S.R. CHAUDHARI V. STATE OF PUNJAB (2001) 7 SCC 126

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INTRODUCTION

Government by the people is the actual definition of responsible government and representative democracy. According to the constitution, it means that the autonomous authority that belongs to the people is used on their behalf by their chosen representatives, who are obligated to answer to the people for their actions in the exercise of those powers. The world's longest-written constitution is the one found in our country. Speaking about the ministers who have the authority to approve governing legislation and to pass the laws, many loopholes exist and are used for their own personal gain. The constituent article grants a privilege, powers, and immunities to the member of parliament, but it appears that the ministers either directly or indirectly abuse these rights.

Three fundamental concepts are considered in parliamentary democracies: representation of the people, accountable government, and legislative accountability of the council of ministers. Through the legislative and the executive branch, this element establishes a direct line of authority from the people. In the end, the calibre of those who serve as the legislature's elected representatives determines the nature and scope of parliamentary democracy. "Elections are the barometer of democracy," it is stated, and "contestants are the lifeline of the parliamentary system and its set-up."

The significant clause In Article 164(4) of the Indian Constitution stipulates that a minister must cease to be a minister at the end of any period of six consecutive months during which he or she is not a member of the state legislature.[1] This can be seen in the recent election of West Bengal where CM Mamata Banerjee lost in her constituency from Nandigram but still, she become the CM of West Bengal because of the privilege given in article 164 (4).

FACTS

On the recommendation of the CM Sardar Harcharan Singh Barar, respondent Shri Tej Prakash Singh was appointed as a minister in the state of Punjab on September 9, 1995. He was not a Punjab legislative assembly member at the time of his appointment as a minister. On March 8, 1996, he presented his resignation from the council of ministers after failing to

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[1]Constitution of India Article 164(4)

secure his election as a Punjab state legislator within the allotted six months. The leadership of the ruling party changed while the same legislative assembly was in session. On November 21, 1996, Smt. Rajinder Kaur Bhattal was named chief minister of Punjab. With effect from November 23, 1996, Shri Tej Parkash Singh, who had not previously been elected to the legislature, was once more appointed as a minister.

The appellant filed a petition requesting a writ of quo warranto against Shri Tej Prakash Singh for a second time during the same legislative's term, claiming that his failure to be elected as a member of the legislature was a violation of constitutional provisions and so bad. The writ petition was dismissed in limine by the Division Bench of the High Court in an order dated December 3, 1996. This special leave appeal challenges the High Court's order and judgement rejecting the writ petition in limine.

LEGAL ISSUE

Can a non-member who has served as a minister for six consecutive months, during which time he has ceased to serve in that capacity, be reappointed to the position without having to run for office again after the six-month term has passed?

OBSERVATION OF THE SUPREME COURT

The phrase "six consecutive months" used by the Constitution's framers means that the period of six months must continue constantly, not even sporadically. It would begin when a non-legislator was appointed as a minister or when a minister changed from being a legislator to a non-legislator, and it would last for the duration of that time period. It is crucial that the word "consecutive" is used. It cannot be defeated by interpreting Article 164(4) as allowing appointments even for a total of six months, during the term of a legislative assembly, that the appointment of such a non-legislative official as a minister can be for six months "at a time", without his receiving a mandate from the electorate in the interim.

Therefore, we believe that it would be against the law to repeatedly appoint someone who is not a member of the Legislature as a Minister for a term of "six consecutive months" without having that person run for office themselves meanwhile. The practise would be obviously improper, undemocratic, invalid, and disrespectful of the constitutional framework. At best, Article 164(4) simply creates a temporary, six-month-long exception to the general rule that only members of the Legislature may serve as ministers. This exception must be narrowly defined and utilised sparingly because it must essentially be used to address a very extraordinary situation. The clear intent of Article 164(4), which states that if a person is

unable to win election to the Legislature within the grace period of six consecutive months, he shall cease to be a Minister, cannot be frustrated by re-appointing the person as a Minister after a brief pause without him gaining the support of the electorate. It is not acceptable to allow the democratic process, which is at the heart of our Constitution's design, to be ignored in this way.

DECISION

After Shri Tej Prakash Singh, the respondent, resigned from the council of ministers on March 8, 1996, during the term of the same Legislative Assembly, without being elected in the interim, the Supreme Court ruled that his reappointment as a minister with effect from November 23, 1996, was improper, undemocratic, invalid, and unconstitutional. His reappointment is subsequently revoked, though at this stage it makes no difference. Due to the importance of the problem, we have addressed it. The High Court's Division Bench erred when it dismissed the appellant's limine writ petition.

Since it was decided that Shri Tej Prakash Singh's appointment to the position of minister in the state of Punjab with effect from November 23, 1996, was unlawful and unconstitutional. The High Court's Division Bench erred when it dismissed the appellant's writ petition. It was determined that a minister's reappointment was invalid. Therefore, this appeal is successful and is granted.

CRITICAL ANALYSIS

This case revolves around Article 164 of the Indian Constitution. According to Article 164(4), if a non-member is appointed a minister, he will no longer hold that position until he is elected to the legislature within a small window of time, such as six months after the date of his appointment. Article 144(3) of the Drafting Constitution, which is equivalent to Article 164(4) of the Constitution. A Minister shall, at the time of his selection as such, be a member of the Legislative Council of the State, as the case may be. This was the amendment that Mr. Mohd. Tahir, MP, offered during the discussion of the drafting provision.

In the Constitutional Assembly, Mr. Tahir, who supports his proposed amendments, stated: "This provision appears to be at odds with the spirit of democracy. This clause was included in the Government of India Act of 1935 as well. Those were undoubtedly the days of imperialism, but thankfully those times are long over. This was then stipulated because, prior to the provisions of the Constitution and the 1935 Act, a Governor could appoint a Minister through the back door if, for some fortunate or unfortunate reason, the candidate was not

chosen by the nation's citizens. However, the people of the states will now elect members of the Legislative Assembly, and we should expect them to send their best men to be their representatives in the council or Legislative Assembly. As a result, I cannot see why a guy who was not chosen by the people of the states to be their representative in the Legislative Assembly or the Council should be appointed.

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, - 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 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 be not permitted to be appointed a member of the Cabinet on the assumption that he shall be able to get himself elected either from the same constituency or from another constituency. After all the privilege that is permitted is a privilege that extends only for six months. It does not confer a right to that individual to sit in the House without being elected. My second submission is this, the fact that a nominated Minister is a member of the cabinet, does not either violate the principle of confidence, because if he is a member of the Cabinet, 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."

The impact of ministers' presence in Parliament. The practise and procedure of both houses ensures that the executive's actions are always subject to scrutiny by Parliament in addition to the means of parliamentary control. Without being a member of the House of Commons or the House of Lords, a minister of the Crown cannot continue in their position indefinitely. Members of either House are free to ask Ministers questions on the management of their ministries, and both Houses are open to motions regarding a particular Minister's or the Government's overall behaviour.[2]

[2]1006 of Vol. 34 Halsbury Laws of England (4th Edn.)

The above reason asserting the minister are the representative of the citizens for some they are not elected it doesn't mean that they are not capable for the member of parliament, they should be given a chance for the period of six months to get elected themselves within that period not exceeding the period otherwise they will cease the office and the same thing happened in the Westminster. They also agree that non-legislator members can be a member of parliament for the prescribed period not exceeding that period.

A Minister who Is not a member of the State Legislature for six consecutive months is disqualified from continuing in that position, according to Article 164(4). However, some people believe that this violates both the Constitution and the rights of the population. It states explicitly that unless he is elected by direct or indirect election during that time, he will cease to be a minister at the end of that period. Additionally, we must keep in mind that the non-member Minister in question is not granted any voting privileges in the House, not even for the "six months" that he is allowed to remain in office. Only members of a State's House of Legislative are granted the right to vote in the House (Article 189). Ministers who are not elected are not covered. He is allowed to speak in the House but is not allowed to cast a vote as an MLA. That person is not granted any of an MLA's rights or privileges. Despite being covered by Article 177, the person is still entitled to speak and otherwise participate in the legislative immunity proceedings as described in Article 194 (2). Without being elected, the person cannot receive any of the perks of an MLA.

All of these limitations also strongly imply that the "six months' clause" in Article 164(4) cannot be utilised twice for the same person without that person being elected in the meantime. Saying that the individual Minister should be allowed to serve as a Minister for longer than six months without being elected at all and represent the electorate that hasn't even returned him would be too superficial given that he is a person who cannot even win an election through direct or indirect means. It would be undemocratic and a violation of the idea of representative government. It would be a fraud on the Constitution as well as a perversion of it.