

In Re: P. Ramamoorthi

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Court : Chennai

Decided On : Apr-07-1952

Reported in : AIR1953Mad94; (1952)2MLJ671

Judge : Rajamannar, C.J. and ;Venkatarama Aiyar, J.

Acts : [Constitution of India](#) - Articles 164, 171 and 226; [Code of Civil Procedure \(CPC\) , 1908](#)

Appeal No. : Writ Petn. No. 244 of 1952

Appellant : In Re: P. Ramamoorthi

Advocate for Pet/Ap. : Party in person

Disposition : Application dismissed

Judgement :

Rajamannar, C.J.

1. This is an application under Article 226 of the Constitution for the issue of a writ of certiorari to call for the records and quash the order of his Excellency the Governor of Madras made in G. O. Ms. No. 1005 Public (Elections) dated 31st March 1952. The said order runs as follows:

'In pursuance of Clauses 3 (e) & (5) of Article 171 of the [Constitution of India](#), I, Sri Prakasa³ Governor of Madras, hereby nominate the following persons to be

members of the Madras Legislative Council:

1. Sri Chakravarthi Rajagopalachari
2. Janab Mahammad Usman
3. Sri Vellapuram Bashyam Ayyangar
4. Sri Omandur P. Ramaswami Reddiar.'

The petitioner is a citizen of India and one of the members of the Madras Legislative Assembly elected on the Communist's Party ticket in the recent general elections held in January 1952. In this application he attacks in particular the nomination of the second respondent, namely, Sri C. Rajagopalachari on several grounds. In view of our decision that the application is not sustainable at the instance of the petitioner in this case, it is not necessary to set out except in the barest outline the several grounds on which the validity of the nomination is impugned.

2. It was first alleged that the nomination is virtually in exercise of fraud of the powers conferred by the Constitution on the Governor, because the nomination was made with the ulterior object of assisting the Congress Legislature party. The next ground on which the validity of the nomination is challenged is that the Governor cannot exercise the power of making the nominations under Article 171(3)(e)(5) of the Constitution except on the advice of the Council of Ministers and having regard to the fact that the nominations[^] are to the Legislative Council which has not yet begun to function, the Council of Ministers who can advise the Government in this matter will be the Council of Ministers appointed from and out of the new Legislative bodies. We refrain from making any remarks on the soundness of any of these several contentions.

3. We must first dispose of the argument that 'it is not necessary for the petitioner to have any personal and direct interest in the matter in respect of which he makes the application and that it is the duty of this court to interfere under Article 226 of the Constitution whenever any violation of any of the provisions of the Constitution is brought to the notice of the court 'pro bono publico' by any citizen, of the State.

The petitioner who argued his case himself went to the extent of saying that even if the attention of this court was not drawn by any person it was still incumbent on this court so far as it was practicable, to interfere in this manner 'suo motu'. Indeed it was said that this duty followed from the form of oath taken by the Judges of this Court which comprises 'inter alia' the promise to uphold the Constitution and the Laws. We have no hesitation in not accepting this argument. It is certainly not the province of this court to interfere either 'suo motu' or at the instance of any person whenever there is any disregard or violation of any of the provisions of the Constitution. Our power under Article 226 of the Constitution can only be invoked at the instance of a person who has a personal grievance against any act of the State in its executive capacity which inflicts a legal injury on him. It has been held over and over again both in the United States of America and in this country that the right which is the foundation of a petition under Article 226 of the Constitution or a corresponding provision is a personal and individual right. Chief Justice Vinson of the United States in a recent case --'Sweatt v. Painter', 63 Mad LW 89 (Journal Section), observed:

'It is fundamental that these cases concern rights which are personal and present.'

The Supreme Court of this country has also adopted the same principle -- 'Charanjitlal Chowdhury v. The Union of India', 1951 SCJ 29.

4. It therefore falls to be considered whether the petitioner is in any manner personally injured by the nomination of the second respondent. In the affidavit filed by him in support of the application he states thus in paragraph 10:

'I submit that I am affected by the order of the first respondent inasmuch as I am deprived of the right along with other members of the Legislative Assembly to have the new Government and to have the nominations of the Legislative Council made on the advice of the Council of Ministers responsible to the legislative Assembly. Further, I submit that as the powers conferred under Article 171(3)(e) and (5) affect the composition of the Legislature and therefore any legislation that may be passed affects every citizen of the Indian Union.'

In spite of the eloquent argument of the petitioner we are unable to agree with him that he has any such personal and direct interest in the matter of the nomination as to enable him to invoke the provisions of Article 226 of the Constitution. The petitioner developed an argument that he was personally affected by the order of nomination because if Sri C. Rajagopalachari had not been nominated but nevertheless had been called upon to form a ministry as the Chief Minister, then Sri C. Rajagopalachari would have had to face an election at the end of six months from the date of his nomination and at such an election the party to which he belongs might be able to defeat him. In our opinion the petitioner is mixing up two things. What is actually impugned in this petition is the nomination of Sri C. Rajagopalachari and not the act of the Governor in calling upon him to form the ministry. The latter act is not the subject-matter of this petition; and we have grave doubts whether that action can be the subject matter of any petition in a court of law. So in any consideration of the validity of the nomination, we should completely omit any reference to the action of the Governor in calling upon Sri C. Rajagopalachari to form the ministry. Now, in what way can the petitioner be said to have been personally aggrieved by this nomination? Surely, he cannot say that the majority which his party commands has been upset by this nomination. He is unable to specify any right, be it property right or personal right, which has been infringed in any manner by the nomination. The petitioner spoke of political rights. We presume that these political rights can come into play in a court of law only in so far as they have the character of legal rights. Otherwise, any discussion as to political right would be completely outside the scope of judicial decision. But we are unable to see even such political rights of the petitioner being infringed.

5. It was said that but for the nomination, it would have been possible for the petitioner along with the other members of his party to have formed a new ministry and to have the nominations made on the advice of the members of that ministry. This is, to say the least, a very remote consequence of the nomination. We are unable to see any personal right of the petitioner which can be said to have been infringed even in an indirect manner by the nomination by the Governor of the second respondent.

6. Finally, the petitioner dilated on his right as a Legislator to see that the nominations were made properly. We do not agree that the petitioner has any such right as a Legislator. Nor has he got a right to see that Sri C. Rajagopalachari does not form a ministry which may be entrusted with the Government of the State.

7. This application must therefore be, and is hereby dismissed.

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