

## HAR SHARAN VERMA

v.

STATE OF U.P. &amp; ANR.

January 10, 1985

[E S. VENKATARAMIAH AND D.P. MADON, JJ.]

*Constitution of India, Article 164 and Article 173(a) (as amended by Constitution (Sixteenth) Amendment Act, 1963)—Effect of amended Article 173(a)—A person not a member of State Legislature—Whether can be appointed as a Minister in a State even after amendment of Article 173(a). Held: Yes.*

Through this petition filed under Article 32 of the Constitution the petitioner prayed for the issue of a writ in the nature of *quo warranto* to the respondent K.P. Tewari who had been appointed in November, 1984 as a Minister of the Government of Uttar Pradesh under Article 164(1) of the Constitution by the Governor of the State of Uttar Pradesh even though Shri Tewari was not a member of either House of the State Legislature. The petitioner contended (i) that in the judgment of *Har Sharan Verma v. Shri Tribhuvan Narain Singh, Chief Minister of U.P. and Anr.*, (AIR 1971 S.C. 1331) where it had been held that the appointment of a person as Chief Minister could not be challenged on the ground that he was not a member of the Legislature of a State at the time of appointment, this Court had not considered the effect of the amendment of Article 173 (a) of the Constitution by the Constitution (Sixteenth) Amendment Act, 1963; (ii) that after the amendment of Article 173 of the Constitution by the Constitution (Sixteenth) Amendment Act, 1963 it was not open to the Governor to appoint a person who was not a member of the Legislature of the State as a Minister and that Article 164(4) of the Constitution would only be applicable to a person who had been a Minister but who ceased to be a member of the Legislature for some reason such as the setting aside of his election in any election petition; and (iii) that the debates of the Constituent Assembly suggested that a person should be a member of the Legislature at the time of his being chosen as a Minister.

Dismissing the petition,

HELD : (1) By the Sixteenth Amendment clause (a) of Article 173 of the Constitution is amended by the addition of a clause which requires a candidate at an election to the Legislature to make and subscribe before some person authorised in that behalf by the Election Commission an oath or affirmation

A according to the form set out for the purpose in the Third Schedule to the Constitution. Earlier it was only after a person was elected or nominated as a member of the Legislature of a State that he was required by Article 188 of the Constitution to make and subscribe an oath or affirmation before taking his seat as such member in the form mentioned in the Third Schedule to the Constitution. The above requirement has to be complied with by an elected or nominated member of the State Legislature even after the Sixteenth Amendment. [550H; 551A; E;H]

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C (2) The object of introducing the amendment in clause (a) of Article 173 of the Constitution was to provide that not only before taking his seat shall a member of the Legislature take the oath prescribed by the Third Schedule as required by Article 188 of the Constitution but that even before standing for election, a candidate must take the same oath. This is to ensure that only a person having allegiance to India shall be eligible for membership of the Legislature. [552C-D]

D (3) Article 177, ensures the implementation of the constitutional principle contained in clause (2) of Article 164 of the Constitution which provides that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. A Minister in a State under our Constitution discharges that responsibility by virtue of the provisions contained in Article 177 of the Constitution which enables him to participate in the proceedings of the Legislative Assembly even though he may not be its member with the right to vote. [553F; G]

E (4) It does not appear that the debates of the Constituent Assembly suggest that a person shall be a member of the Legislature at the time of his being chosen as a Minister. An amendment was proposed to that effect in the Constituent Assembly to the draft Constitution but was not accepted.

[553H; 554A-C]

F (5) The fear expressed by the petitioner that a person who does not owe his allegiance to the Constitution and is not willing to uphold the sovereignty and integrity of India would have an opportunity to become a Minister if he is not required to become a member of the Legislature after having made and subscribed an oath or affirmation as prescribed by Article 173(a) of the Constitution is not well founded because under clause (3) of Article 164 of the Constitution a Minister for a State is required to take an oath of allegiance to the Constitution and to undertake to uphold his office in the form prescribed in the Third Schedule.

[554C-E]

G (6) No material change has been brought about by reason of the amendment of Article 173(a) of the Constitution in the legal position that a person who is not a member of the State Legislature may be appointed as a Minister subject, of course, to clause (4) of Article 164 of the Constitution according to which 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. [554H ; 555A]

H (7) By enacting Article 164(4) of the Constitution the makers of the Constitution provided for a situation where a Minister may lose a seat in the

Legislature after appointment—as the result of an election petition for example— or may not be a member when he is appointed. [555B-C]

*Har Sharan Verma v. Shri Tribhuvan Narain Singh, Chief Minister of U.P. and Anr.*, A.I.R. 1971 S.C. 1331, *Constituent Assembly Debates dated June 1, 1949*, Vol. VIII at p. 521 and *Har Sharan Verma v. Chandra Bhan Gupta & Ors.*, A.I.R. 1962 Allahabad 301, referred to.

ORIGINAL JURISDICTION : Writ Petition (Civil) No. 17135 of 1984.

(Under Article 32 of the Constitution of India)

*Har Sharan Verma* : Petitioner in person.

The Judgment of the Court was delivered by

VENKATRAMIAH, J. The petitioner has filed this petition under Article 32 of the Constitution praying for the issue of a writ in the nature of *quo warranto* to the respondent K.P. Tewari who has been appointed in November, 1984 as a Minister of the Government of Uttar Pradesh under Article 164 (1) of the Constitution by the Governor of the State of Uttar Pradesh even though he (K.P. Tewari) is not a member of either House of the State Legislature.

The petitioner who claims to be a votary of pristine democracy and constitutionalism and a crusader against any person who has not been elected to the State Legislature assuming the office of a Minister has argued this case in person with unabated enthusiasm. It is stated that this is the ninth in the series of cases filed by him over a period of twenty-five years in his attempt to prevent erosion of the Executive responsibility to the Legislature.

In *Har Sharan Verma v. Shri Tribhuvan Narain Singh, Chief Minister of U.P. & Anr.*<sup>(1)</sup> which had been filed by the petitioner himself, a Constitution Bench of this Court has held that the appointment of a person as Chief Minister cannot be challenged on the ground that he was not a member of the Legislature of a State at the time of appointment. The grievance of the petitioner against that Judgment is that this Court had not considered the effect of the amendment of Article 173 (a) of the Constitution by the Constitution (Sixteenth) Amendment Act, 1963.

(1) A.I.R. 1971 S.C. 1331.

**A** The petitioner contends more pointedly in this case that after the amendment of Article 173 of the Constitution by the Constitution (Sixteenth) Amendment Act, 1963, it is not open to the Governor to appoint a person who is not a member of the Legislature of the State as a Minister and that Article 164 (4) of the Constitution would only be applicable to a person who has been a Minister but who ceases to be a member of the Legislature for some reason such as the setting aside of his election in any election petition.

**B** Article 173 before it was amended by the Constitution (Sixteenth) Amendment Act, 1963 read as :

**C** "173. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

(a) is a citizen of India;

**D** (b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age ; and

**E** (c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament."

After its amendment clause (a) of Article 173 of the Constitution now reads thus :

**F** "173. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

**G** (a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;....."

**H** By the Sixteenth Amendment clause (a) of Article 173 of the Constitution is amended by the addition of a clause which requires a candidate at an election to the Legislature to make and subscribe before some person authorised in that behalf by the Election Com-

mission an oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution. The said form of oath or affirmation which a candidate at an election to the Legislature of a State should make and subscribe (which was also introduced by the Sixteenth Amendment in the Third Schedule to the Constitution) reads :

“Form of oath or affirmation to be made by a candidate for election to the Legislature of a State :—

“I, A.B., having been nominated as a candidate to fill a seat in the Legislative Assembly (or Legislative Council), do swear in the name of God that I will bear true faith and solemnly affirm

allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India.”

Earlier it was only after a person was elected or nominated as a member of the Legislature of a State that he was required by Article 188 of the Constitution to make and subscribe an oath or affirmation before taking his seat as such member in the following form mentioned in the Third Schedule to the Constitution :

“Form of oath or affirmation to be made by a member of the Legislature of a State :—

“I, A.B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do swear in the name of God that I will bear true faith and solemnly affirm

allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.”

The above requirement has to be complied with by an elected or nominated member of the State Legislature even after the Sixteenth Amendment. The form of oath or affirmation to be made by a member of the Legislature under Article 188 of the Constitution now reads thus :

A "Form of oath or affirmation to be made by a member of the Legislature of a State :—

B "I, A.B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter."

C The object of introducing the amendment in clause (a) of Article 173 of the Constitution was to provide that not only before taking his seat shall a member of the Legislature take the oath prescribed by the Third Schedule as required by Article 188 of the Constitution but that even before standing for election, a candidate must take the same oath. This is to ensure that only a person having allegiance to India shall be eligible for membership of the Legislature.

D Article 163 (1) and Article 164 of the Constitution which provide for the appointment of the Chief Minister and other Ministers in a State read thus :

E "163. (1) 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.....

F "164. (1) 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 :

G Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

H (2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

- (3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule. **A**
- (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. **B**
- (5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.” **C**

Clause (4) of Article 164 of the Constitution says that a Minister (which includes a Chief Minister also) who for any period of six consecutive months is not a member of the Legislature of a State shall at the expiration of that period cease to be a Minister. By virtue of Article 177 of the Constitution a Minister has a right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State on in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any Committee of the Legislature of which he may be named a member, but would not, by virtue of that Article, be entitled to vote. Article 177, therefore, ensures the implementation of the constitutional principle contained in clause (2) of Article 164 the Constitution which provides that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. Ministerial responsibility to the Legislative Assembly is the means of assuring that the Government is in line with popular opinion, “It is also necessary to emphasise” says Sir Ivor Jennings in his book entitled ‘The British Constitution’ “that ministerial responsibility means only that a politician must be able to answer in the House of Commons for every act of administration.” A Minister in a State under our Constitution discharges that responsibility by virtue of the provisions contained in Article 177 of the Constitution which enables him to participate in the proceedings of the Legislative Assembly even though he may not be its member with the right to vote. The petitioner, however, contends that the debates of the Constituent Assembly suggest that a person shall be a member of the Legislature **D**  
**E**  
**F**  
**G**  
**H**

A at the time of his being chosen as a Minister. It does not appear to be so. In fact, as was pointed out in *Har Sharan Verma v. Shri Tribhuvan Narain Singh, Chief Minister of U.P. and Anr.* (supra) an amendment was proposed in the Constituent Assembly to the draft Constitution as follows :

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

C That amendment was not accepted. (See Constituent Assembly Debates dated June 1, 1949, Vol. VIII at p. 521).

D The fear expressed by the petitioner that a person who does not owe his allegiance to the Constitution and is not willing to uphold the sovereignty and integrity of India would have an opportunity to become a Minister if he is not required to become a member of the Legislature after having made and subscribed an oath or affirmation as prescribed by Article 173 (a) of the Constitution is not well founded because under clause (3) of Article 164 of the Constitution a Minister for a State is required to take an oath of allegiance to the Constitution and to undertake to uphold the sovereignty and integrity of India before entering upon his office in the form prescribed in the E Third Schedule to the Constitution which reads thus :

"Form of oath of office for a Minister for a State :

F "I, A.B., do swear in the name of God that I will bear solemnly affirm true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister for the State of.....and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, G affection or illwill."

H It is thus seen that there is no material change brought about by reason of the amendment of Article 173 (a) of the Constitution in the legal position that a person who is not a member of the State Legislature may be appointed as a Minister subject, of course, to clause (4) of Article 164 of the Constitution which says that a Minis-

ter 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. A

The decision of the Allahabad High Court in *Har Sharan Varma v. Chandra Bhan Gupta and Ors.*<sup>(1)</sup> which was again a case filed by the petitioner, on which the petitioner relies also lays down that by enacting Article 164 (4) of the Constitution the makers of the Constitution provided for a situation where a Minister may lose a seat in the Legislature after appointment—as the result of an election petition for example—or may not be a member when he is appointed. B

We do not, therefore, find any merit in the petition. The petition is accordingly dismissed. C

A.P.J.

*Petition dismissed.*

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(1) A I.R. 1962 Allahabad 301.