

Topic: Conduct Of Government Business Under Article 154 And 166

Name of the Case: State of Madhya Pradesh v. Yashwant Trimbak, AIR 1996 SC 765

Bench: Justice J.B. Patnaik and Justice S.C. Agrawal

Fact of the Case: According to the pension rules, the departmental proceeding against a retired employee could not be instituted without the "Section of the Governor". The learned counsel appearing for the appellants raised two contentions assailing the legality of the order of the Tribunal:

1) The order initiating the departmental enquiry proceeding which was served on the respondent having been passed in the name and by order of the Governor in terms of Article 166(2) of the Constitution of India, the validity of the order cannot be called in question on the ground that it is not an order executed by the Governor and Tribunal, therefore, committed gross error of law in quashing the departmental proceedings on a finding that there has been no sanction of the Governor.

2) The power to accord sanction under Rule 9(2)(b)(i) of the Pension Rules being an executive power of the State Government and the Governor having allocated the Business of the State Government to be transacted by the different Ministers under the Rule of Business made under sub-Article (3) of Article 166 of the Constitution and admittedly the Council of Ministers having accorded sanction, there is no infirmity with the same and further the sanction of the Governor himself is not necessary.

Judgment: The Supreme Court held that the order could not be questioned in any court on the ground that it was not made or executed by the Governor. The bar to judicial inquiry with regard to the validity of such order engrafted in Article 166(2) would be attracted. "The signature of the concerned secretary or under-secretary who is authorised under the authentication rule to sign the document signifies the consent of the Governor as well as the acceptance of the advice rendered by the concerned minister."

The court mentioned that the order of sanction for prosecution of a retired government servant is executive act of the government. Under Article 166(3), the Governor may frame rules of business and allocate all his functions to different ministers except those which the Governor is required by the Constitution to exercise his own discretion. The expression "business of the government of the state" in Article 166 (3), comprises of functions which the Governor is to exercise with the aid and advice of the Council of ministers including the functions which the governor has to exercise in his own subjective satisfaction as well as statutory function of the State Government. Therefore, accepting the matter to be discharged by the Governor in his discretion, "the personal satisfaction of the Governor is not required and any funds may be allocated to ministers". Therefore, the decision taken by council of ministers to sanction prosecution of the retired government servant is valid and does not suffer from any legal infirmity.
