

Ramachandran Vs. M.G. Ramachandran, the Chief Minister of Tamil Nadu and ors.

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Court : Chennai

Decided On : Aug-11-1986

Reported in : AIR1987Mad207

Judge : Venkataswami, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P. No. 7870 of 1986

Appellant : Ramachandran

Respondent : M.G. Ramachandran, the Chief Minister of Tamil Nadu and ors.

Advocate for Pet/Ap. : T. Sivagnanasambandam, Adv.

Judgement :

ORDER

1. This writ petition is for the issue of a writ of quo warranto against the first respondent to s w cause by what authority he claims to have, use, enjoy and perform the duties, rights and privileges of the Office of the Chief Minister of the State of Tamil Nadu.

2. Learned counsel for the petitioner in support of his argument invited my attention to Art. 164, sub-clause (3) and also to Form V of Oaths of Office, prescribed under Third Schedule. According to the learned counsel, the first respondent in a conference convened at Madurai by All World M. G. Ramachandra Mandram has requested the members of the Mandram to give him a promise, and that is the members of Mandram must carry knives with them. Whenever the police fails to punish their enemies, knives will be useful for their self-defence. 'The exact averment in the affidavit is in para 6. which reads as follows -

'Close to midnight on 13th July 1986, the first respondent while addressing his fans (blood kins as he claims them) at the All World M. G. Ramachandra Mandram conference held in Madurai made this request in his speech 'I ask you to promise me one thing. You must all carry knives with you. Whenever the police fails to punish your enemies, knives will be useful for your selfdefence. Please abide by this'. It was reported in Indian Express on 14-7-1986 and also on 3-8-1986. His major portion of the speech was reported in Tamil dailies like Thinathanthi, Anna and Makkal Kural. It is reported that he read out from the prepared text. Again on 15-7-1986, he defended his earlier speech in a Press conference at Madurai. I crave leave of this Honourable Court to treat the typed set as part and parcel of this affidavit.'

3. The only contention of the learned counsel for the petitioner is that by advocating the above principle the first respondent has committed a breach of oath of office taken by him and such breach would be a constitutional impediment for his continuance in office as Chief Minister and, therefore, he cannot continue as Chief Minister.

4. On the arguments of the learned counsel for the petitioner, the question that falls for my consideration is, whether the first respondent has committed any breach of oath by directing the members of All World M. G. R. Mandram to carry knives with them, and if so, whether such breach would be constitutional impediment for his continuance in office as Chief Minister. In my view, the petitioner has to pass through an initial hurdle, whether on the facts and in the

circumstances of the case, a writ of quo warranto would lie under Art. 226 of the [Constitution of India](#). No doubt, as contended by the learned counsel for the petitioner, Art. 164(3) of the Constitution enjoins that before a Minister enters upon his office, the Governor shall administer to him the Oath of Office and secrecy according to the forms set out for the purpose in the third Schedule. At the same time, Art. 164(l) of the Constitution also points out that 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. It is, therefore, clear that the Chief Minister and other ministers shall hold office during the pleasure of the Governor. I may at once make it clear that it is not contended before me that the initial appointment of the first respondent is bad for any reason. Therefore, it has to be taken that the first respondent has been validly appointed in accordance with Art. 164(l) of the Constitution by the Governor of the State of Tamil Nadu. In the context of Art. 164(l) of the Constitution it is for the appointing authority namely, the Governor to consider whether the first respondent has committed any breach of oath disentitling him to continue in office and, therefore, he should withdraw his pleasure. In other words, unless and until the Governor withdraws his pleasure, the Chief Minister is entitled to hold the office. As the essential requirement for the issue of a writ of quo warranto, namely, there is an usurpation of a public office at the time of appointment is admittedly lacking by accepting the initial appointment as valid, and whether there was breach of oaths of office and of secrecy disentitling the first respondent from continuing in office has to be decided by the Governor and not by this court, there is no scope for issuing a writ of quo warranto on the facts of the case.

5. I am supported in this view of mine by a Division Bench judgment of this court and also by a Full Bench judgment of the Kerala High Court. In *Miss R. Ganesan v. S. L. Khurana* reported in 1985 WLR 651 the learned Chief Justice speaking for the Bench has ruled as follows -

'In this appeal, it has been vehemently pressed upon us that under Art. 156(l) of the Constitution, the Governor holds office during the pleasure of the President had if the President declines to withdraw his pleasure, even though the Governor

has acted in violation of the Constitution, the only remedy open to a citizen is to approach the High Court under Art. 226 of the [Constitution of India](#) for a writ of quo warranto. It is difficult for us to see how the appellant can at all ask for a writ of quo warranto against respondent No. 1, He is not disputing the fact that as required by Art. 155 of the Constitution respondent No. 1 has been appointed by the President by warrant under his hand and seal. What is canvassed is that subsequent to the appointment, the Governor has committed a breach of his obligations under the [Constitution of India](#) because he has acted in breach and disregard of the oath which was taken by him under Art. 159 to preserve, protect and defend the Constitution and the law. The breach of this oath, according to the appellant lies in the fact that the executive power of the State which vests in the Governor under Art. 154 can be exercised by him only with the aid and advice of the Council of Ministers, he has exercised these powers only on the advice of the Chief Minister who alone was sworn in on the 10th February, 1985 and no other Ministers were sworn in at all till the 13th February, 1985 when the writ petition was filed. The whole argument proceeds on a misconception of the nature of the writ of quo warranto. The writ of quo warranto is issued in the exercise of jurisdiction of the High Court to protect the public from usurpers of public office. Before a writ of quo warranto is issued, it must be established that the holder of the public office against whom such a writ is asked does not have the legal right to hold that public office. In so far as the present case is concerned, it is not in dispute that the Governor has been duly appointed in accordance with the provisions of Art. 155. He has therefore a constitutional right to hold office under Art. 156 of the Constitution as long as the President does not withdraw his pleasure. It is also an admitted fact that his eligibility to be a Governor as contemplated by Art. 157 has not in any way ceased. There is no provision in the [Constitution of India](#) under which he can be said to have vacated office. There is, therefore no doubt that as long as the President of India does not withdraw his pleasure, he has a right to hold the office of Governor to which he has been properly appointed.'

6. The Full Bench judgment of the Kerala High Court in K. C. Chandy v. Balakrishna, reported in : AIR1986 Ker116 is more or less under an identical circumstance against a Minister. The learned Chief Justice, after referring to various authorities, has held as follows : -

'Oath of office is not an empty formality with no constitutional significance. In the debates in the Constituent Assembly on Art. 56, Dr. Ambedkar is reported to have said that the phrase 'violation of the Constitution' is a large one and may well include treason, bribery or other high crimes and misdemeanours, because treason is certainly violation of the Constitution and bribery will be violation of the Constitution because it will be violation of the oath by the President. In the Judge's transfer case, *S. P. Gupta v. President of India*, : [1982]2SCR365 Pathak, J. observed thus -

'When a Judge permits his judgments in a case to be influenced by the irrelevant consideration of caste and creed, of relationship or friendship, of hostility or enmity he commits a breach of his oath. It is a case where justice is not done and is denied. It is a case of misbehaviour to which the provisions of Art. 218 read with clauses (4) and (5) of Art. 124 are, attracted.'

Breach of oath may thus be a betrayal of faith. The appointing authority, the Governor, in such cases, can consider whether there was in fact any breach of oath. It is not for this Court to embark on any such enquiry. Breach of oath is different from absence of oath. Absence of oath prevents entry into office while breach affects the continuance after a valid entry. If no oath is taken before assumption of office as enjoined by the Constitution, there is no legal title to hold that office and a writ of quo warranto will naturally go from this court. Similarly, 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. This is the mandate of Art. 164(3) of the Constitution. A person without authority cannot function, and the jurisdiction under Art. 226 could be invoked to prevent that usurper in office from functioning. Breach of oath requires a termination of the tenure of office. This power can be exercised by the appointing authority under the Constitution, and according to the procedure, if any, prescribed therein. The termination of the tenure is not the function of a court and it would not be appropriate to exercise jurisdiction under Art. 226 in such cases. Proceedings under Art. 226 in such cases do not lie. It was Jefferson who said -

'Our peculiar security is in the possession of the written Constitution; let us not make it a blank paper by Construction' (Government by Judiciary : Raoul Berger P. 304).

A writ of quo warranto or a writ by way of information in the nature of quo warranto cannot issue in these cases when a post is held 'at pleasure'. This is the normal rule. Even in those cases, however, the non-fulfilment of the conditions prescribed for assumption of office or the absence of the required qualification to hold that office affecting the title to that office will give rise to the issuance of this writ. Once the office is held under a valid title and the continuance depends on the pleasure doctrine, the writ of quo warranto does not run; and no such writ, which can be defeated immediately by the mere exercise of an executive will, will therefore issue.'

7. In the light of the rulings of this Court and the Kerala High Court, above referred to, I have no hesitation to hold that on the facts of the case, no writ of quo warranto could be issued as the question as to whether there was breach of Oath of Office or of Secrecy committed by the first respondent is outside the judicial review under Art. 226 of , the Constitution. Consequently, the writ petition fails and is accordingly dismissed.

8. Petition dismissed

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