S.P. Anand, Indore vs H.D. Deve Gowda & Others on 6 November, 1996

Equivalent citations: AIR 1997 SUPREME COURT 272, 1996 (6) SCC 734, 1997 AIR SCW 18, (1996) 10 JT 274 (SC), (1997) ILR (KANT) 404, (1997) 1 CAL HN 6, (1996) 4 CURCC 136

Author: Sujata V. Manohar

Bench: Sujata V. Manohar

PETITIONER:
S.P. ANAND, INDORE

Vs.

RESPONDENT:
H.D. DEVE GOWDA & OTHERS

DATE OF JUDGMENT: 06/11/1996

BENCH:
CJT, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Ahmadi, CJI.

Can a person who is not a member of either House of Parliament be sworn in as the Prime Minister of India? That is the main question of public importance that the petitioner has raised in this petition brought Under Article 32 of the Constitution. According to the petitioner, the first respondent, Shri H.D. Deve Gowda, the present Prime Minister of India, not being a member of either House of Parliament was, under the Constitution, not eligible to be appointed as the Prime Minister of India and the President of India, Dr. Shanker Dayal Sharma, the third respondent, committed a grave and serious Constitutional error in swearing him in as the Prime Minister. This

action of the third respondent, says the petitioner, is violative of Articles 14, 21 and 75 of the Constitution and, therefore, void ab initio and deserves to be quashed by an appropriate writ of this Court which may be issued in exercise of the powers conferred by Article 32 of the Constitution. The petitioner has also impleaded the Union of India, the Speaker of the Lok Sabha and the Leader of the Muslim League in Lok Sabha (without naming the individual) as respondents 2,4 and 5 respectively.

A Constitution Bench of this Court had occasion to consider whether a person who is 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 a true interpretation of Articles 163 and 164 of the Constitution which, in material particulars, correspond to Articles 74 and 75 bearing on the question of appointment of the Prime Minister. In that case, Shri T.N. Singh was appointed 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. That is how the matter reached this Court.

Now, Article 164(4) provides that 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. It was, however, urged that on the plain language of the said provision, it is obvious that it speaks of appointment of a Minister who is a member of the State Legislature but who loses his seat at a later date in which case he can continue as a Minister for a period of six months during which he must be re-elected or otherwise, must vacate office. Interpreting the said clause in the context of Article 163 and other clauses of Article 164, this 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. See Har Sharan Verma v. Shri Tribhuvan Narain Singh, Chief Minister, U.P. and Another, (1971) 1 SCC 616.

The same petitioner again raised the issue when Shri K.P. Tiwari was appointed in November, 1984 as a Minister of the U.P. Government even though he was not a member of either House of the State Legislature. He contended that the decision rendered by this Court in the case of Shri T. N. Singh was not good law since 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)]. Dealing with this contention this Court pointed out 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 that even before standing for election a candidate must take the same oath, This was to ensure that only a person having allegiance to India shall be eligible for members; the Legislature. The Court further pointed out that clause (4) of Article 164 of the Constitution provides that a Minister (which includes a Chief Minister also) who, for any 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 any material change brought about in the legal position by reason of the amendment of Article 173(a) of the Constitution from that as explained in the earlier decision in Shri T.N. Singh's case (supra). This decision is reported as Har Sharan Verma v. State of U.P. 1985 (2) SCC 48.

Not content with these two decisions rendered by this Court, the very same petitioner once again questioned the appointment of Shri Sita Ram Kesri as a Minister of State of the Central Cabinet since he was not a member of either House of Parliament at the date of the appointment. Spurning the challenge, this Court held that to appoint a non-member of the Parliament as a Minister did not militate against the constitutional mechanism nor did it militate against the democratic principles embodied in the Constitution. The Court, therefore, upheld the appointment under Article 75(5) of the Constitution read with Article 88 thereof, which Article, inter alia, conferred on every Minister the right to speak in, and otherwise to take part in the proceedings of, either House, in joint sitting of the Houses, and in a Committee of Parliament of which he may be named a member, though not entitled to vote. The Court, therefore, on a combined reading of the aforesaid two provisions held that a person not being a member of either House of Parliament can be appointed a Minister up to a period of six months. This case came to be reported as Har Sharan Verma v. Union of India and Another (1987) Suppl. SCC

310. We may now refer to two decisions rendered by the High Courts of Delhi and Calcutta in which the appointment of the present Prime Minister Shri H.D. Deve Gowda was challenged on more or less the same ground. One Dr. Janak Raj Jai filed a writ petition No.2408 of 1996 in which he questioned the appointment since the present Prime Minister was not a member of either House of Parliament on the date he was sworn-in by the President of India as the Prime Minister of India. He contended that while under Article 75(5) a person can be appointed a Minister, he cannot be and should not be appointed a Prime Minister. Dealing with this submission the High Court, after referring to Articles 74 and 75 of the Constitution, held that "when Article 75(5) speaks of a "Minister" it takes within its embrace that Minister also who is described in the Constitution as Prime Minister". In other words that High Court found that the Constitution did not make any distinction between the Prime Minister and other Ministers. The High Court dismissed the petition.

In the Calcutta High Court C.O. No.1336 (w) of 1996 was filed by one Ashok Sen Gupta, a Senior Advocate, challenging he appointment of Shri H.D. Deve Gowda as the Prime Minister of India on the ground that he was not eligible for appointment as he was not a member of either House of Parliament. The learned Single Judge of the High Court in a well considered Judgment held that Article 75(5) of the Constitution permits the President of India to appoint a person who is not a member of either House of Parliament as a Minister, including a Prime Minister subject to the possibility of his commanding the support of the majority of members of the Lok-Sabha. On this line of reasoning the petition was dismissed in limini.

From the aforesaid three decisions of this Court and the High Courts it becomes clear that a person who is not a member of either House of Parliament or of either House of a State Legislature can be appointed a Minister in the Central Cabinet (which would include a Prime Minister) or a Minister in

the State Cabinet (which would include a Chief Minister), as the case may be. But the petitioner herein remains not satisfied.

The petitioner who argued the case in person with great passion, zeal and emotion, claiming to be concerned about the survival of the democratic process and the pristine glory of our constitutional scheme, submitted that if a person who is not the elected representative of the people of the country and in whom the people have not placed confidence, is allowed to occupy the high office of the Prime Minister on whom would rest the responsibility of governing the Nation during peace and war (God forbid), it would be taking a great risk which the country can ill afford to take and, therefore, we should so construe the relevant provisions of the Constitution as would relieve the country of such a risk. When his attention was drawn to the case law aforementioned he stated that those decisions were old and needed to be reconsidered in the changed circumstances. He submitted his submissions in writing which are by and large a repetition of the averments in the petition.

We cannot but observe that the averments in the petition are of a rambling nature and lack cohesion. It is regrettable that a petition challenging the appointment to the high office of the Prime Minister of this country should have been drafted in such a cavalier fashion betraying lack of study, research and seriousness. The petition abounds in casual and irrelevant averments ranging from cases on freedom of speech to fraternity, from judicial independence to judicial review, from civil code to cow slaughter and so on and so forth. In fairness to the petitioner we must state that he desired to refer to cases on these subjects but we did not permit him as we thought it would be a sheer waste of public time. We, therefore, asked him to confine himself to the principal issue, namely whether a person who is not a member of either House of Parliament can be appointed a Prime Minister. Even on this point his submissions were more in the nature of empty rhetoric than of substance. In fact on reading the petition and his written submissions, the words of Chandrachud, C.J. in Mithilesh Kumar Sinha, etc. v. Returning Officer for Presidential Election & Ors., etc. [(1992) Supp.1 SCR 651] come to mind:

> "It is regrettable that election petitions challenging the election to the high office of the President of India should be filed in a fashion as cavalier as the one which characterises these two petitions. The petitions have an extempore appearance and not even a second look, leave alone a second thought, appears to have been given to the manner of drafting these petitions or to the contentions raised therein. In order to discourage the filing of such petitions, we would have been justified in passing a heavy order of costs against the two petitioners."

In order to appreciate the contention raised in this petition, and to determine if the aforesaid decision on which the learned Attorney General relied has any bearing on the point at issue in the present petition, it would be advantageous to read Articles 74 and 75 in juxtaposition with Articles 163 and 164 of the Constitution :

> 74. Council of Ministers to aide and advise President.-- (1) 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.] (2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

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.

163. Council of Ministers to aid and advise Governor.-- (1) 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.

(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:

(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.

Provided that in the States of Bihar Madhya Pradesh and Orissa, 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.

When we compare Articles 74 and 75 with Articles 163 and 164 the first point of difference is that while the former deal with the President and the Prime Minister, the latter deal with the Governor and the Chief Minister. Article 74(1) and Article 163(1) are substantially the same except that the sentence beginning with `except' and ending with 'discretion', special to the Governor's function, is not to be found in Article 74(1). The proviso to Article 74(1) which grants a special privilege to the President is not to be found in Article 163(1) whereas clause (2) of Article 163 is not to be found in Article 74. Clause (2) to Article 163 is a corollary to the exception clause in Article 163(1) and has no relevance to the issue on hand. Article 74(2) and Article 163(3) are verbatim the same.

Article 75(1) and (2) are identical to Article 164(1) except that in the case of the latter, the two clauses have been combined into one. The proviso to Article 164(1) which is special to States, is not to be found in Article 75. The rest of the clauses of the two Articles are identical except for consequential changes.

On a plain reading of Article 75(5) it is obvious that the Constitution-makers desired to permit a person who was not a member of either House of Parliament to be appointed a Minister for a period of six consecutive months and if during the said period he was not elected to either House of Parliament, he would cease to be a Minister. This becomes clear if one were to read the debates of the Constituent Assembly (the draft Articles were 62 and 144 for the present Articles 75 and 164). Precisely on the ground that permitting such persons to be appointed Ministers at the Union or State levels would "cut at the very root of democracy", an amendment was moved to provide: "No person should be appointed a Minister unless at the time of his appointment, he is elected member of the House:" which amendment was spurned by Dr. Ambedkar in the following words:

> "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. Therefore, this qualification in my judgment is quite unnecessary."

At the end of the discussion, the Constituent Assembly rejected the proposed amendment. Furthermore, as pointed out in the decision of this Court (1987 Supp. SCC 310), such an appointment does not militate against the democratic principles embodied in our Constitution. With respect, we agree.

The petitioner then invited our attention to Halsbury's Laws of England (Third Edition) page 347 wherein at para 745 it is stated: "By conventional usage the Prime Minister is invariably a member of either House of Commons or House of Lords"; footnote (i) proceeds to add that the person selected is preferably to be a member of the House of Commons. The petitioner further urged that even if the Constitution is construed to permit a person who is not a member of either House of Parliament to be appointed a Minister for six months, there is nothing in Article 75(5) to suggest that he can be appointed the Prime Minister of the country. He urged that the status of the Prime Minister is distinct from that of a Minister and, therefore, it is essential that a person who occupies the high position of a Prime Minister should be an elected representative of the people. This submission overlooks the fact that the person who is appointed the Prime Minister is chosen by the elected representatives of the people and can occupy the position only if he enjoys the confidence of the majority of the elected representatives in the Lok Sabha. Secondly, we must bear in mind the scheme of our Constitution and if our constitution permits such appointment, that should put an end to the controversy.

Now Article 75(1) envisages a Council of Ministers with the Prime Minister at the head to aid and advise the President, and the latter is expected to act in accordance with such advice but if he has any reservations he may require the Council of Ministers to reconsider such advice. Thus, the President has to act in accordance with the advice of the council of Ministers as a body and not go by the advice of any single individual. Only a person who, the President 407 thinks, commands the confidence of the Lok Sabha would be appointed the Prime Minister who in turn would choose the other Ministers. The Council of Ministers is made collectively responsible to the House of the People. The form of the oath prescribed in the Third Schedule under Article 75(4) is the same for the Prime Minister as well as a Minister. In other words, the Constitution does not draw any distinction between the Prime Minister and any other Minister in this behalf. This is not to say that the Prime Minister does not enjoy a special status; he does as the head of the Council of Ministers but the responsibility of the Council of Ministers to the House of the people is collective. Besides, the

caption of article 75 as a whole is "other provisions as to Ministers". No separate provision is to be found dealing with the appointment of the Prime Minister as such. Therefore, even though the Prime Minister is appointed by the President after he is chosen by such number of members of the House of the People as would ensure that he has the confidence of the House and would be able to command the support of the majority, and the Ministers are appointed on the advice of the Prime Minister, the entire Council of Ministers is made collectively responsible to the House and that ensures the smooth functioning of the democratic machinery. If any Minister does not agree with the majority decision of the Council of Ministers, his option is to resign or accept the majority decision. If he does not, the Prime Minister would drop him from his cabinet and thus ensure collective responsibility. Therefore, even though a Prime Minister is not a member of either House of Parliament, once he is appointed he becomes answerable to the House and so also his Ministers and the principle of collective responsibility governs the democratic process. Even if a person is not a member of the House, if he has the support and confidence of the House, he can be chosen to head the Council of Ministers without violating the norms of democracy and the requirement of being accountable to the House would ensure the smooth functioning of the democratic process. We, therefore, find it difficult to subscribe to the petitioner's contention that if a person who is not a member of the House is chosen as Prime Minister, national interest would be jeopardised or that we would be running a great risk. The English convention that the Prime Minister should be a member of either House, preferably House of Commons, is not our constitutional scheme since our Constitution clearly permits a non-member to be appointed a Chief Minister or a Prime Minister for a short duration of six months. That is why in such cases when there is any doubt in the mind of the President, he normally asks the person appointed to seek a vote of confidence of the House of the People within a few days of his appointment. By parity of reasoning if a person who is not a member of the State Legislature can be appointed a Chief Minister of a State under Article 164 (4) for six months, a person who is not a member of either House of Parliament can be appointed Prime Minister for the same duration. We must also bear in mind the fact that conventions grow from longstanding accepted practice or by agreement in areas where the law is silent and such a convention would not breach the law but fill the gap. If we go by that principle, the practice in India has been just the opposite. In the past, persons who were not elected to State Legislatures have become Chief Ministers and those not elected to either House of Parliament have been appointed Prime Ministers. We are, therefore, of the view that the British Convention to which the petitioner has, referred is neither in tune with our constitutional scheme nor has it been a recognised practice in our country.

The petitioner had contended before this Court when his petition was called on for hearing on 30.7.1996 that he had filed a similar petition bearing No.774 of 1996 in the Madhya Pradesh High Court and that the High Court had ordered notice to issue exercising jurisdiction under Article 226 of the Constitution. He sought permission to withdraw his petition. Here we must mention that in PIL cases, the petitioner is not entitled to withdraw his petition at his sweet-will unless the court sees reason to permit withdrawal. In granting the permission the Court would be guided by considrations of public interest and would also ensure that it does not result in abuse of the process of law. Courts must guard against possibilities of such litigants settling the matters out of the court to their advantage and then seeking withdrawal of the case. There are umpteen ways in which the process can be abused and the courts must be aware of the same before permitting withdrawal of the

petition. This is not to say that this was one such case. Here we did not allow withdrawal as we noticed that the very same question was being raised from court to court. It was raised in the High Courts of Delhi and Calcutta. Notwithstanding the decisions rendered in the said two cases, to which we have already referred, we were informed by the petitioner himself that he had raised the issue in the Madhya Pradesh High Court and another such petition was filed in the Allahabad High Court. To avoid such snowballing leading to multiplicity of cases we thought it in public interest to examine the issue with a view of avoiding conflict of opinions. That is the reason why we refused to permit withdrawal of the petition and decided to settle the issue of law one way or the other, which we do by this decision.

Before we part, we cannot help mentioning that on issues of constitutional laws, litigants who can lay no claim to have expert knowledge in that field should refrain from filing petitions, which if we may say so, are often drafted in a casual and cavalier fashion giving an extempore appearance not having had even a second look. This is the impression that one gets on reading the present petition. It is of utmost importance that those who invoke this Court's jurisdiction seeking a waiver of the locus standi rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight-errant roaming at will in pursuit of issues providing publicity. He must remember that as a person seeking to espouse a public cause, he owes it to the public as well as to the court that he does not rush to court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. Lastly, it must also be borne in mind that no one has a right to the waiver of the locus standi rule and the court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy, by filling a series of petitions refusing to accept the Court's earlier decisions as concluding the point. We say this because when we drew the attention of the petitioner to earlier decisions of this Court, he brushed them aside, without so much as showing willingness to deal with them and without giving them a second look, as having become stale and irrelevant by passage of time and challenged their correctness on the specious plea that they needed reconsideration. Except for saying that they needed reconsideration he had no answer to the correctness of the decisions. Such a casual approach to considered decisions of this Court even by a person well-versed in law would not be countenanced. Instead, as pointed out earlier, he referred to decisions having no bearing on the question, like the decisions on cow slaughter cases, freedom of speech and expresssion, uniform civil code, etc., we need say no more except to point out that indiscriminate of this important lever of public interest litigation would blunt the lever itself.

We would have ordered the petitioner to pay the cost of this petition but we refrain from doing so on this occasion in the hope that he will exercise restraint in future, failing which he may in a similar or like case be visited with an order of cost. With these observations we dismiss the petition the interim order staying proceedings pending elsewhere shall stand vacated with a direction that they shall be

disposed of in the light hereof.