

N. Ramu Vs. Union of India and Others

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Court : Chennai

Decided On : Feb-01-1995

Reported in : AIR1995Mad347; (1995)IIMLJ33

Judge : Shivaraj Patil, J.

Acts : [Constitution of India](#) - Articles 154, 164, 166(2), 167, 310 and 361(1); Tamil Nadu Government Business Rules, 1978 - Rules 5, 11, 12 and 35(2); Preventive Detention Act - Sections 11(1)

Appeal No. : Writ Petn. No. 19390 of 1994

Appellant : N. Ramu

Respondent : Union of India and Others

Advocate for Def. : R. Krishnamoorthy, Adv. General, assisted by ;R. Muthukumaraswamy, G.P.

Advocate for Pet/Ap. : Patty B. Jegannathan, Adv.

Judgement :

ORDER

1. At the request of the learned counsel for the petitioner the respondents 1 and 2 were ordered to be deleted on 30-11-1994. The learned Advocate General, took notice for respondents 3 and 4 on the said date and stated that counter-affidavit

would be filed. Thereafter counter-affidavits were filed.

2. Briefly stated, the following are the facts which are considered necessary and relevant for the disposal of this writ petition:--

The petitioner states that he is a practising advocate in the High Court for the past 18 years. He is filing the writ petition as a public interest litigation without any motive against the respondents for redressal of the public injury and to quash the unconstitutional actions of the respondents 3 and 4. The third respondent is responsible for the policy decisions of the State.

3. According to the petitioner the Executive power of the State vested with the Governor and shall be exercised by him either directly or through Officers subordinate to him as contemplated under Article 154; the executive power of the State is co-extensive with the legislative power; every member of the public knew about the existence of a cold war between the Chief Minister and the Governor; the Chief Minister deliberately violated the precedents and the constitutional provisions; as contemplated under Article 167 it is the constitutional duty of the Chief Minister to communicate to the Governor all decisions of the Council of Ministers relating to the administration -- affairs of the State and proposals for legislations; this Court has to issue proper directions to the Chief Minister to do her constitutional duty under Art. 167; the third respondent with the oblique motive has deliberately violated the constitutional provisions stipulated under Article 164 of the Constitution and violated the oath of office and secrecy set out in the third schedule to the Constitution; the third respondent further violated the provisions laid down under Articles 166 and 167; the third respondent never met the second respondent to render her constitutional duties; and the unconstitutional activities of the third respondent clearly proved her mala fides.

4. The third respondent intentionally created a constitutional crisis in the State of Tamil Nadu by issuing a Notification in G.O. Ms. No. 1068 dated 16-11-1994. Hence it is high-time to command the third respondent to act in accordance with the constitutional provisions by the Judiciary.

5. It is further stated that the procedure followed in Tamil Nadu was to put up to the Governor the proposals for appointment, posting and promotions of Officers including Secretaries, Collectors, and senior police Officers under Rule 35(2)(ix) of the Business Rules and Secretarial Instructions, hereinafter referred to as 'the Rules', of the Government. Now the third respondent has invoked the provisions of Rule 35(4) which gives overriding powers to the Chief Minister. Under Article 310 of the Constitution the Governor is entitled to see all the files before issue of orders. The business rules cannot invade and override the Constitutional provisions.

6. The fourth respondent issued Notification G.O. Ms. No. 1068 dated 16-11-1991 and allocated the port-folios of the Honourable Ministers of Tamil Nadu under the unconstitutional and mala fide directions of the third respondent; the said Notification violates the provisions of Articles 164 and 166 of the [Constitution of India](#). Hence the said Notification is liable to be quashed as ultra vires to the Constitution. In case the said Notification is not quashed it will amount to utter failure of the constitutional machinery, and besides such illegal notifications will create a bad precedent. Further in future the credibility of the Rule of law will be lost. For these reasons, this Court as Custodian of Rule of Law has to direct the third respondent to act in accordance with the provisions of Articles 166 and 167 and quash the said notification.

7. The third respondent while adopting the detailed counter-affidavit filed by the fourth respondent, in addition, in her affidavit has stated that the allegations made in paragraphs 2 and 3 of the affidavit filed by the petitioner questioning the alleged unconstitutional actions of this respondent for alleged political advantages, are absolutely untenable and baseless. The allegations made in paragraph 5 that there exists a cold war between her and the Governor are also misconceived and untenable. Similarly the averments made that this Court should issue directions to her to do her constitutional duties under Article 167 of the Constitution is absolutely untenable as she has always been acting in accordance with the constitution including Article 167. The other allegations made in the same paragraph are denied as politically motivated. Similarly the allegations made in paragraphs 6 and 7 are also denied. It is denied that she has brought about a

constitutional crisis by issuing the impugned Government Order. As referred to in the counter-affidavit of the fourth respondent, the action of re-allocating the business amongst the Ministers has been done exercising the powers under Explanation I to Rule 5 and orders issued accordingly, which is perfectly in accordance with the provisions of the Constitution and the Rules made thereunder. There has been no violation of any provisions of the Constitution either with regard to the decision taken in that regard or in the manner of issue of the Government Order in question. The averments made in paragraph 8 of the writ petition referring to Rules 35(2) and 35(4) and Article 310 of the Constitution have no relevance whatsoever. The allegations made in paragraphs 9 and 10 that the impugned Government order violates the provisions of the Constitution are without substance.

8. It is further stated that there are absolutely no grounds for questioning the impugned order. The re-allocation of the port-folios among the Ministers had been felt necessary in the public interest, and having regard to the urgency of the matter orders were issued invoking the relevant rules. There is neither illegality nor irregularity in the action taken by her and the Government. The allegations of mala fides or motives have been made without any valid basis and are stoutly denied. On the basis of the counter-affidavit the third respondent has sought for dismissal of the writ petition.

9. The fourth respondent in his counter-affidavit states that the writ petition is wholly mis-conceived and is devoid of any merit whatsoever. The business of the Government are governed by the Tamil Nadu Government Business Rules made under Article 166(2) and (3) of the [Constitution of India](#). Rule 5 of the said Rules provides that the Governor shall, on the advice of the Chief Minister, allot the business of the Government amongst the Ministers, by assigning one or more Department to the charge of the Minister. Explanation I to the said rule provides that in cases where orders allotting business have to be issued urgently the allotment may be made by the Chief Minister and cases circulated to the Governor after issue of orders. In terms of the said rules the business of the Government has been allotted to various Ministers by the Governor on the Advice of the Chief Minister.

10. On 7-10-1994 a proposal was made by the Chief Minister to effect certain changes in the port-folios of the Ministers. Accordingly proposals were made to re-allot the business among the Ministers in the manner suggested by the Chief Minister and accordingly the said proposals were forwarded to the Governor on 8-10-1994, so as to enable him to act on the advice of the Chief Minister and re-allot the business of the Government amongst the various Ministers. Even though the proposals were circulated to the Governor on 8-10-1994 the file was not received back from the Governor till 15th November, 1994. There was an urgent need felt in the public interest by the Chief Minister to have the re-allotment of the business effected. Hence she invoked the powers vested in her under Explanation I to Rule 5, and made the re-allotment of the business among the various Ministers on 16-11-1994. The Chief Minister having issued the order directed circulation of the cases to the Governor.

11. In view of the decision taken by the Chief Minister under Explanation I to Rule 5, orders were accordingly issued by the Government in G.O. Ms. No. 1068 Public (Special-B) Department dated 16-11-1994. The said order was made in the name of the Governor and duly authenticated as required by Article 166 of the Constitution read with Rules 11 and 12, and Clause 84 of the Secretariat Instructions. Thus the said order is perfectly valid and there is no illegality or irregularity in the same. As contemplated by Explanation I to Rule 5 the Governor had also seen the same and affixed his signature on 21-11-1994. It is thus submitted that there is absolutely no irregularity or illegality in the action taken by the Government and that the writ petition is wholly misconceived. This respondent also has denied the other allegations made in the affidavit filed by the petitioner and sought for dismissal of the writ petition.

12. The petitioner has filed a reply affidavit stating that the allegations made in paragraphs 5 and 6 of the affidavit are not politically motivated; the third respondent has not given any valid reasons for invoking the urgency provisions viz., Rule 5 Explanation I overriding and invading the mandatory provisions stipulated in Rule 5, when the very same file was pending before the Governor. The impugned Notification was issued in the name of the Chief Minister and not issued in the name of the Governor. The third respondent has not given any valid

reason or explanation in her counter in this regard. Hence the impugned notification has to be quashed, and that the third respondent has not given any explanation for issuing the impugned notification in violation of the mandatory provisions of Rules 11 and 12.

13. Shri Patty, B. Jegannathan, learned counsel for the petitioner contended that the impugned Notification issued is not in conformity with Articles 154, 166 and 167 of the [Constitution of India](#); the third respondent has acted in violation of Articles 166 and 167 of the Constitution and has intentionally created a constitutional crisis in the State of Tamil Nadu by issuing the said notification G.O. Ms. No. 1068 dated 16-11-1994. Further proper procedure ought to have been followed in accordance with the Tamil Nadu Government Business Rules and Secretariat Instructions. The third respondent has invoked the provisions of Rule 35(4) which gives overriding powers to the Chief Minister; under Article 310 of the Constitution the Governor is entitled to see all the files before issue of orders and that business rules cannot invade or override the constitutional provisions; the impugned Notification under which certain portfolios were allocated to Ministers was made by the third respondent unconstitutionally and mala fide; the said notification is issued in violation of Articles 164 and 166 of the Constitution, and as such it is liable to be quashed as ultra vires of the constitution; and in case it is not quashed it will amount to utter failure of the constitutional machinery and such illegal notifications will create a bad precedent affecting the credibility of Rule of law. The third respondent has not given valid reasons for invoking the urgency provisions i.e., Rule 5 Explanation (1) when the very same file was pending before the Governor. The impugned Notification was issued in the name of the Chief Minister and not issued in the name of the Governor. In the circumstances, according to the learned counsel, the impugned Notification is to be quashed.

14. Shri R. Krishnamurthy, learned Advocate General, representing the respondents 3 and 4 argued in support of justification and validity of the impugned notification. He submitted that the writ petition is wholly misconceived and is devoid of any merit; the businesses of the Government are governed by the rules which are framed under Article 166(2) and (3) of the Constitution; Rule 5 of the Rules provides that the Governor shall, on the advice of the Chief Minister, allot

the business of the Government amongst the Ministers by assigning one or more department to the charge of the Minister; Explanation (1) to the said rule provides that in cases where orders allotting business have to be issued urgently the allotment may be made by the Chief Minister and the cases circulated to the Governor after issuing orders; in terms of the said rules the business of the Government has been allotted to various Ministers; on 7-10-1994 a proposal was made by the Chief Minister to effect certain changes in the portfolios of the Ministers which proposals were forwarded to the Governor on 8-10-1994 so as to enable him to act on the advice of the Chief Minister; since the file was not received back from the Governor till 15-11-1994 and urgent need was felt in the public interest by the Chief Minister, hence she acted under Explanation (1) to Rule 5 and made re-allotment of the business among the various Ministers on 16-11-1994; having issued the order the Chief Minister directed circulation of it to the Governor; thus the impugned G.O. Ms. No. 1068 dated 16-11-1994 was issued; the said order was made in the name of the Governor and was authenticated as required by Article 166 of the Constitution read with Rules 11 and 12 and Clause 84 of the Secretariat Instructions, and thus the said order is perfectly valid. The learned Advocate General has placed before this Court the original records relating to the issue of the impugned notification for perusal of this Court and to show that the impugned notification issued is perfectly valid having regard to the records which speak for themselves.

15. I have carefully considered the submissions of the learned counsel for the parties.

16. From the above-said original records produced before me, it is clear that the third respondent directed allotting of business relating to some subjects to different ministers. From the Note for circulation it is seen that reallocation of business among Ministers was approved by the third respondent on 7-10-1994 which was circulated to the Governor on 8-10-1994. It was not received back till 15-11-1994. Hence the third respondent directed to issue the impugned G.O. Ms. No. 1068 dated 16-11-1994. Thereafter the file was circulated to the Governor after issue of the Government Order which is also approved by the Governor on 21-11-1994. Pursuant to G.O. Ms. No. 1068 another G.O. Ms. No. 1069 was issued on 16-11-

94 itself notifying allocation of subjects among the Ministers. At the end of the said Notification it is stated 'By order of the Governor' under the signature of the Secretary to Government authenticating it.

17. Rule 5 of the Tamil Nadu Government Business Rules, 1978 (for short, 'the Rules') reads thus :--

'The Governor shall, on the advice of the Chief Minister, allot the business of the Government among the Ministers by assigning one or more departments to the charge of a Minister:--

Provided that nothing in this rule shall prevent the assigning of one department to the charge of more than one Minister.

Explanations.-- (1) In cases, where orders allotting business have to issue urgently, the allotment may be made by the Chief Minister and the cases circulated to the Governor after issue of orders.'

As can be seen from the above rule, the Governor shall, on the advice of the Chief Minister, allot the business of the Government among the Ministers. In cases where order allotting the business is to be issued urgently the allotment may be made by the Chief Minister and the cases circulated to the Governor after issue of orders. The allotment of business of the Government among the Ministers is to be done by the Governor on the advice of the Chief Minister.

18. A reading of the Rules shows that the choice of allotment of business of the Government among the Ministers rests with the Chief Minister. The Governor has to allot the business of the Government among the Ministers on the advice of the Chief Minister. In cases of urgency, orders allotting the business may be made by the Chief Minister and the cases circulated to the Governor after issue of orders.

19. From the records it is clear that the re-allocation of business among some Ministers was approved by the third respondent on 7-10-1994. The cases were circulated to the Governor on 8-10-1994, but the file was not received back from the Governor till 15-11-1994. Since the matter assumed urgency the re-allocation of business among Ministers was made by the third respondent and orders were

issued accordingly which fact is clear from the note for circulation found in the records. This aspect is also supported by the counter-affidavit filed by respondents 3 and 4.

20. The contention of the learned counsel for the petitioner in this regard is that the respondent No. 3 has not explained as to what were the reasons for the urgency, and there was no justification for the third respondent to issue orders when the same matter was pending before the Governor. In my view, whether there was urgency or not and what were the reasons for urgency are not the matters to be decided by this Court, and it is equally not necessary for the respondent No. 3 to explain as to the reasons for urgency. It may depend upon the exigencies of time. If it was considered urgent in the interest of running the business the re-allocation of business could be done by the Chief Minister acting under Explanation (1) to Rule 5, Explanation (1) to Rule 5 is plain and clear in its language which provides for allotment of business by the Chief Minister in case of urgency, and circulate the cases to the Governor after issue of orders. That is what is done in the instant case. Added to this the Governor has approved the action of the third respondent on 21-11-1994. Hence it cannot be said that G.O. Ms. No. 1068 impugned in this writ petition was without the authority of law or against the provisions of the Constitution.

21. The contention of the learned counsel for the petitioner that the business rules cannot override the provisions of the Constitution is also not acceptable, for the reason that these rules are made by the Governor exercising the powers conferred by clauses (2) and (3) of Article 166 of the [Constitution of India](#), and the Constitutional validity of these rules are not questioned. Even otherwise, these rules are made for the more convenient transaction of business of the Government of the State and for the allocation among Ministers of the said business. It is also not ' shown to me how this Rule 5 runs contrary to the provisions of the Constitution, when it is under Rule 166(3) of the Constitution itself the Governor has made these Rules.

22. The impugned Notification G.O. Ms. No. 1068 produced by the petitioner does not show that it is issued by order of the Governor. However the copy of this

Notification found in the record shows that it is issued by Order of the Governor. On this basis the learned counsel commented that the copy of the Notification found in the file cannot be given credence as it is not consistent with the Notification issued in the Gazette. The Notification published in the Gazette only shows that the Notification is issued in the name of the Chief Secretary. On the same day i.e., on 16-11-1994 itself G.O. Ms. No. 1069 was issued notifying the allocation of subjects among all Ministers which shows that it was issued 'By order of the Governor' under the signature of the Chief Secretary to Government.

23. According to the learned Advocate General, G.O. Ms. No. 1068 is only a Notification showing the decision of the third respondent directing allocation of business to some Ministers. Based on the same Government Order, G.O. Ms. No. 1069 was issued on the same date stating it to be by Order of the Governor, signed by the Chief Secretary after due authentication. He states that these facts are supported by the records produced before this Court. As can be seen from the records themselves they are to the said effect. In view of the approval of the Governor of the re-allocation of the business among Ministers on 21-11-1994 after orders were issued, makes the decision of the third respondent re-allocating the business among the Ministers acting under Explanation (1) to Rule 5 perfectly valid. Even with regard to urgency the same note which was sent for circulation and approved by the Governor itself shows that there was urgency and the Governor after perusal of the same has ratified it on 21-11-1994.

24. In view of what is stated above, the impugned G.O. Ms. No. 1068 dated 16-11-1994 is only the decision of the third respondent. Assuming that the order is not issued in the name of the Governor or by Order of the Governor, and not only authenticated, what is the effect of such irregularity is to be dealt with in the light of the various pronouncements of the Supreme Court and High Courts.

25. Under Article 166 of the Constitution, all executive action of the Government of a State shall be expressed to be taken in the name of the Governor, and that orders made in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor and that the validity of the order which is so authenticated shall not be called in question on the ground

that it is not an order made by the Governor. It follows that if the requirements laid down in this Article are complied with the order cannot be called in question, on the ground that it is not an order made by the Governor.

26. In the case 'Dattatreya Moreshwar v. State of Bombay' (AIR 1952 SC 181) : : 1952 CriLJ955 the Supreme Court has stated thus (at pp. 185, 186):--

'Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself. The position, therefore, is that while the Preventive Detention Act requires an executive decision, call it an order of an executive action, for the confirmation of an order of detention under Section 11(1) that Act does not itself prescribe any particular form of expression of that executive decision. Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision as to whether the detention order should be confirmed or not under Section 11(1). That such a decision has been in fact taken by the appropriate Government is amply proved on the record. Therefore, there has been, in the circumstances of this case, no breach of the procedure established by law and the present detention of the petitioner cannot be called in question.'

The Supreme Court in 'State of Bombay v. Purushottam Jog Naik' (AIR 1952 SC 317) : : 1952 CriLJ1269 , in paragraph 11 has stated thus (at p. 318):--

'The short answer in this case is that the order under consideration 'is' 'expressed' to be made in the name of the Governor because it says 'By order of the Governor'. One of the meanings of 'expressed' is to make known the opinions or the feelings of a particular person and when a secretary to Government apprehends a man and tells him in the order that this is being done under the orders of the Governor, he is in substance saying that he is acting in the name of the Governor and, on his behalf, is making known to the detenu the opinion and

feelings and orders of the Governor. In our opinion, the Constitution does not require a magic incantation which can only be expressed in a set formula of words. What we have to see is whether the substance of the requirements is there.'

In yet another case 'R. Chitralekha v. State of Mysore' (AIR 1964 SC 1823: 1964 (6) SCR 368) : : [1964]6SCR368 , after referring to the cases of 'Dattatreya Moreshwar' (AIR 1952 SC 181) and 'Purushottam Jog Naik' (AIR 1952 SC 317) : : 1952 CriLJ1269 aforementioned, the Supreme Court stated that (at p. 1829 of AIR):--

'It is, therefore, settled law that provisions of Article 166 of the Constitution are only directory and not mandatory in character and if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor'.

In Chitralekha's case the contention advanced was that Annexure IV was invalid as it didnot conform to the requirements of Article 166 of the Constitution, as it was not issued in the name of the Governor or by Order of the Governor. The said Annexure-IV reads thus:--

'Sir,

Sub: Award of marks for the 'interview' of the candidates seeking admission to Engineering Colleges and Technical Institutions.

With reference to your letter No. AAS 4.ADW/63/249I, dated the 25th June, 1963, on the subject mentioned above, I am directed to state that Government have decided that 25 percent of the maximum marks

Yours faithfully,

Sd/- S. NARASAPPA,

Under Secretary to Government,

Education Department.'

In the case of P. Joseph John v. State of Travancore-Cochin (1955 SCR 1011) : (AIR 1955 SC 160) : : (1956)ILLJ235SC the Supreme Court observed thus (at pp. 164, 165 of AIR) :--

'Mr. Thomas argued that the show cause notice was not in accordance with the provisions of Art. 166 of the Constitution in as much as it was not expressed to have been made in the name of the Rajpramukh. As above mentioned, this notice was issued on behalf of the Government and was signed by the Chief Secretary of the United State of Travancore-Cochin who had under the rules of business framed by the Rajpramukh the charge of the portfolio of 'service and appointments' at the Secretariat level in this State. This was in our opinion substantial compliance with the directory provisions of Art. 166 of the Constitution. It was held by this court in Dattatreya Moreshwar Pangar-kar v. State of Bombay (1952 SCR 612): (AIR 1952 SC 181) : : 1952 CriLJ955 that clauses (1) and (2) of Article 166 are directory only and non-compliance with them does not result in the order being invalid, and that in order to determine whether there is compliance with these provisions all that is necessary to be seen is whether there has been substantial compliance with those requirements. In the present case there can be no manner of doubt that the notice signed by the Chief Secretary of the State and expressed to be on behalf of the Government and giving opportunity to the petitioner to show cause against the action proposed to be taken against him was in substantial compliance with the provisions of the article. The petitioner accepted the notice and in pursuance of it applied for further time to put in his defence. He was twice granted this time. In these circumstances, the contention of Mr. Thomas that as the notice was not expressed as required under Art. 166 it was invalid and therefore the requirements of Art. 311 were not satisfied in this case must be held to be devoid of force. We are satisfied that all the requirements of Art. 311 have been fully complied with in this case. It may also be mentioned that the High Court held that H. H. the Rajpramukh had intimation of the decision of the Council of Ministers and the action proposed to be taken against the petitioner and that in fact His Highness approved of the proposed action.'

The Full Bench of Bombay High Court in the case of Chandrakant Sakharam Karkhanis v. State of Maharashtra (AIR 1977 Bom 193 : : AIR1977 Bom193), in

paragraph 20 (at p. 206), has stated thus:--

'The next aspect deals with form and formalities, if any, that are required to be followed or gone through while framing rules under the proviso to Art. 309. Several things will have to be considered under this topic. The first thing that need be considered is whether the instrument must be issued 'by order and in the name of the Governor' or not. While considering this aspect it must be stated at once that the position in law is well established and there is no particular charm in the expression 'by order and in the name of the Governor' and its absence in any particular circular, order or resolution would not be conclusive one way or the other, for, even if such expression is absent it is well settled that the fact that the instrument has been issued under the authority of the Governor can be proved by other evidence if necessary and if it is so proved, there would be no question of the relevant circular, order or resolution getting vitiated by reason of its absence.'

Further in paragraph 22 (at p.211) of the same decision it is held thus:--

'The aforesaid decisions make the position quite clear that the provisions of Art. 166 of the Constitution themselves are directory in nature and further that the rules framed by the Governor under clause (3) of the Art. 166 must be regarded as rules having been framed for more convenient transaction of business of the Government and are directory in character and not mandatory and any non-compliance thereof would be a mere procedural defect but would not confer any right upon any citizen to approach the Court under Art. 226 of the Constitution.'

27. The learned counsel for the petitioner has placed reliance on the following two decisions viz., (i) Srinivasan v. Governor of Tamil Nadu, Madras AIR 1985 Mad 187) and (ii) K. A. Mathialagan v. Governor of Tamil Nadu AIR 1973 Mad 198). The first of the above two decisions was relied on to state that it shall be the duty of the Chief Minister to communicate to the Governor all decisions of the Council of Ministers relating to the administration and the affairs of the State. Paragraphs (at pp.189, 190) of the said judgment reads:--

'The second contention is that there has been a violation of An. 167 of the Constitution in that the decision of the Council of Ministers has not been

communicated to the Governor by the Chief Minister as contemplated by that Article but it has been communicated by the Finance Minister, and that will not satisfy the requirement of An. 167. That Article says that it shall be the duty of the Chief Minister of each State to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State. According to the learned counsel the Chief Minister alone can communicate the decisions to the Governor and none else as per the provisions in Art. 167. The above contention, in my view, is based on a misconception of the scope of An. 167. Article 167 talks of the duty of the Chief Minister and not his right. The object of the Article is to ensure that the Chief Minister does not give effect to the decision of the Council of Ministers without reference to the Governor and it is for that purpose a duty is enjoined by that provision in the Chief Minister to communicate all the decisions of the Council of Ministers to the Governor. Therefore, the petitioner is not right in saying that the Chief Minister alone has got the right to communicate the decision of the Council of Ministers and none else. No doubt, the Chief Minister is under a duty to communicate the decision of the Council of Ministers, but if the Chief Minister is not in a position to perform the said duty the same can be performed by the Minister to whom his functions had been delegated. In this case the portfolios of the Chief Minister have been allocated by the Governor to the Finance Minister during the period of the former's medical treatment by the earlier notification of the Governor. Therefore all the functions assigned to the Chief Minister under the business Rules can be performed by the Finance Minister. Further, the Finance Minister has also been delegated the powers of the Chief Minister and as a delegatee, the former can communicate the decisions of the Council of Ministers to the Governor. I do not therefore find any substance in the above contention of the petitioner as well.'

In the case on hand the proposal for re-allocation of the business of the Government among Ministers was sent to the Governor on 8-10-1994. The Governor has seen and signed the order of re-allocation of the business among the Ministers on 21-11-1994.

28. The second decision, viz.. K. A. Mathialagan (AIR 1973 Mad 198) was cited in support of the submission that facts may be ascertained from the Governor. After

considering the various cases the Full Bench of this Court has observed thus (at p. 219): --

'Neither the Supreme Court in this case, nor in the other cases we referred to of the High Courts, was it held that the personal immunity afforded by Art. 361(1) to the Governor did not avail where his bona fides were questioned. They have not held that where his bona fides are questioned, he can personally be, called to enter his defence. In our opinion, his personal immunity extends to such a case as well. Though the Governor cannot be personally, as a party or otherwise, called upon to answer a charge of bad faith or lack of bona fides with reference to his official act, the validity of his act is open to attack on that ground in a Court. In fact the second proviso to Art. 361(1) is indicative of it. But inasmuch as mala fides or want of bona fides is a mental factor and when such a charge is made against the Governor in respect of his official act, we are inclined to think that there will be at least an obligation or duty on the Governor to make an affidavit for assistance of the Court in deciding the question. In this case, the Governor has made such an affidavit denying the charge of mala fides on his part in proroguing the Assembly.'

Having regard to the facts in the instant case both these decisions do not advance the case of the petitioner in any way.

29. In the case of *M/s. Pioneer Motors Ltd. Tirunelveli v. O.M.A. Majeed, Mirania Motor Service, Tirunelveli* AIR 1957 Mad 48 it is stated that under the Constitution no Minister can issue an order which would be treated as an Order of Government. What he could issue is only a direction to the Secretary and it is only when the Secretary or those who under whom carry out this duty that an order of Government results. The order of Government becomes effective only then, not on the same note or the decision of the Minister on the file. In my opinion this decision does not help the petitioner in any way, as in the instant case G.O.Ms. No. 1068 dated 16-11-1994 is issued by the Chief Secretary and G.O.Ms. No. 1069 was issued by the Chief Secretary by order of the Governor.

30. The legal positions that emerges from the decisions cited above are:--

(i) Compliance with the requirements of Art. 166 gives an immunity to the order inasmuch as it cannot be challenged on the ground that it is not an order made by the Governor, but it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor, and that the provisions of Art. 166 of the Constitution are only directory and not mandatory in character;

(ii) The Business Rules framed by the Governor under Art. 166(3) of the Constitution are, for more convenient transaction of the business of the Government of the State;

(iii) All executive action of the Government of a State shall be taken in the name of the Governor and that the orders made in the name of the Governor shall be authenticated in such manner as may be specified in Rules. There is no specific or set form in which an executive order should be expressed. What is to be seen is whether there is substantial compliance of the requirements of Art. 166 of the Constitution.

31. In the instant case the third respondent did communicate the decision taken for reallocation of portfolios amongst some Ministers and sent the file for circulation even after issuing the order re-allocating the portfolios among the Ministers acting under Explanation I to Rule 5 of the Business Rules. Hence it cannot be said that the third respondent did not perform her duty as contemplated under Art. 167 of the Constitution. The petitioner has neither cited other instances nor placed any material before this Court to take a view that the respondent No. 3 failed to perform a duty as required under Art. 167 of the Constitution.

32. Neither the details nor particulars relating to the allegation of mala fide or political motive are given by the petitioner in the affidavits filed. The respondents 3 and 4 have also denied the allegations of mala fide or any political motivation in issuing the impugned order. Similarly there is no material to hold that if the impugned notification is not quashed it would amount to utter failure of the constitutional machinery. In view of the facts of this case and the various decisions referred to and discussed above it cannot be said that the impugned notification was issued in violation of Arts. 164 and 166 of the [Constitution of India](#).

33. In the light of the above decisions, if the impugned Government Order is examined, it cannot be said that it is either invalid or vitiated. The Chief Minister approved the proposal for re-allocation of the business of the Government among the Ministers on 7-10-1994. The said proposal was sent to the Governor on 8-10-1994. Since the file was not received back from the Governor till 15-11-1994 the third respondent, in view of the urgency, took the decision exercising the powers under Explanation (1) to Rule 5 of the Rules to issue orders re-allocating the business of the Government among the Ministers, and the said decision was notified by the Chief Secretary in G.O.Ms. No. 1068 dated 16-11-1994. Further G.O.Ms. No. 1069 dated 16-11-1994 was also issued on the same day showing allocation of the business of the Government among all Ministers showing it to be by Order of the Governor, authenticated and signed by the Chief Secretary. Further on 21-11-1994 when the file was circulated after issue of orders the Governor has seen and signed the order of re-allocation of the business of the Government among the Ministers. Even looking to the original records, it is clearly established that as a matter of fact also the decisions were taken and orders were issued as stated above.

34. In view of what is stated above, I am not persuaded to agree that any constitutional crisis was created by issuing the impugned order in G.O.Ms. No. 1068 dated 6-11-1994. Since the decision was taken by the Chief Minister exercising the power under Explanation I to Rule 5 of the Rules made by the Governor under Art. 166(2) for convenient transaction of the business of the Government, and the impugned order was issued indicating the same, followed by the Government Order G.O.Ms. No. 1069 issued on the same date, i.e., 16-11-94 by Order of the Governor duly authenticating it under the signature of the Chief Secretary, which decision was also seen and signed by the Governor on 21-11-94, there is no force in the submission of the learned counsel for the petitioner that the action of the third respondent in taking the decision re-allocating the business among the Minister is either illegal or invalid.

35. Thus on facts, for the reasons stated and in the light of the discussion made above, in my opinion, this writ petition has no merit. Hence it is liable to be dismissed. Accordingly it stands dismissed with no order as to costs.

36. Petition dismissed.

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