in S.P. Anand Vs. H.D. Deve Gowda and others, , which

lays down the law explicitly and emphatically inasmuch as the question raised, in the case H.D. Deve Gowda (supra), was whether a person, who

is not a Member of either House of Parliament, can be appointed as Prime Minister of India, because the contention was that Shri H.D. Deve

Gowda, not being a Member of either House of Parliament, was, under the Constitution, not eligible to be appointed as the Prime Minister of

India.

34. Referring to the case of Har Sharan Verma Vs. Shri Tribhuvan Narain Singh, Chief Minister, U.P. and Another, , the Supreme Court, pointed

out in S.P. Anand Vs. H.D. Deve Gowda and others, , that the Constitution Bench, in Har Sharan Verma's case, had the occasion to consider

whether a person, who was not a member of either House of the State Legislature, could be appointed a Minister of State and this question was

answered in the affirmative on the interpretation of Articles 163 and 164 of the Constitution, which, in material particulars, correspond to Articles

74 and 75, which have some bearing on the question of appointment of the Prime Minister.

35. In S.P. Anand Vs. H.D. Deve Gowda and others, , the Supreme Court has pointed out that in Har Sharan Verma Vs. Shri Tribhuvan Narain

Singh, Chief Minister, U.P. and Another, , Shri T.N. Singh was appointed as the Chief Minister of Uttar Pradesh even though he was not a

member of either House of the State Legislature on the date of his appointment, his appointment was challenged in the High Court by way of a writ

petition filed under Article 226 of the Constitution, the High Court dismissed the writ petition, but granted a certificate, under Article 132 of the

Constitution, and that was how the matter had reached the Supreme Court.

36. Pointed out the Supreme Court, in S.P. Anand Vs. H.D. Deve Gowda and others, , that in the case of Har Sharan Verma Vs. Shri Tribhuvan

Narain Singh, Chief Minister, U.P. and Another, , the Court held that clause (4) of Article 164 had an ancient lineage and there was no reason to

whittle down the plain thrust of the said provision by confining it to cases, where a person, being a member of the legislature and a Minister, for

some reason, loses his seat in the State. Accordingly, the decision of the High Court was affirmed.

37. The same issue, which was raised in Har Sharan Verma Vs. Shri Tribhuvan Narain Singh, Chief Minister, U.P. and Another, , was, again,

raised in Har Sharan Verma Vs. State of U.P. and Another, , when Shri K.P. Tiwari was appointed, in November, 1984, as a Minister in the U.P.

Government, without being a member of either House of the State Legislature. It was contended, in the light of the Constitution (Sixteenth

Amendment) Act, 1963, that Shri K.P. Tiwari was appointed as a Minister of the U.P. Government even though he was not a member of either

House of the State Legislature and that the decision, rendered in the case of Har Sharan Verma Vs. Shri Tribhuvan Narain Singh, Chief Minister,

U.P. and Another, , was not good law, because the Court had overlooked the amendment of Article 173(a) effected by the Constitution

(Sixteenth) Amendment Act, 1963. [The corresponding provision in regard to Parliament is Article 84(a)].

38. Dealing with above contention, the Supreme Court pointed out, in Har Sharan Verma Vs. State of U.P. and Another, , that the object of

introducing the amendment, in clause (a) of Article 173 of the Constitution, was to provide that not only before taking his seat shall a member of

legislature take the oath prescribed by the Third Schedule as required by Article 188 of the Constitution, but even before standing for election, a

candidate must take the same oath and this was to ensure that only a person, having allegiance to India, shall be eligible for membership of the

legislature.

39. The Court further pointed out, in Har Sharan Verma Vs. State of U.P. and Another, , that clause (4) of Article 164 of the Constitution

provides that a Minister (which includes a Chief Minister) who, for a period of six consecutive months, is not a member of the legislature of a State

shall, at the expiration of that period, cease to be a Minister. In other words, the Court held that a person, who was not a member of either House

of the State Legislature, could also be appointed by the Governor as the Minister (which includes the Chief Minister) for a period not exceeding six

consecutive months. The Court, therefore, did not see, in Har Sharan Verma Vs. State of U.P. and Another, , any material change brought about

in the legal position by reason of the amendment of Article 173(a) of the Constitution from the law as stood explained in the earlier decision in Har

Sharan Verma Vs. Shri Tribhuvan Narain Singh, Chief Minister, U.P. and Another, .

40. The same issue was, once again, raised in Harsharan Verma Vs. Union of India (UOI) and Anr, , when Shri Sita Ram Kesri came to be

appointed as a Minister of State in the Central Cabinet on the ground that he was not a member of either House of Parliament on the date of his

appointment as Minister of State. The Supreme Court upheld the appointment.

41. In the present appeal, it has been submitted by the appellant, in person, before us with great compassion and emotion that the Constitutional

scheme of composition of the Government, both, at the Union as well as State level, would be rendered unconstitutional if a person, who is not an

elected representative of the people, is allowed to occupy the pivotal Office of the Prime Minister or the august Office of the Chief Minister. When

his attention was drawn to the cases, which we have referred to, including the case of S.P. Anand Vs. H.D. Deve Gowda and others, , the

appellant correctly points out that all the decisions, which have been referred to, are decisions, which were rendered before the Ninety-First

Amendment of the Constitution.

42. There can be no doubt that Ninety-First Amendment of the Constitution came into force with effect from 1 January, 2004, and the decisions,

which are being referred to, are decisions, which were rendered before the Ninety-First Amendment of the Constitution.

43. In order to appreciate the contention, which the appellant has raised, and in order to determine if his contention has any merit, it would be

apposite to read and analyse Clause (1-A) of Article 75 and Clause (1-A) of Article 164 a little further.

44. The only change in the constitutional scheme after the decisions, which we have referred to, including the decision in S.P. Anand Vs. H.D.

Deve Gowda and others, , is the introduction of Clause (1-A) of Article 75 and Clause (1-A) of Article 164 of the Constitution. We have to,

therefore, determine if the introduction of Clause (1-A) in Article 75 or Clause (1-A) in Article 164 has made any material change in the view,

which we have taken above. To our mind, the insertion of Clause (1-A) either in Article 75 or in Article 164 has not brought any material change

to the meaning attributable to Clause (5) of Article 75 and Clause (4) of Article 164 inasmuch as Clause (1-A) in both the cases, namely, in the

case of Article 75 as well as Article 164, merely quantifies, as rightly observed by the learned single Judge, the maximum strength of the Council of

Ministers and nothing more.

45. We, therefore, completely agree with the reasons, which the learned single Judge has assigned for dismissing the writ petition.

46. Reading further Clause (5) of Article 75 would clearly show that a person, who is not a member of the House of Parliament, but has been

appointed Minister, has to become Member of either House of Parliament within a period of six months. Article 79 provides for the Houses of

Parliament. There are two Houses known as Council of States (referred to as "Rajya Sabha") and House of the People (referred to as "Lok

Sabha"). If what the appellant contends is to be accepted, then, Clause (5) of Article 75 would be rendered redundant. The appellant points out, in

this regard, that Clause (5) of Article 75 talks of Minister and not talks of Prime Minister. The answer, as the learned single Judge has pointed out,

is simple and the answer is that Prime Minister is one of the Ministers, who is the Leader so far as the Council of Ministers is concerned, the

distinction being that it is the Prime Minister, who is first appointed by the President, and the remaining Ministers are appointed on the advice of the

Prime Minister. This becomes clearer from Article 74 of the Constitution, which lays down that the Council of Ministers is headed by Prime

Minister; otherwise, there is no distinction between a Minister and Prime Minister.

47. Similar are the provisions with regard to the Chief Minister of the State. Article 163 clearly conveys that it is the Chief Minister, who heads the

Council of Ministers.

48. Though the appellant refers to the case of B.R. Kapur Vs. State of Tamil Nadu and Another, , in support of his submissions, that a person

cannot be appointed as Chief Minister unless he has been elected as a Member of the Legislative Assembly nor can a person be appointed as

Prime Minister unless he has been elected to the House of the People as its Member, we find that the decision in B.R. Kapur (supra), has no

bearing on the issue, which we confront inasmuch as the decision, relied upon by the appellant, does not help the Court to determine the real issue,

the real issue being whether a person, not being a Member of the House of the People, can be appointed as Prime Minister or whether a person,

not being a Member of the State Legislature of a State, can be appointed as Chief Minister of the State.

49. We may also pause, at this stage, to refer to the case of Ashok Pandey Vs. K. Mayawati and Others, , which the appellant relies upon. In

Mayawati's case (supra), writs of quo warranto for removal of Chief Minister and a Minister were sought for on the ground that they were

Members of Rajya Sabha. The basic ground of challenge was that the two respondents, namely, respondent Nos. 1 and 2 therein, were Members

of the Rajya Sabha and neither of them, being a Member of the State Legislative Assembly, could have been appointed as the Chief Minister and

the Minister at the State level. The Supreme Court, in Mayawati's case (supra), clarified that 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

Legislative Assembly at the time of address of the Governor as contemplated by Article 175. The Supreme Court, in Mayawati's case (supra),

also pointed out that Article 164(4) provides that the Minister, who, for a period of six months, is not a Member of the Legislature of the State,

shall, at the expiration of the said period, cease to be a Minister. The Supreme Court, in Mayawati's case (supra), further pointed out that the plain

words, appearing in the Constitution, 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. In this regard, in Mayawati's case (supra), the Supreme Court has, indeed,

pointed out that there is nothing in the Constitution, which would make the appointment of the Chief Minister and Minister, none of whom is a

Member of the State Legislature, illegal. The Supreme Court referred, on this aspect, to the case of Har Sharan Verma Vs. Shri Tribhuvan Narain

Singh, Chief Minister, U.P. and Another, , and pointed out that in Har Sharan Verma (supra), 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.

50. In order to strengthen the conclusion, which we have arrived at, we consider it apposite to refer to the proceedings of the Constituent

Assembly, wherein Mr. Tahir, a member of the Constituent Assembly, proposed an amendment, which read thus:

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

51. 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.

52. Responding to the amendment, which Mr. Tahir has proposed, and opposing the same, Dr. Ambedkar 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.

53. After the debate, the proposed amendment was negatived.

54. The above discussions, on the floor of the Constituent Assembly, on the proposed amendment, which sought to make only an elected member

of the House a Minister and not a person, who was not an elected member of the House, clearly prove the point that the founder of the

Constitution intended to make it Constitutionally permissible to have a Minister at the Union or the State level without his being an elected member

of the House, though he cannot continue beyond a period of six months from the date of his appointment as a Minister unless he got himself

elected.

55. Having referred to the debate in the Constituent Assembly, which we have reproduced above, the Supreme Court has pointed out, in the case

of Ashok Pandey Vs. K. Mayawati and Others, , that 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 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.

56. Article 164(4) is, therefore, according to the Supreme Court in Ashok Pandey Vs. K. Mayawati and Others, , not a source of power or an

enabling provision for appointment of a non-legislator as a Minister even for a short duration; rather, according to the Supreme Court, in

Mayawati's case (supra), Article 164(4) is in the nature of a disqualification or restriction for a non-member, who has been appointed as the 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. The

relevant observations, appearing in this regard, in Mayawati's case (supra), read as under:

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"".

57. The above observations appearing in *Ashok Pandey Vs. K. Mayawati and Others*, , make it more than abundantly clear that there is no

impediment to the appointment of a person as a Chief Minister or as Minister if he is not a Member of the Legislative Assembly of the State

concerned, the only limitation being that such a person cannot, continue as the Chief Minister or as a Minister if he does not get elected either as a

Member of Legislative Assembly or Legislative Council if the State has a Legislative Council within a period of six months of his appointment as

Chief Minister or Minister of the State, as the case may be. No different can be the scheme of appointment of Prime Minister or other Ministers in

the Council of Ministers at the Union level.

Conclusions

58. The resultant effect is that a person can be appointed as Prime Minister or a Minister, in Union Government, without his being a Member of the

House of the People or a Member of the Council of the States; but he cannot continue as Prime Minister or a Minister beyond a period of six

months from the date of his appointment as Prime Minister or a Minister, as the case may be, unless he becomes, in the meanwhile, a Member of

either House of Parliament, i.e., Lok Sabha or Rajya Sabha. Similarly, in the case of State of Bihar, a person can be appointed, as Chief Minister

or a Minister, without his being a Member of the Legislative Assembly of the State or without his being a Member of the Legislative Council of the

State subject to the condition that he cannot continue as Chief Minister or a Minister, in the State Government, beyond a period of six months from

the date of his appointment as Chief Minister or a Minister, as the case may be, unless he becomes, in the meanwhile, a Member of either House

of Legislature, i.e., Vidhan Sabha or Vidhan Parishad.

Parting Words

59. What crystallizes from the above discussions is that a person, without being a Member of either House of Parliament, can be appointed as

Prime Minister subject to the limitation that such an appointee cannot continue to hold the office of the Prime Minister beyond a period of six

months from the date of his appointment as Prime Minister unless he becomes, in the meanwhile, a Member of either House of Parliament.

Similarly, a person, without being a Member of either House of State Legislature, can be appointed as Chief Minister subject to the limitation that

such an appointee cannot continue to hold the office of the Chief Minister beyond a period of six months from the date of his appointment as Chief

Minister unless he becomes, in the meanwhile, a Member of either House of State Legislature if the State has more than one House.

60. The Ninety-First Amendment of the Constitution, which inserted Clause (1-A) in Article 75 and Clause (1-A) in Article 164, cannot be held to

have made any difference on the above aspect of the constitutional scheme of governance except that these amendments fix the total strength of the

Council of Ministers both, at the Union as well as at the State levels.

Relief(S), If Any

61. Because of what has been discussed and pointed out above, we do not find any infirmity in the conclusions arrived at, and the decision

rendered, by the learned single Judge. We find no merit at all in the present appeal. The appeal, therefore, fails and shall, accordingly, stand

dismissed. No order as to costs.