

ADVOCATE-GENERAL OF MADHYA PRADESH

HIGH COURT DISMISSES PETITION FOR WRIT

NAGPUR, Nov. 27.

A Division Bench of the Nagpur High Court, consisting of Mr. Justice R. Kaushalendra Rao and Mr. Justice P. Deon rejected to-day a *quo warranto* application under Article 226 of the Constitution, challenging the validity of the appointment of Mr. T. L. Shevde as Advocate-General of Madhya Pradesh.

The application, moved by Mr. G. D. Karkare, Editor of *New Leader*, an English weekly of Nagpur, contended that Mr. Shevde could not be appointed Advocate-General under Article 165 (1) inasmuch as he had attained the age of 60 on the date of appointment, namely, January 26, 1950. Mr. Shevde was, therefore, guilty of "intrusion" into the office of Advocate-General and the Governor, who had appointed him, was guilty of "usurpation of powers under Article 165 (1)", according to the applicant.

When the application was taken up for hearing, the Advocate-General raised preliminary objections on the grounds that the Advocate-General's appointment was not of a justiciable character; that as the Governor was not amenable to the court, the appointment could not be declared invalid; and that the applicant had no *locus standi* merely as a private individual as he was not seeking enforcement of Fundamental Rights or any other legal rights attaching to him.

Dismissing these objections, Their Lordships said: "The immunity afforded by Article 361 is personal to the Governor. It does not place the actions of the Governor purporting to be done in pursuance of the Constitution beyond the scrutiny of the court. Power under Article 226 was given not only for the enforcement of Fundamental Rights of the Constitution, but for any other purpose. We see no reason to refuse a citizen under a democratic republican Constitution to move for a writ of *quo warranto* for testing the validity of a high appointment under the Constitution."

The application concerning "public government" was, therefore, maintainable, Their Lordships said.

Turning to the question whether Mr. Shevde's appointment was "vitiated" because he was past 60 on the date of his appointment or because he had retired as a Judge of the High Court, Their Lordships said: "It is obvious that provisions relating to a Judge of a High Court cannot be made applicable to the Advocate-General."

Their Lordships referred to Article 217 (1) which says that a Judge of a High Court shall hold office "until he attains the age of 60 years", and said the provision about duration in the first clause of Article 217 could not be made applicable to the Advocate-General because there was a specific provision about the duration of the appointment of the Advocate-General in clause (3) of Article 165 which said that the Advocate-General shall hold office "during the pleasure of the Governor". The specific provision in the Constitution must, therefore, be given effect to without any limitation. "If that be the true position, as we hold it is, then the appointment (of Mr. Shevde) is not bad because the person is past 60 years so long as he had qualifications prescribed in the second clause of Article 217."

Their Lordships said: "If the provision in the first clause of Article 217 viewed as a guarantee of tenure of office until the age of 60 is not applicable to the Advocate-General because he holds office during the pleasure of the Governor, we see no compelling reason why the same provision construed as a disability should be made applicable to him. We are, therefore, of the view that the first clause of Article 217 cannot be read with the first clause of Article 165 so as to disqualify a person from being appointed Advocate-General after the age of 60. We have no doubt on the point."

While rejecting the application, Their Lordships, however, granted leave to the applicant for appeal to the Supreme Court, under Article 132 (1).

Mr. R. V. S. Mani appeared for the applicant, while Mr. T. L. Shevde, Advocate-General, argued for himself.—PTI.