Supreme Court of India
Har Sharan Verma vs Tribhuvan Narain Singh, Chief ... on 16 March, 1971
Equivalent citations: 1971 AIR 1331, 1971 SCR 1
Author: S Sikri
Bench: Sikri, S.M. (Cj), Shelat, J.M., Vaidyialingam, C.A., Grover, A.N., Ray, A.N.

PETITIONER:
HAR SHARAN VERMA

Vs.

RESPONDENT:
TRIBHUVAN NARAIN SINGH, CHIEF MINISTER U.P. & ANR.

DATE OF JUDGMENT16/03/1971

BENCH:
SIKRI, S.M. (CJ)
BENCH:
SIKRI, S.M. (CJ)
SHELAT, J.M.
VAIDYIALINGAM, C.A.

CITATION:
1971 AIR 1331 1971 SCR 1
CITATOR INFO :
RF 1985 SC 282 (3,12)

ACT:
Constitution of India, Art. 164(4)--Appointment as Chief Minister of a person who is not a member of State Legislature--Validity of appointment.

HEADNOTE:
The first respondent was appointed as Chief Minister of U.P. on October 18, 1970. His appointment was challenged on the ground that he was not a member of either house of legislature at the time of appointment. In appeal to this Court against the High Court's judgment dismissing the petition under Art. 226,
HELD : (i) Clause (4) of Art. 164 must be interpreted in the context of Arts. 163 and 164 of the Constitution. Article 163(1) provides 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 in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." Under cl.(1) of Art. 164 the Chief Minister has to be appointed by him on the advice of the Chief, Minister. They all hold office during the pleasure of the Governor. Clause' (1)

does not provide any qualification for the person to be selected by the Governor as Chief Minister or minister. But cl. (2) makes it essential that the council of Ministers shall be collectively responsible to the Legislative Assembly of the State. This is the only condition that the Constitution prescribes in this behalf. There is thus no reason why the plain words' of cl.(4) of Art. 164 should be cut down in any manner and confined to a case where a Minister loses for some reason his seat in the Legislature of the State. That this is the correct meaning to be given to Art 164(4) is supported by the proceedings of the Constituent Assembly and the position as it obtains in England, Australia and South Africa. [12GH, 3E].

(ii) -If the Governor of a State appoints a Chief Minister and Council of Ministers none of whom are members of the State Legislature, and the Legislative Assembly of the State to whom the Council of Ministers would be responsible endorses this unlikely Council of Ministers, there is noth- ing in the Constitution which would make this appointment illegal. [3AB].

(iii) There can be no difficulty in Ministers who are not members of the Legislature being present at the time of the Governor's address because by virtue of Art. 177 they would be entitled to be present at the meeting of the Legislature addressed by the Governor. [3C-D].

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2205 of 1970.

Appeal from the judgment and order dated November 4, 1970 of the Allahabad High. Court in Lucknow Bench in writ petition No. 1402 of 1970.

The appellant appeared in person.

1-1 S. c India/71 L. M. Singhvi, R. Bana and O. P. Rana, for the respondents. The Judgment of the Court was delivered by Sikri, C. J. In this appeal by certificate granted by the High Court under Art. 132 of the Constitution a short question as to the interpretation of cl. 4 of Article 164 of the Constitution arises. This question has arisen in connection with the appointment on October, 18, 1970, of Shri Tribhuvan Narain Singh as Chief Minister of Uttar Pradesh. He was not a member of either House of Legislature of the State of Uttar Pradesh at the time of his appoint- ment.

The appellant, who is a rate-Payer of the Lucknow Consti- tuency to the Uttar Pradesh Legislative Assembly, filed a petition under Art. 226 of the Constitution in the High Court challenging the appointment of the respondent as Chief Minister. The High Court dismissed the petition but granted a certificate under Art. 132 of the Constitution, and the appeal is now before us.

Article 164(4) reads as follows :

" 164(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."

The appellant contends that this clause only applies when a Minister, who is a Member of the Legislature of the State, loses his seat and the idea behind cl. (4) of Art. 164 is to give him a period of six months to get himself. reelected. The learned Counsel for the respondent, Mr. Singhvi, contends that the scope of cl. (4) cannot be whittled down in this manner as there is no warrant in the language of the article. He further says that even in England a person can be a Minister without being a Member of the House of Commons or the House of Lords. He further points out that a number of constitutions contain similar provisions. It seems to us that cl. (4) of Art. 164 must be interpreted in the context of Arts. 163 and 164 of the Constitution. Article 163(1) provides 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 in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." Under cl.(1) of Art. 164, the Chief Minister has to be appointed by the Governor and the other Ministers have to be appointed by him on the advice of the Chief Minister. They all hold office during the pleasure of the Governor. Clause (1) does not provide any qualification for the person to be selected by the Governor as the Chief Minister or Minister, but cl. (2) makes it essential that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. This is the only condition that the Constitution prescribes in this behalf.

The appellant says that if the interpretation put by the High Court is correct it would be possible for a Governor to appoint a Chief Minister and Ministers none of whom are Members of the State Legislature. He said that this could not have been contemplated. But if the Legislative Assembly of the State to whom this Council of Ministers would be collectively responsible endorses this unlikely Council of Ministers there is nothing in the Constitution which would make this appointment illegal.

The appellant drew our attention to Art. 175 in which it is provided that "the Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of Members." He said that it would be rather strange that the Ministers, who were not members of either the Legislative Assembly or the Legislative Council would not be present. But it seems to us that by virtue of Art. 177 the Ministers, even if they are not Members of a Legislative Assembly or Legislative Council would be entitled to be present at such a meeting. It seems to us that in the context of the other provisions of the Constitution referred to above there is no reason why the plain words of cl. (4) of Art. 164 should be cut down in any manner and confined to a case where a, Minister loses for some reason his seat in the Legislature of the State. We are assured that the meaning we have given to cl. (4) of Art. 164 is the correct one from the proceedings of the Constituent Assembly and the position as it obtains in England, Australia and South Africa.

An amendment(1) was proposed in the Constituent Assembly that the following be substituted :

> "A Minister shall, at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the States as the case may be."

This amendment was, however, negatived. It is interesting to note the position in England. According to Jennings(2) :

> "It is a well-settled convention that these ministers should be either peers or members of the House of the Commons. There have been occasional exceptions. Mr.
> (1) Constituent Assembly Debates dated June 1, 1949 Official Report Vol. VIII. P. 521.
> (2) Cabinet Government by Jennings-third edition, page 60.
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> Gladstone. once held office, out of Parliament for nine months. 'The Scottish Law officers sometimes, as in 1923 and 1924, are not in parliament, General Smuts was minister without portfolio and a member of the War Cabinet from 1916 until 1918. Mr. Ramsay MacDonald and Mr. Malcolm MacDonald were members of the Cabinet though not in Parliament from the general election of November 1935 until early in 1936."
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> "The House of Commons is, however, critical of such exceptions."

S. 64 of the Commonwelth of Australia Constitution Act inter alia provides that "after the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of representatives." Commenting on this Quick & Garran(3) state as, follows :

> "The appointment of a Federal Ministry will necessarily precede the election of the first Federal Parliament. There must be a Ministry to assist and advise the Governor General in the performance of Executive Acts essential.for the conduct of the first general election. The first Federal Ministry cannot at their appointment be members of the Federal Parliament, because at the time of their appointment there is no such Parliament in existence. After the first general election, however, no Federal Minister is permitted to hold office for a longer ,,period than three months, unless he is or becomes a senator or a member of the House of Representatives. Section 32 of the Constitution Act of South Australia (4th January, 1856) contained a similar provision, viz., that after the first general election of the South Australian Parliament, no person should hold the offices of Chief Secretary, Attorney-General, Treasurer, Commissioner of Crown Lands and Immigration, or Commissioner of Public Works, for more than three calendar months, unless he should be a member of the Legislative Council or House of Assembly."
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> This shows that Art. 164 (4) has an ancient lineage. Section 14(1) of the South Africa Act, 1909 reads thus "The Governor-General may appoint officers not exceeding (twelve) in number to administer such departments of State of the Union as the Governor-General in (3) "Annotated Constitution of the Australian Commonwealth"

by Quick & Garran, p. 711.

> Council may establish; such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Executive Council and shall be the King's ministers of State for the Union. After the first general election of members of the House of Assembly, as hereinafter provide, no minister shall hold office for a longer period than three months unless he is or becomes a member of either House of Parliament." Hahlo and Kahn(4) state thus :
>
> "The rule of responsible government that Ministers must be Members of Parliament is ensured by the statutory requirement that they be or within three months become members of either House."

In the result the appeal fails and is dismissed. There will be no order as to costs.

G. C.

Appeal dismissed.

(4) "The British Commonwealth--The Development of its Laws and Constitutions" by Hahlo & Kahn (Vol. 5 P. 130).